G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Agriculture
DIVISION:	Consumer and Industry Services
SUBJECT:	Industrial Hemp - Licensing
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 43-26-103(e)
EFFECTIVE DATES:	May 18, 2018 through June 2, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The current rule requires closure of the industrial hemp license application period after April 1. This emergency rule reopens the 2018 application period through June 1, 2018.

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 impact is expected 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 current rule requires closure of the industrial hemp license application period after April 1. This rule re-opens the 2018 application period through June 1, 2018.

(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. §43-26-103(e) requires the department of agriculture to promulgate rules as "necessary to implement and administer an industrial hemp program in this state on an ongoing basis."

(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;

Growers and processors of industrial hemp and farmers interested in growing industrial hemp as an alternative crop are most directly affected by this rule. Tennessee Hemp Industries Association 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;

Tenn. Op. Atty. Gen. No. 07-133 (departments of state may not waive an application deadline expressly provided by statute).

(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 estimated increase in departmental revenues and expenditures resulting from this rule is minimal.

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

Jai Templeton, Commissioner, Tennessee Department of Agriculture

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

Jai Templeton, Commissioner, Tennessee Department of Agriculture

(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

440 Hogan Road, Nashville, Tennessee 37220; (615) 837-5202; jai.templeton@tn.gov

(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: 05-18-18
Rule ID(s): 6768
File Date: 5/18/18
Last Effective Day: 6/2/18

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 Department of Agriculture
Division: Consumer & Industry Services
Contact Person: Jay Miller
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5341
Email: jay.miller@tn.gov

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

Statement of Necessity:
This rule is promulgated to re-open the application period for industrial hemp licensing through June 1, 2018, for the 2018-2019 licensure year.

Under T.C.A. §43-26-103, the department is charged with implementing and administering an industrial hemp program on an ongoing basis. Accordingly, the department created in 2015 its industrial hemp pilot program, which is coming into its fourth year of existence. Initial years of the program have been plagued by use of poorly suited seed, unavailability of allowable pesticides for maintenance of crops, and nonexistence of processing facilities in the state for harvested hemp material. As a result, the program has failed to develop as a robust and sustainable program in Tennessee and is now entering a pivotal period of its development that will determine whether Tennessee is a viable location for growth of industrial hemp industries. Accordingly, the Tennessee legislature amended state law in 2017 to allow use of landrace varieties of industrial hemp that may be better suited for growth in Tennessee's climate. Since then, the department has received exponential growth in the number of applicants for its program in the 2018-2019 licensure year. However, those applicants have been unable to secure appropriate levels of planting material for the licenses obtained and a significant portion of licensed grow areas have been mal-affected by higher than normal precipitation, owner/grower contract disputes for licensed grow areas, and the like. For these reasons, the department finds that additional growers are immediately necessary to the sustainability of its industrial hemp pilot program; that the lack of available resources among current licensees poses an immediate danger to the public welfare; and that this danger is such that use of any other form of rulemaking authorized under the Tennessee Uniform Administrative Procedures Act would not adequately protect the public.

This rule is promulgated to continue in effect from the date of its filing until June 2, 2018.

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
0080-06-28	Industrial Hemp
Rule Number	**Rule Title**
0080-06-28-.02	Licensing

Amendment

Chapter 0080-06-28
Industrial Hemp

Paragraph 0080-06-28-.02(1), but none of its subparagraphs, is amended by deleting the phrase "by April 1 of" and inserting instead the word "for", so that as amended the paragraph shall read:

(1) Each applicant for an industrial-hemp license shall submit a signed, complete, accurate, and legible application form provided by the Commissioner ~~by April 1 of~~ for the year in which the applicant plans to grow industrial hemp, which includes the following:

Authority: T.C.A. §§ 4-3-203; 43-26-103.

Paragraph 0080-06-28-.02(3) is amended by deleting the word "April" in both instances in which it appears and inserting in both instances the word "June", so that as amended the paragraph shall read:

(3) Any application for a license received after ~~April~~ June 1, or that is not complete by ~~April~~ June 1, will be denied.

Authority: T.C.A. §§ 4-3-203; 43-26-103.

* 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 an emergency rule(s), lawfully promulgated and adopted.

Date: May 16, 2018

Signature: [signature]

Name of Officer: Julie Hopkins

Title of Officer: Commissioner

Subscribed and sworn to before me on: May 16, 2018

Notary Public Signature: [signature]

My commission expires on: 07/05/2021

JOYCE M. JACKSON NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

Agency/Board/Commission:

Rule Chapter Number(s):

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.

[signature]

Herbert H. Slatery III
Attorney General and Reporter

May 18, 2018
Date

Department of State Use Only

Filed with the Department of State on: 5/18/18

Effective for: 15 *days

Effective through: 6/2/18

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

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2018 MAY 18 AM 10:47
SECRETARY OF STATE
PUBLICATIONS

[signature]

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Secretary of State
DIVISION:	Business Services
SUBJECT:	Uniform Commercial Code - Filing Procedures for Affidavits and Petitions for Review / Contested Cases
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 47-9-526 and Public Chapter 406, as codified at Tennessee Code Annotated, Section 47-9-513(e), authorize the Secretary of State to promulgate rules related to the Uniform Commercial Code and Secured Transactions.
EFFECTIVE DATES:	August 7, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These rulemaking hearing rules set out the applicable definitions, as defined by Public Chapter 406, the procedures for filing of affidavits and petitions for review, and the contested case procedures relating to the Uniform Commercial Code as provided for by Public Chapter 406.

Public Hearing Comments.

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

There were no comments received regarding these proposed rules and/or rule amendments, either written or oral.

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 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.

There are no small businesses affected by this proposed rule.

(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 are no added costs since there are no small businesses affected by this proposed rule.

(3) A statement of the probable effect on impacted small businesses and consumers.

There are no small businesses impacted by this proposed rule, so there is no effect.

(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 small businesses affected by this proposed rule.

(5) A comparison of the proposed rule with any federal or state counterparts.

There are no small businesses affected by this proposed rule.

(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.

There are no small businesses affected by this proposed 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The proposed rules will not impact 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;

The proposed rules set out the applicable definitions, as defined by Public Chapter 406, the procedures for filing of affidavits and petitions for review, and the contested case procedures relating to the Uniform Commercial Code as provided for by Public Chapter 406.

(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;

Tenn. Code. Ann. § 47-9-526 and Public Chapter 406, as codified at T.C.A. § 47-9-513(e), authorize the Secretary of State to promulgate rules related to the Uniform Commercial Code and Secured Transactions.

(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 fraudulent financing statement filers and the public officials subject to such harassment. Those business entities filing legally valid and proper financing statements may be incidentally affected, however, this impact is anticipated to be small.

(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;

The proposed rules with have neither an increase nor a decrease in state and local government revenues and expenditures. The fiscal impact is minimal.

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

Mary Beth Thomas, General Counsel, Office of the Secretary of State; Lauren Topping, Assistant General Counsel, Office of the Secretary of State.

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

Mary Beth Thomas, General Counsel, Office of the Secretary of State.

(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 Beth Thomas, General Counsel, Office of the Secretary of State, Tennessee State Capitol, 1st Floor, Nashville, TN 37243; (615) 741-2819; Mary.Beth.Thomas@tn.gov

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

N/A

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Sequence Number: 05-12-18
Rule ID(s): 4763-6764
File Date: 5/9/18
Effective Date: 9/7/18

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:	Secretary of State
Division:	Division of Business Services
Contact Person:	Mary Beth Thomas
Address:	600 Charlotte Avenue, State Capitol, 1st Floor, Nashville, Tennessee, 37243
Phone:	(615) 741-2819
Email:	Mary.Beth.Thomas@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)

Amended Rules:

Chapter Number	**Chapter Title (Amendment)**
1360-08-01	Uniform Commercial Code General Provisions
Rule Number	**Rule Title**
1360-08-01-.01	Definitions

New Rules:

Chapter Number	**Chapter Title (New)**
1360-08-06	Filing Procedures for Affidavits and Petitions for Review
Rule Number	**Rule Title**
1360-08-06-.01	Filing Procedures for Affidavits and Petitions for Review
1360-08-06-.02	Contested Cases

RULES
OF
THE TENNESSEE DEPARTMENT OF STATE
DIVISION OF BUSINESS SERVICES

CHAPTER 1360-08-01
UNIFORM COMMERCIAL CODE
GENERAL PROVISIONS

TABLE OF CONTENTS

1360-08-01-.01	Definitions	1360-08-01-.11	Office Hours
1360-08-01-.02	Means to Deliver UCC Records	1360-08-01-.12	Effective Date
1360-08-01-.03	Search Request Delivery	1360-08-01-.13	Repealed
1360-08-01-.04	Forms	1360-08-01-.14	Repealed
1360-08-01-.05	Fees	1360-08-01-.15	Repealed
1360-08-01-.06	Reserved	1360-08-01-.16	Repealed
1360-08-01-.07	Methods of Payment	1360-08-01-.17	Repealed
1360-08-01-.08	Overpayment and Underpayment	1360-08-01-.18	Repealed
1360-08-01-.09	Public Records Services	1360-08-01-.19	Repealed
1360-08-01-.10	Fees for Public Records Services		

1360-08-01-.01 DEFINITIONS. The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

(a) "Active record" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the searchable indexes and has not either lapsed or been terminated.

(b) "Address" means either (i) a street address, route number (may include box), or P.O. Box number, plus the city, state, and zip code, or (ii) an address that purports to be a mailing address outside the United States of America. Submitted addresses will be verified and standardized using the United States Postal Service Address Matching System Application Programming Interface.

(c) "Affidavit" means a notarized affidavit, signed under penalty of perjury pursuant to T.C.A. § 47-9-513(e)(2)(A), stating that the affiant is a public official and that the UCC financing statement was filed without any reasonable basis or legal cause, and the affiant's factual basis for why the UCC financing statement lacks any reasonable basis or legal cause, executed on the form available from the secretary of state's filing office.

(d) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations, and terminations.

(e) "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

(f) "Statement of claim" means a UCC record whereby the debtor or secured party indicates that a financing statement is inaccurate or wrongfully filed.

(g) "Cost Bond" means the bond filed by the secured party of record, unless exempt pursuant to T.C.A. § 47-9-513(e)(5)(B), contemporaneously with the filing of a petition for review, in accordance with these rules.

(h) "Filing office" and "filing officer" mean the Tennessee Secretary of State, Division of Business Services.

(i) "Filing officer statement" means a statement entered into the filing office's information system to correct an error.

(j) "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.

(k) "Petition for Review" means a petition filed by a secured party of record who believes in good faith that the filed financing statement by the secured party was filed with reasonable basis or legal cause.

(l) "Public Official" means:

(A) An individual who is a current or retired elected or appointed government official, including a state, county, metropolitan, or municipal official;

(B) An individual who is the head of a division or major unit or department within an agency or office of the executive, judicial, or legislative branch of state, county, metropolitan, or municipal government, regardless of the title of this position, and who, as a substantial part of the individual's duties, provides meaningful input on the development of policy goals or the implementation of policy;

(C) A high-ranking employee within the executive, judicial or legislative branch of state, county, metropolitan or municipal government who has primary responsibility for one (1) or more of the following functions:

i. Public information and legislative affairs;

ii. Fiscal, budget and audit matters;

iii. Legal, security, or internal affairs;

iv. Information technology systems; and

v. Human resources;

(D) A first responder, as defined in T.C.A. § 29-34-203; or

(E) A law enforcement officer, as defined in T.C.A. § 39-11-106.

(m) "Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service, but does include a service provider who acts as a filer's representative in the filing process.

(n) "Searchable indexes" means the searchable index of individual debtor names and the searchable index of organization debtor names maintained in the UCC information management system.

(o) "Secured party of record" includes a secured party of record as defined in the UCC as well as a person who has been a secured party of record with respect to whom an amendment has been filed purporting to delete such person as a secured party of record.

(p) "UCC" means the Uniform Commercial Code as adopted in this State.

(q) "UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements as described in Rule 1360-08-03.

(r) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, a filing officer statement, or a statement of

claim, and includes a record thereof maintained by the filing office. The term "UCC record" shall not be deemed to refer exclusively to paper or paper-based writings.

(s) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system, which has not yet lapsed under T.C.A. § 47-9-515 with respect to all secured parties of record.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 47-9-102, 47-9-520, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.* ***Administrative History:*** *Original rule filed October 23, 2000; effective January 6, 2001. Repeal and new rule filed March 19, 2013; effective June 17, 2013.*

* 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 State (board/commission/ other authority) on 03/26/2018 (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: 02/01/2018

Rulemaking Hearing(s) Conducted on: (add more dates). 03/26/2018

Date: APRIL 5, 2018

Signature: Mary Evans Thomas

Name of Officer: Mary E Thomas

Title of Officer: General Counsel

BETTYE L. STANTON
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 5-6-2019

Subscribed and sworn to before me on:

Notary Public Signature: Bettye L. Stanton

My commission expires on: May 6, 2019

Agency/Board/Commission: Secretary of State

Rule Chapter Number(s): 1360-08-01 Uniform Commercial Code General Provisions
1360-08-06 Filing Procedures for Affidavits and Petitions for Review

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

4/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 5/9/18

Effective on: 8/7/18

Tre Hargett

Tre Hargett
Secretary of State

SECRETARY OF STATE
RULES & REGULATIONS
2018 MAY -9 PM 1:34
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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Transportation
DIVISION:	Traffic Operations
SUBJECT:	Specific Service Signs (Logo Sign Program)
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 54-5-1108
EFFECTIVE DATES:	August 13, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	See attached Summary of Rulemaking Hearing Rules, with attached redline copy of Chapter 1680-03-02, Specific Service Signs (Logo Sign Program), as amended by these proposed rule amendments.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

See attached Responses to Public Comments.

Rulemaking Hearing Rules
of the Tennessee Department of Transportation

Chapter 1680-03-03
Specific Service Signs (Logo Sign Program)

Responses to Public Comments

I. INTRODUCTION

On November 1, 2017, the Tennessee Department of Transportation ("TDOT") filed a notice of rulemaking hearing with the Secretary of State inviting public comment on the proposed revisions to Chapter 1680-03-03, Specific Service Signs (Logo Sign Program). These Logo Sign Program rules are promulgated in accordance with the Commissioner of Transportation's authority under T.C.A. § 54-5-1108.

In accordance with T.C.A. § 4-5-203(a)(1), TDOT transmitted a copy of the notice of rulemaking directly to interested parties, including the Tennessee Hospitality &Tourism Association, the Tennessee Fuel & Convenience Store Association, the Tennessee Outdoor Advertising Association, the Tennessee Outdoor Advertising Cooperative, TN Logos, Inc. (the current contract administrator of the Logo Sign Program), and the Federal Highway Administration, Tennessee Division.

TDOT held a public rulemaking hearing on January 4, 2018, to receive public comment on proposed revisions to Chapter 1680-03-03. TDOT did not receive any separate written comments. A copy of the transcript of the public hearing is available for inspection at TDOT by contacting the TDOT Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941; or by email at TDOT.RecordsRequest@tn.gov.

II. SUMMARY OF COMMENTS AND RESPONSES

In accordance with T.C.A. § 4-5-222 and Tennessee Department of State Rule 1360-01-02-.05(1), TDOT summarizes the public comments received at the public rulemaking hearing and makes the following responses to these comments.

General Comments

Mr. Brad Mizer, representing East-West Media and the Tennessee Outdoor Advertising Cooperative, offered general comments critical of the Logo Sign Program. He objected that the program unfairly competes with the outdoor advertising industry and suggested that it be discontinued. He also suggested that the contractor who administers the Logo Sign Program on behalf of TDOT be

required to pay a fee for each sign panel comparable to the fees the outdoor advertising industry pays for billboard permits.

Response: State law specifically authorizes TDOT to establish the Logo Sign Program within the rights-of-way of the interstate highway system and other controlled-access highways (collectively referred to hereinafter as "freeways") for the purpose of advising the traveling public of available services within certain eligible business categories, subject to the guidelines established in the Manual on Uniform Traffic Control Devices ("MUTCD"). T.C.A. § 54-5-1101. The Logo Sign Program has been in place since 1989 and the traveling public has come to rely on the program to provide information about motorist services available to the public upon exiting a freeway at a particular interchange.

In accordance with T.C.A. § 54-5-1103, TDOT has awarded a service contract to administer the Logo Sign Program. Pursuant to that contract, eligible businesses pay an annual fee to the administrative services contractor to install and maintain their logo signs at a freeway interchange, and the contractor in turns remits a substantial percentage of that fee revenue to TDOT. By contrast, the permit and annual renewal fees that billboard operators pay to erect and maintain outdoor advertising along highways regulated by TDOT are established by statute. T.C.A. § 54-21-104. The Logo Sign Program established under T.C.A. 54-5-1101, et seq., and the regulation of outdoor advertising as required under T.C.A. 54-21-101, et seq., are entirely different programs.

Rule 1680-03-03-.01 – Preface

Mr. Gary Douglas, Douglas Outdoor Media, objected to the rule provision allowing logo signs to be installed in urbanized areas of 100,000 or more upon written request of the local government, especially in the case of cities that severely restrict or ban outdoor advertising by private industry.

Response: The provision allowing logo signs on freeways in urbanized areas of 100,000 or more upon the written request of the local government is already in the current rule, and the proposed rule does not make any change in this provision. The existing rule does not require the local government of such an urbanized area to opt into the Logo Sign Program. TDOT does not believe it is appropriate for it to dictate how a local government may choose to exercise its independent authority to regulate outdoor advertising within its jurisdiction. There is no change in the final rule.

Rule 1680-03-03-.02 – Definitions

There were no public comments addressed specifically to the proposed amendment to this rule, and there is no change in the final rule.

Rule 1680-03-03-.04 – Criteria for the Erection of Signs for the Logo Sign Program

Mr. Brad Mizer, representing East-West Media and the Tennessee Outdoor Advertising Cooperative, objected to any expansion of the use of trailblazer signs to direct motorists to businesses off the freeway.

Response: The proposed rule does not expand the use of trailblazer signs. As under the current rules, the business is required to furnish the trailblazer signs to TDOT's administrative services contractor, and the business is also required to make arrangements with the appropriate local government for the installation of trailblazer signs if they are needed on a city street or county road to direct motorists to the business. If it is not feasible to install all the needed trailblazer signs, the business will not be considered eligible for a logo sign on the freeway. There is no change in the final rule.

Rule 1680-03-03-.05 – Services Permitted

Both Mr. Gary Douglas, Douglas Outdoor Media, and Mr. Brad Mizer, representing East-West Media and the Tennessee Outdoor Advertising Cooperative, objected to the expansion of the Logo Sign Program to businesses categorized as "Attractions".

Response: The Manual on Uniform Traffic Control Devices (MUTCD) was revised in 2000 to authorize "Attractions" as a new category of businesses eligible for specific service signs (logo signs) on freeways, and TDOT's rules have allowed "Attractions" to participate in the Logo Sign Program since 2002. The proposed rule will not remove that eligibility.

The proposed rule more specifically defines the eligibility criteria for particular types of Attractions, but as a practical matter it does not significantly expand eligibility under this category. More specifically, the proposed rule:

- Provides a general definition (from the MUTCD) of the types of businesses that will qualify as an Attraction;
- Adds specific eligibility criteria for particular types of businesses categorized as Attractions;
- Identifies alternative criteria for signing antique districts and historic districts, rather than individual businesses, where businesses of the same type are clustered within close walking distance;
- Deletes the existing requirement that eligible Attraction businesses must be open to walk-in business; and
- Clarifies that a seasonal business open at least six (6) months out of the year will be eligible as a "partially qualified" business.

Rule 1680-03-03-.06 – Measurements

Mr. Gary Douglas, Douglas Outdoor Media, offered a general objection regarding the expansion of eligibility for logo signs to businesses within fifteen (15) miles of an interchange and asked how the fifteen (15) miles is measured.

Response: Eligibility distance is the distance measured by road from the Primary Point of Intersection (PPOI), which is the point where the centerline of the freeway intersects with the centerline of the crossroad, to the Secondary Point of Intersecton (SPOI), which is the center line of road providing access to the business, and from there by a perpendicular line to the nearest corner of the business building. The eligibility distance of fifteen (15) miles applies only to the business categories of Camping and Attractions. Businesses offering gas, food, and lodging must be within three (3) miles of eligibility distance from the PPOI. These eligibility distances are already established in the current rule, and the proposed rule will not change any of the current eligibility distance requirements. There is no change in the final rule.

Rule 1680-03-03-.07 – Application Process

There were no public comments addressed specifically to the proposed amendment to this rule, and there is no change in the final rule.

Rule 1680-03-03-.10 – Logo Sign Composition

There were no public comments addressed specifically to the proposed amendments to this rule, and there is no change in the final rule apart from minor corrections in the text.

Rule 1680-03-03-.11 – Sign Dimensions and Details

There were no public comments addressed specifically to the proposed amendments to this rule, and there is no change in the final rule apart from minor corrections in the text.

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.

Introduction

T.C.A. § 54-5-1108 directs the Commissioner of Transportation to promulgate rules to implement and administer the Logo Sign Program for specific motorist services accessible from interstate highways and other freeways at interchanges with other streets and highways. Logo signs (also called specific service signs) provide the traveling public with business identification and directional information for essential motorist services – specifically for gas, food, lodging, camping and attractions – accessible from streets and highways that interchange with interstate highways and other freeways (fully access controlled highways) on the state highway system.

Analysis of Impact on Small Business[1] (T.C.A. § 4-5-402)

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The promulgated rules are consistent with the logo sign provisions in the Federal Highway Administration's Manual on Uniform Traffic Control Devices (adopted in Tennessee under TDOT Rule Chapter 1680-03-01).

(2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rules include revisions intended to make the rules better organized and more clear.

(3) The establishment of flexible compliance and reporting requirements for small business:

The logo sign program rules do not regulate business activities but merely allow eligible businesses to obtain logo signs to identify motorist services accessible from freeway interchanges. There are no specific compliance or reporting requirements in the proposed rules.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small business:

There are no specific compliance or reporting requirements in the proposed rules.

(5) The consolidation or simplification of compliance or reporting requirements for small business:

There are no specific compliance or reporting requirements in the proposed rules.

(6) The establishment of performance standards for small business as opposed to design or operational standards required in the proposed rule:

The logo sign program rules do not regulate business standards or activities but merely allow eligible businesses to obtain logo signs to identify motorist services accessible from freeway interchanges.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not create any occupational licenses or other barriers to enter into any particular business, profession, or nonprofit activity.

[1] Per T.C.A. § 4-5-102(13) "small business" means "a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees."

Economic Impact Statement (T.C.A. § 4-5-403)

(1) The type or types of small business[2] 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:

Logo signs provide the traveling public with business identification and directional information for essential motorist services – specifically for gas, food, lodging, camping and attractions – accessible from streets and highways that interchange with interstate highways and other freeways (fully access controlled highways) on the state highway system. There are currently 1,983 businesses participating in the Logo Sign Program by having their logo signs installed at one or more freeway interchanges, and there are many more that are eligible to participate. It is not known how many of these businesses could be characterized as small businesses.

(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:

The proposed rule amendments do not impose any reporting or recordkeeping requirements or any new administrative requirements. There is an existing application process for participation in the program.

(3) A statement of the probable effect on impacted small businesses and consumers:

The proposed rule amendment in 1680-03-02-.04(3)(f) will allow the logo signs of a particular motorist service type to "roll over" onto a second background sign panel, up to a maximum of twelve logo signs, where there are more than six eligible businesses of that motorist service type accessible from a particular interchange. Eligible businesses of the motorist service type normally assigned to a particular background sign panel will continue to have priority to occupy the available logo sign spaces. The overall effect will be to allow more businesses to be signed, which will benefit these additional businesses and the consumers who rely on logo signs to identify available motorist services at a particular interchange.

Rule 1680-03-03-.05 will be amended to provide more specific criteria for determining what businesses or facilities will be eligible for "Attraction" logo signs, including the criteria under which multiple businesses within close proximity may be signed together as an "antique district" or "historic district" or the like. This will provide greater clarity and transparency in determining how to allocate the available logo sign spaces to eligible businesses and could possibly result in more businesses being signed.

(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 on small business:

The existing rules and proposed rule amendments do not regulate business activities. As noted in Item (3) above, one effect of the proposed amendments is to expand the number of businesses able to participate in the logo sign program by allowing rollovers onto a second background sign panel.

(5) A comparison of the proposed rule with any federal or state counterparts:

The proposed rules are consistent with the Federal Highway Administration's standards for specific service signs as established in Chapter 2J. of the Manual on Uniform Traffic Control Devices (MUTCD).

(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:

The proposed rules do not impose regulations on business activities. Businesses of the same type are subject to the same eligibility requirements regardless of size. The proposed amendments do clarify eligibility criteria for Attractions, including alternative eligibility criteria for certain types of businesses, e.g., allowing multiple businesses within close proximity to be signed together as an "antique district" or "historic district" or the like even though one or more of the businesses individually does not meet minimum parking space requirements.

[2] Per T.C.A. § 4-5-102(13) "small business" means "a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees."

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 rules implement and administer the Logo Sign Program for the specific motorist services accessible from streets and highways that interchange with interstate highways and other freeways (fully access controlled highways) on the state highway system. These proposed rules have no specific or direct 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;

See attached Summary of Rulemaking Hearing Rules, with attached redline copy of Chapter 1680-03-02, Specific Service Signs (Logo Sign Program), as amended by these proposed rule amendments.

(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. § 54-5-1108 directs the Commissioner of Transportation to promulgate rules to implement and administer the Logo Sign Program. The proposed rules are consistent the Federal Highway Administration's standards for specific service signs as established in Chapter 2J. of the Manual on Uniform Traffic Control Devices (MUTCD).

(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 or entities (including nonprofit organizations) that are most directly affected by these rule amendments are the owners of businesses that provide specific motorist services – specifically gas, food, lodging, camping and attractions – accessible from streets and highways that interchange with interstate highways and other freeways on the state highway system. Associations representing these types of businesses, including the Tennessee Fuel & Convenience Store Association and the Tennessee Hospitality & Tourism Association, received copies of the proposed rules but have not expressed any position regarding adoption of the rules. Some businesses in the outdoor advertising industry, and particularly those that are members of the Tennessee Outdoor Advertising Cooperative, are critical of the Logo Sign Program in general.

(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;

The promulgation of these rule amendments will not have any impact on local government revenues or expenditures. Because the amended rules will allow for the "rollover" of eligible businesses onto a second background sign panel, it is anticipated that more businesses will be eligible for, and will obtain, logo signs. If so, this will result in additional revenues coming to TDOT from the contractor that administers the logo sign program; however, these additional revenues are expected to be minimal (i.e., not more than $500,000).

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

John H. Reinbold, General Counsel; Joseph Sweat, Transportation Manager 1, Traffic Operations Division.

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

John H. Reinbold, General Counsel; Joseph Sweat, Transportation Manager 1, Traffic Operations Division.

(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

John H. Reinbold, General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941.

Joseph Sweat, Transportation Manager 1, Traffic Operations Division, Tennessee Department of Transportation, Suite 1200, James K. Polk Building, Nashville, TN 37243; telephone number (615) 532-3431.

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

None at this time.

Tennessee Department of Transportation
Traffic Operations Division

Chapter 1680-03-03
Specific Service Signs (Logo Sign Program)

Summary of Rulemaking Hearing Rules (Final Rules)

The following is a summary of the amendments to TDOT's regulations regarding construction and administration of Specific Service Signs (Logo Sign Program), as directed in T.C.A. §54-5-1108. A "redline" version of Chapter 1680-07-03, as amended, is attached to this summary.

Rule 1680-03-03-.01: Preface.

The rule is amended by adding a new paragraph (2) to clarify that once an interchange has been determined eligible for logo signs because it is outside the census boundary of any city having 100,000 or more in population, the interchange will remain eligible for logo signs notwithstanding any subsequent change in the population or urbanized area boundary of the city. This is a modified version of a paragraph formerly contained in Rule 1680-03-03-.04.

Rule 1680-03-03-.02: Definitions.

Paragraph (2) is amended to clarify the definition of "business" to include any facility, whether commercial or nonprofit, that is open to the public and provides one of the five qualifying motorist services eligible to participate in the Logo Sign Program.

Rule 1680-03-03-.04: Criteria for the Erection of Signs for the Logo Sign Program.

As amended, the provisions within the current rule are reorganized under new paragraph subject matter headings to make them easier to follow. Some provisions in the current rule have also been moved to other rules where the subject matter is a better fit.

In addition, paragraph (3) of this rule, as amended, will allow logo signs for a particular motorist service type to "roll over" onto a second background sign panel where there are more than six eligible businesses of that motorist service type accessible from the interchange. Eligible businesses of the motorist service type normally assigned to a particular background sign panel will continue to have priority to occupy the available logo sign spaces.

Rule 1680-03-03-.05: Services Permitted.

There are only minor, mostly stylistic, changes to the several provisions regarding logo signs for Gas, Food, Lodging, and Camping motorist services.
Subparagraph (3)(e) regarding Attractions is amended to:

- Add a general description of the types of businesses that will qualify as an Attraction;
- Delete the requirement that the business must always be open to walk-ins without requiring an appointment;
- Provide more specific eligibility criteria for various categories of businesses that may qualify for an Attraction logo sign (Part 6);
- Allow logo signs for antique districts and historic districts, without signing for individual businesses within these districts, where businesses of the same category are clustered within close walking distance (Part 7);
- Clarify that a business open seasonally at least six months out of the year, but which otherwise meets all the minimum criteria for signing as an Attraction, will be considered a "partially qualified" business eligible for a logo sign where space is available (Part 8); and
- Clarify that a business having a supplemental guide sign will not be eligible for a logo sign if doing so would prevent another eligible business from obtaining a logo sign.

Rule 1680-03-03-.06: Measurements.

The rule is amended only to adopt the standard numbering format. There are no substantive changes.

Rule 1680-03-03-.07: Application Process.

The amended rule incorporates an existing provision, formerly in Rule 1680-03-03-.04, that requires applicants and business participants in the Logo Sign Program to hold TDOT and the State of Tennessee harmless for any loss of business caused by damage to or removal of background sign panels, logo signs, or trailblazer signs.

Rule 1680-03-03-.10: Logo Sign Composition.

As amended, the rule incorporates provisions formerly in Rule 1680-03-03-.04 that address the composition and wording of logo signs. Provisions relating to sign construction specifications have been moved to Rule 1680-03-03-.11.

Rule 1680-03-03-.11: Sign Dimensions and Details.

As amended, the rule incorporates provisions formerly in Rule 1680-03-03-.10 that address sign construction specifications.

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For Department of State Use Only

Sequence Number: 05-15-18
Rule ID(s): 6767
File Date: 5/15/18
Effective Date: 8/13/18

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 Transportation
Division:	Traffic Operations Division
Contact Person:	John H. Reinbold, General Counsel
Address:	505 Deaderick Street, Suite 300, Nashville, TN
Zip:	37243
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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**
1680-03-03	Specific Service Signs (Logo Sign Program)
Rule Number	**Rule Title**
1680-03-03-.01	Preface
1680-03-03-.02	Definitions
1680-03-03-.04	Criteria for the Erection of Signs for the Logo Sign Program
1680-03-03-.05	Services Permitted
1680-03-03-.06	Measurements
1680-03-03-.07	Application Process
1680-03-03-.10	Sign Composition
1680-03-03-.11	Business Logo Dimensions and Details

RULES
OF
TENNESSEE DEPARTMENT OF TRANSPORTATION

CHAPTER 1680-03-03
SPECIFIC SERVICE SIGNS (LOGO SIGN PROGRAM)

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1680-03-03-.01 PREFACE.

(1) Specific service signs (hereafter referred to as logo signs) provide the traveling public with business identification and directional information for essential motorist services. Logo signs will be permitted at interchanges on freeways that are located outside of the census boundary of cities of 100,000 or greater population as designated by the United States Bureau of Census in the most recent decennial federal census.

(2) An interchange that became an eligible location under paragraph (1) shall remain an eligible interchange notwithstanding any subsequent changes in the population of the city or in the urbanized area boundary of such city.

(23) In addition, logo signs will be permitted on freeways within the urbanized area boundary of cities of 100,000 or greater population as designated by the United States Bureau of Census in the most recent decennial federal census, upon written request by the local government, provided all the criteria are met as described in these rules.

(24) The following rules set forth the criteria to be followed in the administration of the Logo Sign Program. If questions arise in the interpretation of these rules, the Commissioner of the Tennessee Department of Transportation, or the Commissioner's designee, will make the final administrative determination. These rules supersede all prior rules related to gas, food, lodging, and camping or attraction service signs.

Authority: *T.C.A. §§ 54-5-1101 and 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed September 7, 1990; effective October 22, 1990. Amendment filed May 20, 1997; effective September 18, 1997. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.01 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.02 DEFINITIONS.

(1) Background Sign Panel means an official sign panel placed within the freeway right-of-way along the mainline of travel or exit ramp with the words Gas, Food, Lodging, Camping or Attraction, or a combination thereof, and with space where one to six individual business logo signs may be attached.

(2) Business means any ~~approved public commercial~~ facility, whether commercial or nonprofit, that is open to the public and provides one of the five qualifying motorist services eligible to participate in the Logo Sign Program.

(3) Commissioner means the Commissioner of the Tennessee Department of Transportation.

(4) Contractor means the firm awarded the administrative services contract by the Department

(Rule 1680-03-02, continued)

for the marketing, management, and maintenance of the Logo Sign Program.

(5) Department means the Tennessee Department of Transportation.

(6) Disadvantaged Business Enterprise means a small business concern that is certified as a "Disadvantaged Business Enterprise" pursuant to the Rules of the Tennessee Department of Transportation Contract Compliance Office, Chapter 1680-08-01, Certification of Disadvantaged Business Enterprises.

(7) Double Exit means an interchange design where, for a given direction of travel on the mainline, two exit ramps provide access to the crossroad, with one ramp for each direction of travel on the crossroad.

(8) Eligibility Distance means the total roadway distance plus the offset distance to the primary point of entrance to a business. (See Rule 1680-03-03-.13, Figure 9 for an example.)

(9) Exit Ramp means the travel lane at an interchange on a freeway leading from the mainline to the intersecting crossroad.

(10) Freeway means a divided highway with full control of access.

(11) Logo Sign means an individual sign of a participating business in the Logo Sign Program that consists of the business's name, trademark, logo, or combination of same. This is the sign that is attached on the background sign panels.

(12) Mainline means the through travel lanes of a freeway.

(13) Motorist Service means a place of business providing either gas, food, lodging, camping or attraction facilities.

(14) MUTCD means the Manual on Uniform Traffic Control Devices.

(15) Offset Distance means the distance measured from the secondary point of intersection (SPOI) to the nearest comer of the business's building. If the building has an offset the comer that will provide for the shortest eligibility distance will be used for measurement purposes. (See Rule 1680-03-03-.13, Figure 9 for an example.)

(16) PPOI (Primary Point of Intersection) means the point at which the centerline of the median on the freeway intersects with the centerline of the crossroad. When the crossroad has more than two lanes, the centerline of the median, bridge or the exact center of the roadway surface crossing the freeway mainline will be used. (See Rule 1680-03-03-.13, Figure 9 for an example.)

(17) Priority Distance means the distance measured from the Secondary Point of Intersection (SPOI) to the center of the main doorway of the business. (Used only in case of ties in eligibility distance measurements. See Rule 1680-03-03-.13, Figure 9 for an example.)

(18) Rest Room means a clean private rest room, having at least one flush toilet and at least one sink with running water, in working order.

(19) Roadway Distance means the distance measured from the Primary Point of Intersection (PPOI) along the centerline of the crossroad or other public/private roadway leading to the Secondary Point of Intersection (SPOI).

(20) Single Exit means an interchange design where, for a given direction of travel on the mainline, only one exit ramp provides access to the crossroad.

(Rule 1680-03-02, continued)

(21) SPOI (Secondary Point of Intersection) means the point at which the center line of the public or private thoroughfare providing direct access to the business facility intersects with a perpendicular line to the nearest corner of the business building.

(22) Tennessee-Based Business Enterprise means a person or entity that has an office in the State of Tennessee.

(23) Trailblazer Background Panel means an official sign panel placed before the intersection where a turn is required to get to the business to display Trailblazer Signs. These are placed at intersections with 3 or more trailblazers signs.

(24) Trailblazer Sign means the sign used in the Logo Sign Program that indicates the name, direction and distance to a motorist service.

(25) Urbanized Area Boundary means that boundary identified as the census boundary by the United States Bureau of Census for a specific geographical location.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed September 7, 1990; effective October 22, 1990. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.02 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.03 GENERAL PROVISIONS.

(1) The Department has the authority to provide for the construction and administration of the Logo Sign Program.

(a) Construction contract(s): The Department may enter into contract(s) for the construction of logo sign background sign panels. The construction contract(s) shall be for the construction and erection of the background sign panels.

(b) Administrative services contract(s): The Department may enter into contract(s) for administration of the Logo Sign Program. The contract(s) shall be subject to the provisions of T.C.A. § 54-5-1103.

(2) Contracts shall be awarded to Tennessee-based business enterprises pursuant to T.C.A. § 54-5-1105.

Authority: *T.C.A. §§ 54-5-1103, 54-5-1105, and 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.03 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.04 CRITERIA FOR THE ERECTION OF SIGNS FOR THE LOGO SIGN PROGRAM.

(1) The Department will allow the erection and maintenance of signs for the Logo Sign Program in accordance with the MUTCD, these rules, and contract provisions. ~~However, to minimize the interference with the more critical regulatory, warning and guide signs, the logo sign background sign panels will be erected prior to the advance guide sign on the mainline, where possible, and at close spacing on the exit ramp. In addition to the aforementioned, the following criteria should be met:~~

(2) Background Sign Panels – Mainline

(Rule 1680-03-02, continued)

(a) To minimize the interference with the more critical regulatory, warning and guide signs, the background sign panels shall be erected at least eight hundred feet (800') in advance of the Exit Direction sign at the interchange.

(b) The desired spacing between each mainline background sign panel should be at least eight hundred feet (800') ~~feet~~, and the mainline background sign panel shall not conflict or interfere with any other official highway guide sign.

~~Exit ramp background sign panels shall not be erected where the ramp terminus offers no options for turns. However, where no businesses are visible from the terminus, the contractor may install trailblazer signs at a location determined by the Department and in conformance to specifications for trailblazer signs.~~

(c) There shall be no more than a total of four (4) background sign panels along the approach to any interchange, in each direction of travel~~, and no more than one background sign panel shall be erected for each eligible motorist service~~.

(d) Within the urbanized area boundary of cities of 100,000 or greater population as designated by the United States Bureau of Census in the most recent decennial federal census, the total number of background sign panels at each interchange may vary based on the space allowance, but the total number shall not exceed four. Priority will be as follows: first, Gas and/or Food; second, Lodging; and third, Attraction and/or Camping.

(e) Background sign panels shall not be installed at any directional interchange. A directional interchange is an interchange of two Interstate highways, or any other freeway-to-freeway interchange having comparable geometric design features.

(f) Each background sign panel shall display no more than six (6) logo signs.

(g) Each background sign panel shall display the word message Gas, Food, Lodging, Camping, or Attraction, as needed, based on the type of motorist services that may be available at the interchange.

(h) The background sign panels shall be erected in the following order in relation to the direction of travel: first, Attraction and/or Camping; second, Lodging; third, Food; and fourth, Gas (to the extent that each type of motorist service may be available at an interchange). Where a motorist service type is displayed on more than one background sign panel, the background sign panels for that motorist service should follow one another in succession if space is available.

(i) At interchange approaches having a single exit, each background sign panel shall bear the type of motorist service followed by the exit number (or directional information if unnumbered) on a line above the logo signs.

(j) At interchange approaches having a double exit:

1. The top section of the background sign panel shall bear the type of motorist service and exit number (or directional information in unnumbered) on a line above the logo signs for the businesses accessible from the first exit

2. The lower section of the background sign panel shall bear the type of motorist service and exit number (or directional information in unnumbered) on a line above the logo signs for the businesses accessible from the second exit.

3. When a motorist service is to be signed at only one of the two exits, one section of the background sign panel may be omitted or a single exit interchange background sign panel may be employed.

(3) Logo Signs – Mainline

(a) An eligible business will have its logo signs installed at an interchange that provides it with the shortest eligibility distance.

(b) An eligible business may have logo signs installed at a second interchange, provided it meets all the requirements as set forth in these rules and the business does not prevent another eligible business from participating in the Logo Sign Program at that interchange.

(c) In the event that an eligible business provides more than one motorist service, it may be eligible to display a logo sign for each service it provides on the proper background sign panel at an interchange, provided the following conditions are met;

1. It meets all minimum criteria for the service,

2. It does not prevent participation by another business which offers a sole service and would otherwise qualify for placement on the background sign panel, and

3. Space is available on the background sign panel.

(d) The placement of individual logo signs on all background sign panels should typically be as follows, except as provided in part 4 below:

1. All businesses that are accessible via a left turn from the exit ramp terminus should be placed first;

2. All businesses that are accessible via a right turn from the exit ramp terminus should be placed second; and

3. The logo signs of all businesses should be placed according to eligibility distance from each direction of turn, starting with the logo sign of the business with the shortest eligibility distance and going to the logo sign of the business with the greatest eligibility distance.

4. The actual placement of logo signs on a background sign panel may vary from this typical order of placement to the extent that one or more businesses may remove their logo signs and the logo signs of new businesses take their place; provided, however, that the typical order of placement should be restored whenever the background sign panel is refurbished.

(e) Ordinarily, each background sign panel will display logo signs for each separate type of motorist service, with one background sign panel for Gas, one for Food, one for Lodging, and one for Camping and/or Attractions, with up to six (6) logo signs for each type of motorist service on each background sign panel (or combination of motorist services in the case of Camping and Attractions).

(f) However, to the extent that eligible businesses applying for a logo sign in each type (or combined type) of motorist service may be underrepresented or overrepresented at each interchange, the Department may elect to display more than one type of motorist

service on a single background sign panel and/or one type of motorist service on more than one background sign panel, subject to the following:

1. No single type of motorist service shall be represented on more than two (2) background sign panels, up to a maximum of twelve (12) logo signs for any single type of motorist service.

   (i) Priority shall be given to the placement of logo signs on the background sign panel ordinarily assigned to that motorist service, up to a maximum of six (6) logo signs.

   (ii) Additional logo signs for the overrepresented motorist service may be allowed to roll over onto a background sign panel that would ordinarily be assigned to a different motorist service, provided that the space allowed for the roll over logo signs shall be in a configuration allowing for two (2), three (3), four (4), or six (6) logo signs.

2. No more than three (3) types of motorist services shall be represented on any single background sign panel.

   (i) If three (3) types of motorist services are displayed on one background sign panel, each type of motorist service shall be limited to two (2) logo signs.

   (ii) If two (2) types of motorist services are represented on one background sign panel, each motorist service shall be limited to either three (3) logo signs for each type or four (4) for one type and two (2) for the other type.

3. If an eligible business in a type of motorist service that has been unrepresented or underrepresented on a background sign panel applies for a logo sign, it shall be given priority for placement on the background sign panel that would ordinarily be assigned to that type of motorist service.

   (i) One or more businesses with a "roll-over" logo sign may be removed at the end of their logo sign contract periods as necessary to make space for the eligible business in the type of motorist service that would ordinarily be assigned to that background sign panel.

   (ii) The "roll-over" businesses subject to removal shall be, first, any business that is only partially qualified, and then any business having the furthest eligibility distance from the interchange.

~~The background sign panels should be erected in the following order in relation to the direction of travel: first, attraction and/or camping; second, lodging; third, food; and fourth, gas.~~

~~A separate background sign panel shall be erected for each type of motorist service, except where no more than three approved businesses are available for each of two types of services. The Department in that case may elect to display a background sign panel for two types of services on the same background sign panel.~~

~~A business will have its logo signs installed at an interchange that provides it with the shortest eligibility distance.~~

~~A business may have logo signs installed at a second interchange, provided it meets all the requirements as set forth in these rules and the business does not prevent another eligible business from participating in the Logo Sign Program at that interchange.~~

~~The number of logo signs on the background sign panel shall be limited to six for each motorist service.~~

~~The placement of individual logo signs on all background sign panels will be as follows:~~

~~All businesses that are accessible via a left turn from the exit ramp terminus will be placed first.~~

~~All businesses that are accessible via a right turn from the exit ramp terminus will then be placed.~~

~~The logo signs of all businesses will be placed according to eligibility distance from each direction of turn, starting with the logo sign of the business with the shortest eligibility distance and going to the logo sign of the business with the greatest eligibility distance.~~

~~A business is eligible to participate in the Logo Sign Program provided that it offers at least one of the specific motorist services (gas, food, lodging, camping or attraction) and it meets the applicable minimum criteria set forth in Rule 1680-03-03-.05.~~

~~In the event that a business provides more than one motorist service, it may be eligible to display a logo sign for each service it provides on the proper background sign panel, provided the following conditions are met;~~

~~It meets all minimum criteria for the service,~~

~~It does not prevent participation by another business which offers a sole service and would otherwise qualify for placement on the background sign panel,~~

~~Space is available on the background sign panel.~~

~~Within the urbanized area boundary of cities of 100,000 or greater population as designated by the United States Bureau of Census in the most recent decennial federal census, the total number of boards at each individual interchange may vary based on the space allowance, but the total number shall not exceed four. Priority will be as follows: first, gas and/or food; second, lodging; and third, attraction and/or camping.~~

~~At interchange approaches having a single exit, each background sign panel shall bear the type of service followed by the exit number on a line above the logo signs.~~

~~On interchange approaches having a double exit, each background sign panel shall consist of two sections.~~

~~1. The top section shall bear the type of service and display the logo sign for the businesses accessible from the first exit.~~

~~The lower section shall bear the type of service and display the logo sign for the businesses accessible from the second exit.~~

~~2. The exit number shall be displayed on a line above the logo signs in each section.~~

~~3. When a motorist service is to be signed at only one of the two exits, one section of the background sign panel may be omitted or a single exit interchange background sign~~

(Rule 1680-03-02, continued)

~~panel may be employed.~~

(4) Background Sign Panels and Logo Signs at Exit Ramps

(a) Exit ramp background sign panels shall not be erected where the ramp terminus offers no options for turns. However, where no businesses are visible from the terminus, the Department's contractor may install trailblazer signs at a location determined by the Department and in conformance to specifications for trailblazer signs.

(b) All businesses displayed on a mainline background sign panel ~~will~~shall also be displayed on ~~the~~an exit ramp background sign panel~~. This only applies to interchanges that are eligible for exit ramp background sign panels.~~ if the businesses are not readily visible from the ramp terminus.

1. Exit ramp background sign panels shall consist of a motorist service legend and logo signs identical to, but smaller than, the logo signs displayed on the mainline background sign panel.

2. The arrangement of individual logo signs on an exit ramp background sign panel will be the same as the arrangement of logo signs as stipulated in ~~Rule~~subparagraph 1680-03-03-.04(3~~1~~)(c~~d~~)5 above.

3. There will be directional arrows and mileage to each business on the exit ramp background sign panels at single exit interchanges. (See Rule 1680-03-03-.13, Figure 2.)

~~Descriptive advertising words, phrases, or slogans shall not be allowed on any logo sign, except to indicate dates of operation of eligible campgrounds that open on a seasonal basis, to indicate that a business is "open 24 hours," or that a business offers "diesel" or "auto diesel fuel," or other as approved by the Department. If more than two (2) descriptive words, phrases, or slogans are requested, approval must be obtained from the Department.~~

~~The distance that a gas, food or lodging motorist service business can be located from the PPOI to qualify for a logo sign shall not exceed three (3) miles in either direction. The distance that a camping or attraction motorist service business can be located from the PPOI to qualify for a logo sign shall not exceed fifteen (15) miles in either direction.~~

(5) Trailblazer Signs

(a) Specific service trailblazer signs shall be installed along crossroads where the route to the business requires a direction change, where it is questionable as to which roadway to follow, or where additional guidance is needed. Where it is not feasible or practical to install Specific Service trailblazer signs to such businesses, those businesses shall not be considered eligible for signing from the ramp and main roadway. A Specific Service trailblazer sign shall not be required at the point where the business is visible from the roadway and access is readily apparent.

1. Where the road on which the trailblazer sign is needed is a state highway, the qualifying business will furnish the contractor with the appropriate trailblazer signs. The contractor will erect and maintain all trailblazer signs.

2. Where the road on which the trailblazer sign is needed is a city or county road, it shall be the responsibility of the business to make arrangements with the appropriate local governmental agency allowing the contractor to erect and maintain the trailblazer sign(s).

(Rule 1680-03-02, continued)

(b) Trailblazer signs shall consist of a logo sign identical to but smaller than a mainline logo and a supplemental directional arrow and mileage sign. (See Rule 1680-03-03-.13, Figures 3 and 4, for sign specifications.)

(c) The location of other traffic control devices shall take precedence over the location of a Specific Service trailblazer sign.

(d) When used, each Specific Service trailblazer sign or sign assembly shall be limited to no more than four logo sign panels. The logo sign panels on Specific Service trailblazer signs shall be duplicates of those displayed on the Specific Service ramp signs.

(e) Appropriate legends, such as directional arrows or the word message NEXT RIGHT or SECOND RIGHT, shall be displayed with the logo sign panel to provide proper guidance. The directional legend and border shall be white and shall be displayed on a blue background.

~~Trailblazer signs may be installed to indicate the need for a turn when the crossroad terminates. In addition, trailblazer signs should be used to indicate whenever a turn is needed to reach an eligible business. All trailblazer signs will have a supplemental sign showing a directional arrow and mileage to the business.~~

~~Where the road on which the trailblazer sign is needed is a state highway, the qualifying business will furnish the contractor with the appropriate trailblazer signs. The contractor will erect and maintain all trailblazer signs.~~

~~Where the road on which the trailblazer sign is needed is a city or county road, it shall be the responsibility of the business to make arrangements with the appropriate local governmental agency allowing the contractor to erect and maintain the trailblazer sign(s).~~

~~Trailblazer signs shall consist of a logo sign identical to but smaller than a mainline logo and a supplemental directional arrow and mileage sign. (See rule 1680-03-03-.13, Figures 3 & 4 for sign specifications.)~~

~~Logo signs shall not be installed at any directional interchange. A directional interchange is an interchange of two Interstate highways, or any other freeway-to- freeway interchange having comparable geometric design features.~~

~~The applicants and business participants in the Logo Sign Program agree to hold harmless the State of Tennessee, the Department of Transportation, and its employees for any loss of business caused by any damage to or removal of background sign panels, logo signs or trailblazer signs.~~

~~(2) An interchange which was an eligible location for the Logo Sign Program as of March 9, 1989, shall continue to be an eligible location notwithstanding changes in the urbanized area boundary. An interchange which became an eligible location at a later date shall be unaffected by changes in the urbanized area boundary for the duration of the term of the contract between the Department and the contractor in effect at the time of any suchchange.~~

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed September 7, 1990; effective October 22, 1990. Amendment filed January 17, 1992; effective March 3, 1992. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.04 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.05 SERVICES PERMITTED.

(Rule 1680-03-02, continued)

(1) A business is eligible to participate in the Logo Sign Program provided that it offers at least one of the specific motorist services (Gas, Food, Lodging, Camping or Attraction) and it meets the applicable minimum criteria set forth in Rule 1680- 03-03-.05.

(~~1~~2) Eligible motorist service facilities shall comply with the laws concerning the provision of public accommodations without regard to race, religion, color, age, sex, or national origin, and the laws concerning the granting of licenses and approvals for motorist service facilities.

(~~2~~3) The types of motorist service facilities shall be limited to gas, food, lodging, camping or attraction. To qualify for the Logo Sign Program and to display a logo sign on a background sign panel, the following minimum criteria must be met:.

(a) Gas

To qualify for a "Gas" logo sign, a business shall:

1. Offer ~~V~~vehicle services, which shall include fuel, oil, air and water;

2. Provide ~~D~~drinking water suitable for public use and ~~two~~one or more clean public rest rooms, ~~with at least one for men and one for women,~~ which must be available during all hours the facility is open to the public;

3. Have ~~C~~continuous operation at least sixteen (16) hours per day, and seven (7) days a week; and

4. Be ~~L~~located not more than three (3) miles from the PPOI and meet the requirements set forth in Rule 1680-03-03-.06.

(b) Food

To qualify for a "Food" logo sign, a business shall:

1. Have ~~A~~a valid permit as required by the Hotel, Food Service Establishment and Swimming Pool Inspection Act of 1985, ~~as stipulated~~codified in T.C.A. Title 68, Chapter 14, Part 3, and have all other licenses and approvals as required by local governmental bodies;

2. Have ~~C~~continuous operation, at least six (6) days a week and opening not later than 7:00 a.m., serving breakfast, and closing no earlier than 8:00 p.m.; and provided that ~~A~~a business which is only open six (6) days a week must identify the day of closure on its logo, (e.g., "Closed Sunday"), with six inch letters located on the lower one third of the business logo which contrast in color to the color of the logo background.;

3. Provide ~~O~~on-premise seating for at least twenty-five (25) persons, or in the case of drive-in food establishments, provide service capacity for at least twenty-five (25) persons;

4. ~~Two (2)~~Provide one or more clean public rest rooms, ~~with at least one (1) for men and one (1) for women,~~ which must be available during all hours the facility is open to the public; and

5. Be ~~L~~located not more than three (3) miles from the PPOI and meet the requirements as set forth in Rule 1680-03-03-.06.

(Rule 1680-03-02, continued)

6. If space is available, a food service business shall not be excluded from participating in the Logo Sign Program because the business does not serve breakfast. Such a food service business that meets all other criteria shall be considered partially qualified, and it may occupy any available space on a Food background sign panel if doing so would not exclude a business that does serve breakfast.

7. Food service businesses qualified for a logo sign as of July 1, 2001, shall remain qualified thereafter and shall not be bumped by another food service business as long as all required fees are paid, unless the Department elects to award advertising space under a competitive selection process. ~~A business that meets all criteria set forth above will be considered "fully qualified." A business that meets the distance criteria but not all of the other criteria will be considered "partially qualified." A fully qualified business shall have priority over a partially qualified business. If a business is approved for the space as a fully qualified business, but then changes to become only partially qualified, said business may have its contract revoked.~~

(c) Lodging

To qualify for a "Lodging" logo sign, a business shall:

1. Have ~~A~~all appropriate State and local licenses or approvals;

2. Provide ~~O~~off-~~-~~street parking;

3. Have ~~A~~a minimum of twenty (20) sleeping units;

4. Provide ~~A~~a private entrance and a rest room ~~which has~~with hot and cold running water and a tub or shower for each sleeping unit;

5. Have ~~C~~continuous operation twenty-four (24) hours a day~~,~~; and~~;~~

6. Be ~~L~~located not more than three (3) miles from the PPOI, and meet the requirements as set forth in Rule 1680-03-03-.06.

(d) Camping

To qualify for a "Camping" logo sign, a business shall:

1. Have ~~A~~all appropriate State and local licenses and approvals, including health permits;

2. Have ~~C~~continuous operation for at least six (6) months of the year~~-~~, and provided that:

   (i) The contract between the business and the contractor shall specify the seasonal opening and closing dates of operation for the campground, and the logo signs of tile business shall indicate the specific dates that the campground is open for operation~~-~~; and

   (ii) The business will be required to pay the total annual fee to the contractor regardless of the number of months of operation~~-~~;

3. ~~A campground shall consist of~~Provide a minimum of ten (10) individual

(Rule 1680-03-02, continued)

campsites, each having accommodations for potable water and electrical hook-ups for conventional travel trailers, tents and campers;

4. Provide ~~P~~parking spaces for each campsite;

5. ~~Each campsite shall h~~Have a minimum area of three hundred square feet (300 sq. ft.) ~~square feet~~ for each campsite;

6. Provide ~~A~~a sanitary disposal system for travel trailers and campers;

7. ~~Separate~~ Provide shower facilities ~~for men and women~~ with hot and cold running water and ~~two (2) or more~~ clean public rest rooms~~, one (1) for men and one (1) for women~~;

8. Provide ~~A~~a full-time attendant on duty or on call twenty-four (24) hours a day to maintain and manage campground services; and

9. Be ~~L~~located not more than fifteen (15) miles from the PPOI and meet the requirements as set forth in Rule 1680-03-03-.06.

(e) Attraction

To qualify for an "Attraction" logo sign, a business shall have the primary purpose of providing amusement, historical, cultural, or leisure activities of regional significance to the public, and in addition the business shall:

1. Provide ~~A~~adequate parking for the facility with a minimum of twenty (20) spaces;

2. Have ~~Y~~year-round operation and be open to the public at least five (5) days a week, including at least one day on the weekend, except as specifically provided in part 6 below;

3. Be ~~L~~located not more than fifteen (15) miles from the PPOI and meet the requirements as set forth in Rule 1680-03-03-.06;

4. Provide ~~Two (2)~~one or more clean public rest rooms, ~~with at least one (1) for men and one (1) for women,~~which must be available during all hours the facility is open to the public; and

5. Be ~~O~~open to members of the public of all age groups, and excluding businesses open only to adults~~;, and;~~

~~6. Open to walk-ins. No appointments required.~~

~~7~~6. Categories of businesses eligible for an a~~A~~ttraction sign, subject to criteria established in parts 1 – 5 of this subparagraph (e), may include, but are not necessarily limited to, the following:

(i) Arenas or stadiums (must be a permanent facility with a seating capacity of at least 750; not subject to the requirement in part 2 above to be open five days per week)~~,~~;

(ii) Cultural centers (must be a permanent facility for the performing arts with a seating capacity of at least 750; not subject to the requirement in part 2 above to be open five days per week)~~,~~;

(Rule 1680-03-02, continued)

(iii) Amusement parks (must be a permanent facility that, at a minimum, offers food services, rides, and other entertainment);

(iv) Zoos or aquariums (must be a permanent facility for the exhibition of living creatures);

(v) Race tracks (must be a permanent facility for organized racing events with a seating capacity of at least 750; not subject to the requirement in part 2 above to be open five days per week);

(vi) Historical sites (must be a structure or site on the National Historic Register and open to the public for regularly scheduled tours and information);

(vii) Museums (must be a permanent facility for the exhibition of significant works of artistic, historic, or scientific value);

(viii) Arts or crafts (must be a permanent facility for the exhibition, demonstration, and instruction of and regarding local arts and crafts);

(ix) Wineries, ~~or~~ breweries, or distilleries (must be a permanent facility, licensed by the Tennessee Alcoholic Beverage Commission, that produces and distributes fermented and distilled or un-distilled alcoholic beverages and offers tours and tastings to visitors);

(x) Golf courses (must be a permanent facility open to the public that offers at least nine holes of play);

(xi) Recreational areas (must be a permanent facility such as a park, hiking trail, or sports facility that is open to the general public during regularly scheduled business hours, without any reservation requirement, for recreational and sporting activities, including without limitation golf driving ranges, archery ranges, shooting ranges, ski areas, miniature golf ranges, horseback riding stables, etc.); ~~and~~

(xii) Shopping~~, Outlet or Antique M~~malls (must have a minimum of fifty (50) businesses within a single comprehensive facility);

(xiii) Antique malls (must have a minimum of twenty (20) vendor booths within, and each accessible from the interior of, a single building facility containing at least 3,000 square feet);

(xiv) Flea markets (must have a minimum of fifty (50) vendor booths within, and each accessible from the interior of, a single building facility; not subject to the requirement in part 2 above to be open five days per week); and

(xv) Tours (must operate on a regular, daily schedule within or from a single permanent facility, and the tour must have the primary purpose to educate the public regarding matters of historic, cultural, or scientific interest along the tour route, or to exhibit manufacturing or other processes conducted within the facility, and not primarily for the purpose of soliciting or promoting commercial transactions).

7. Special categories of facilities eligible for Attraction signing under specific alternative minimum criteria include:

(Rule 1680-03-02, continued)

(i) Antique districts (must have at least four (4) antique retail shops located within easy walking distance from a single parking location; provided, however, that the minimum parking criteria for a single facility established in part 1 of this subsection (e) shall not apply to each antique retail shop so long as adequate public parking is readily available within the district, and that all other minimum criteria established in parts 2 – 5 of this subparagraph (e) shall apply to each antique retail shop within the district); and

(ii) Historic districts (must have at least four (4) historic sites, each of which must be listed on the National Historic Register and open to the public for regularly scheduled guided or self-guided tours, within easy walking distance from a single parking location, and there must be trailblazing signs directing visitors to a centrally located information center or self-service kiosk where information concerning the historic district and a map for any self-guided tours can be obtained; provided, that the minimum parking criteria for a single facility established in part 1 of this subsection (e) shall not apply to each historic site so long as adequate public parking is readily available within the district, and that all other minimum criteria established in parts 2 – 5 of this subparagraph (e) shall apply to each historic site within the district; and provided further, that no business included within the historic district shall be eligible for an individual logo sign).

8. A business that meets all criteria set forth above will be considered "fully qualified." A business that is open seasonally at least six (6) months out of the year but meets all other criteria set forth in parts 1 – 5 of this subparagraph (e) and is otherwise an eligible business or facility under part 6 or 7 ~~that meets the distance criteria and is open to walk-ins but does not meet all of the other criteria~~ will be considered "partially qualified." A fully qualified business shall have priority over a partially qualified business. If a business is approved for the space as a fully qualified business, but then changes to become only partially qualified, said business may have its contract revoked.

9. An attraction shall not be eligible to participate in the Logo Sign Program if a guide sign has been erected for the attraction in accordance with Chapter 1680-03-02, Manual on Uniform Traffic Control Devices - Supplemental Rules for Guide Signs on Freeways, Expressways and Conventional Highways, if such participation would prevent another business from participating in the Logo Sign Program.

Authority: *T.C.A. §§ 54-5-1101, ~~and~~ 54-5-1108, and 54-5-1110.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed January 17, 1992; effective March 3, 1992.Amendment filed May 20, 1997; effective September 28, 1997. Amendment filed February 27, 1998; effective June 26, 1998. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-9-1-.05 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.06 MEASUREMENTS.

~~(1)~~ For the purpose of determining which business in each category will receive priority for the Logo Sign Program, the following will apply;

(a1) The business having the shortest eligibility distance from the PPOI will have priority. In the event that two businesses have the same eligibility distance, the business with the shortest

(Rule 1680-03-02, continued)

priority distance will have preference. This process will continue in ascending order as the eligibility distance increases from the PPOI until all positions on the background sign panel are filled.

(~~b~~2) To qualify, the business must meet one of the following criteria-:

~~1.~~(a) Gas, food and lodging:;

~~(ii)~~1. The business shall be located on the crossroad within three (3) miles of the PPOI, and either the business or its on-premise sign shall be readily identifiable from the crossroad.

~~(ii)~~2. If the crossroad is less than three (3) miles in length and terminates with a thoroughfare, a business may qualify provided it is located on the thoroughfare and is three (3) miles or less from the PPOI and either the business or its on-premise sign is readily identifiable from the thoroughfare. (See Rule 1680-03-03-.13, Figure 9)

~~2.~~(b) Campgrounds and attractions:

~~(i)~~ A campground or attraction shall be located within fifteen (15) miles of the PPOI.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed January 17, 1992; effective March 3, 1992. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.06 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.07 APPLICATION PROCESS.

(1) Any business that wishes to participate in the Logo Sign Program shall complete and submit a signed application to the contractor.

(2) A business may qualify to provide more than one motorist service under the Logo Sign Program, provided it meets all the requirements of these rules. If a business wishes to have a separate logo sign for each motorist service it provides, the business must submit a separate signed application for each motorist service.

(3) If an application is approved, the contractor shall issue a "Notice of Eligibility." A "Notice of Eligibility" shall be issued regardless of the availability of space on the background sign panel for which the business has applied.

(4) The "Notice of Eligibility" will be kept on file by the contractor for three (3) years from the date it is issued.

(5) Should the contractor deny an application, the contractor shall provide by certified mail or hand delivery (and obtain a signed receipt) a "Notice of Non-Eligibility" to the business, outlining the facts that warranted the denial.

(6) A business may be bumped from a sign at the end of its existing contract. In order to bump a business, the new business must submit an application at least sixty (60) days prior to the contract end date for the business that will be bumped. A new business that has a shorter eligibility distance than a business with a current sign may bump that business from the sign. However, a new food or attraction business that is fully qualified but with a longer eligibility distance may bump a business that is partially qualified but with a shorter eligibility distance. All other criteria contained in these rules shall apply.

(Rule 1680-03-02, continued)

(7) The applicants and business participants in the Logo Sign Program shall agree to hold harmless the State of Tennessee, the Department of Transportation, and its employees for any loss of business caused by any damage to or removal of background sign panels, logo signs or trailblazer signs.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.07 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.08 SPACE AVAILABLE NOTIFICATION.

(1) When space is available on a background sign panel, the contractor will:

(a) Contact any establishment that is open for business at the interchange and has a shorter eligibility distance than a business with a current "Notice of Eligibility" on file with the contractor or a current participant of the Logo Sign Program. This establishment must be provided the opportunity to submit an application to participate in the Logo Sign Program; and,

(b) Approve or deny the establishment's application based upon the requirements of these rules; and,

(c) Issue a "Notice of Space Availability" to the business with the current shortest eligibility distance that hold a "Notice of Eligibility;" and,

(d) Make such inquiries, investigations and inspections as necessary to insure that the business continues to meet the eligibility requirements set out in these rules.

(2) The contractor will notify the business of the required number of mainline, exit ramp and trailblazer logo signs required.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.08 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.09 TERMINATION OF PARTICIPATION.

(1) The Department or the contractor may inspect a business at any time during its contract period to assure that the business continues to meet the eligibility requirements set out in SPECIFIC these rules.

(2) The agreement between the contractor and the business shall contain provisions that cover breach of contract by the business. The following concepts shall be included within the provisions:

(a) A business believed by the contractor to be breaching the contract, for any reason, shall be given a reasonable period of time to remedy the situation.

(b) Should the business fail to remedy the situation, its logo sign(s) shall be removed and the contract terminated with no proration of monies paid.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.09 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

(Rule 1680-03-02, continued)

1680-03-03-.10 LOGO SIGN COMPOSITION.

(1) ~~All logo signs (main, exit ramp and trailblazer) shall have a blue background and a silver-white border.~~ A logo shall be either an identification symbol/trademark or a word message. Each logo shall be placed on a separate logo sign attached to a background sign panel.

(2a) Symbols or trademarks shall be reproduced in the colors and shape consistent with customary use, and any integral legend shall be proportional in size.

(3~~b~~) Messages, symbols and trademarks which resemble any official traffic control device are prohibited.

(4~~c~~) Descriptive advertising words, phrases, or slogans shall not be allowed on any logo sign, except to indicate dates of operation of eligible camping or attractions businesses that are open on a seasonal basis, to indicate that a business is "open 24 hours," or that a business offers "diesel" or "auto diesel fuel," or other as approved by the Department. If more than two (2) descriptive words, phrases, or slogans are requested, approval must be obtained from the Department.~~Logo signs furnished to the contractor shall be constructed of aluminum, 0.080 inches thick, and conforming to American Society of Testing and Materials (ASTM)-B 209 Alloy 606 1 -T6 or 5052-1138.~~

~~(d) The logo sign blanks shall be flat and contain no visible lateral bow.~~

~~(2) The logo sign shall be fabricated from encapsulated lens reflective sheeting and shall meet Tennessee Standard Specification 916.06, material Type II. The process color used for screening the business logo on the encapsulated lens background shall be as recommended by the manufacturer of the reflective sheeting.~~

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed January 17, 1992; effective March 3, 1992. Rule has been assigned a new control number from 1680-09-01-.10 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.11 ~~BUSINESS LOGO~~SIGN DIMENSIONS AND DETAILS.

(1) Background panels.

(a) All background sign panels and trailblazer background panels shall have a blue background, a white border, and white legends of upper-case letters, numbers, and arrows.

(b) All background sign panels and trailblazer background panels shall be fabricated from encapsulated lens or micro-prismatic reflective sheeting and shall meet the requirements for reflective sheeting in Tennessee Department of Transportation, Standard Specifications for Road and Bridge Construction, Section 916.06.

(2) Logo signs.

(a) Logo signs furnished to the contractor shall be constructed of aluminum, 0.080 inches thick, and conforming to American Society of Testing and Materials (ASTM)-B 209 Alloy 606 1 -T6 or 5052-1138.

(b) The logo sign shall be flat and contain no visible lateral bow.

(c) The logo sign shall be fabricated from encapsulated lens or micro-prismatic reflective

(Rule 1680-03-02, continued)

sheeting and shall meet the requirements for reflective sheeting in Tennessee Department of Transportation, Standard Specifications for Road and Bridge Construction, Section 916.06. The process color used for screening the business logo shall be as recommended by the manufacturer of the reflective sheeting.

(d) Mainline business logo signs for all types of services will be 48" x 36" in size, 0.080" in thickness, and will have a 3" border radius and a 1/4" border width.

(2e) Exit ramp business logo signs for all types of services will be 24" x 18" in size, 0.080" in thickness, and will have a 1 1/2" border radius and a 3/8" border width.

(3f) Trailblazer logo signs will be 24" x 18" in size, 0.080" in thickness, and will have a 1 1/2" border radius and a 3/8" border width.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.11 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.12 BUSINESS LOGO SIGN MAINTENANCE.

(1) The contractor will perform all maintenance work on all background sign panels, trailblazer signs and sign supports that are a part of the Logo Sign Program.

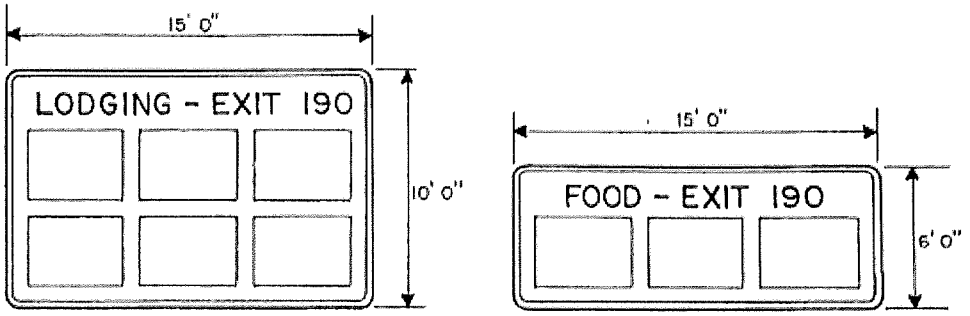
(2) When the logo sign of a business becomes damaged because of acts of vandalism, natural causes, or accidental damage, the business will provide, at its expense, a new logo sign to the contractor unless the damage was caused by the contractor or its agent. If the contractor or its agent damages the logo sign of a business, the contractor will be responsible for the cost of replacement.

(3) If in the opinion of the Department or the contractor, a logo sign of a business becomes unsightly, badly faded, or in a state of disrepair, the business shall provide at its expense a new or refurbished logo sign to the contractor upon request.

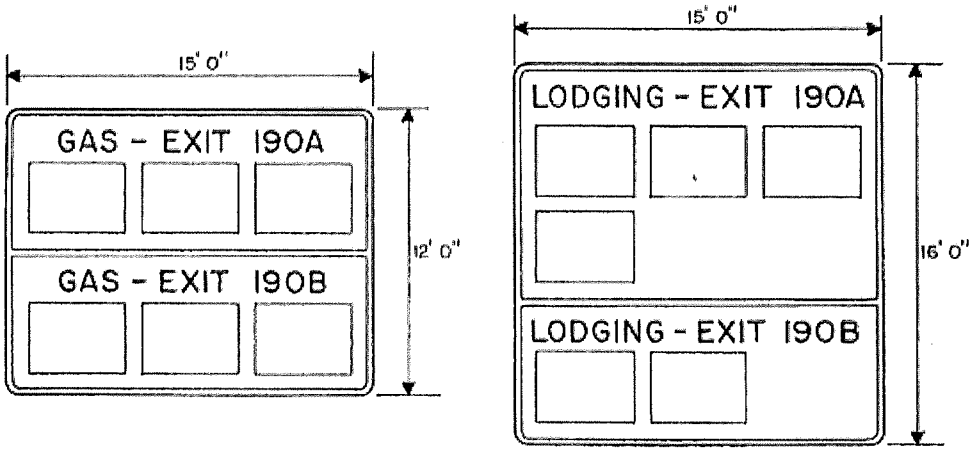
Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.12 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

(Rule 1680-03-02, continued)

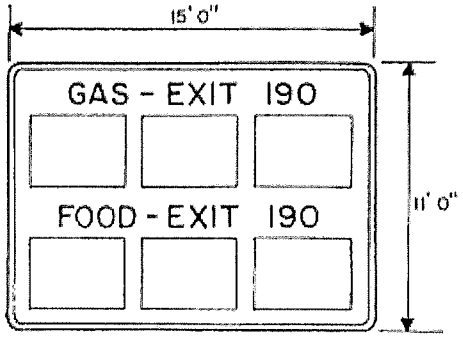
1680-03-03-.13 APPENDIX.



TYPICAL MAINLINE BACKGROUND SIGN PANEL DETAIL (SINGLE EXIT RAMP INTERCHANGE)



TYPICAL MAINLINE BACKGROUND SIGN PANEL DETAIL (DOUBLE EXIT RAMP INTERCHANGE)



TYPICAL COMBINATION MAINLINE BACKGROUND SIGN PANEL

FIGURE 1

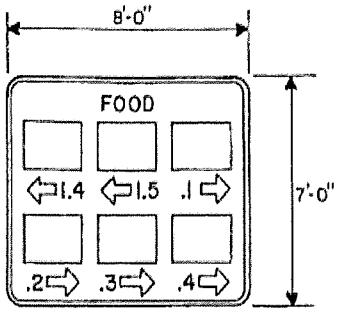


FIGURE 2: TYPICAL EXIT RAMP BACKGROUND SIGN PANEL DETAIL

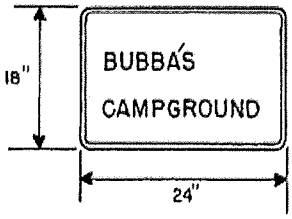


FIGURE 3: TYPICAL TRAILBLAZER SIGN DETAIL

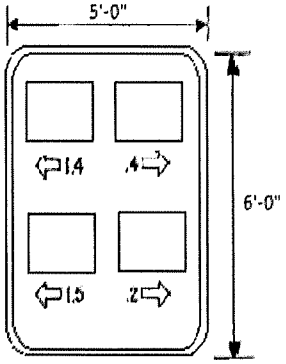


FIGURE 4: TYPICAL TRAILBLAZER BACKGROUND PANEL DETAIL

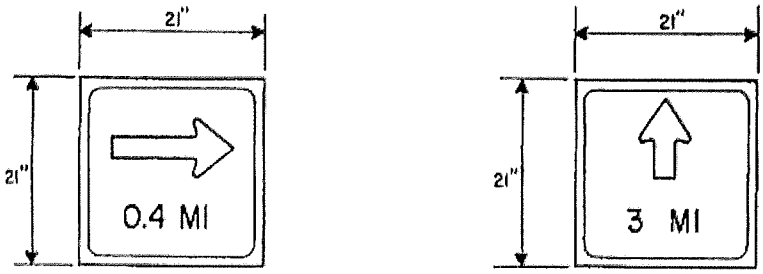


FIGURE 5: TYPICAL DIRECTION ARROW & MILEAGE DETAIL

(Rule 1680-03-03-.13, continued)

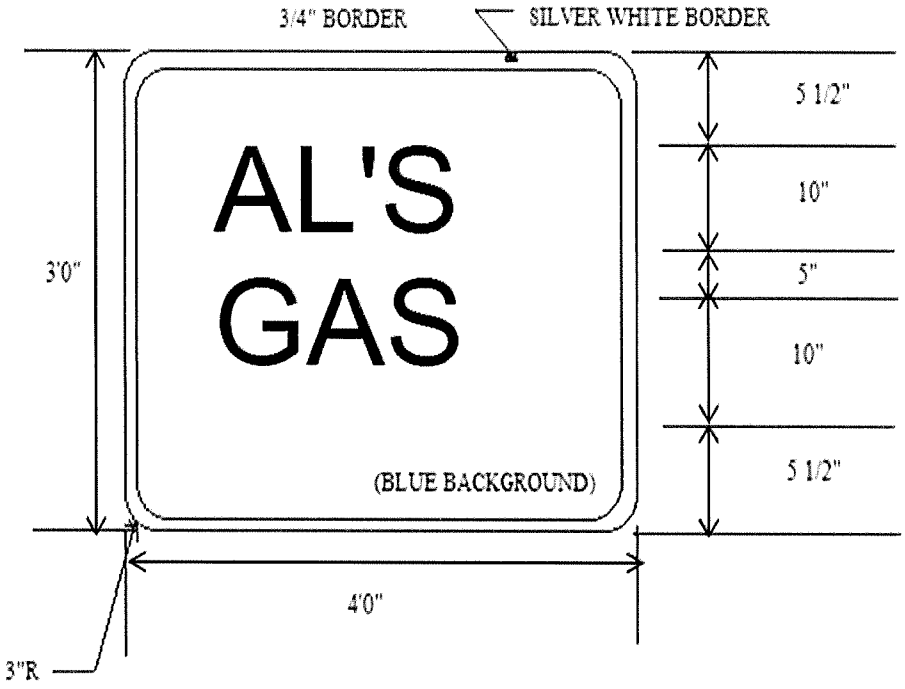


FIGURE 6: TYPICAL MAINLINE LOGO SIGN DETAIL
(FOR ALL MOTORIST SERVICES)

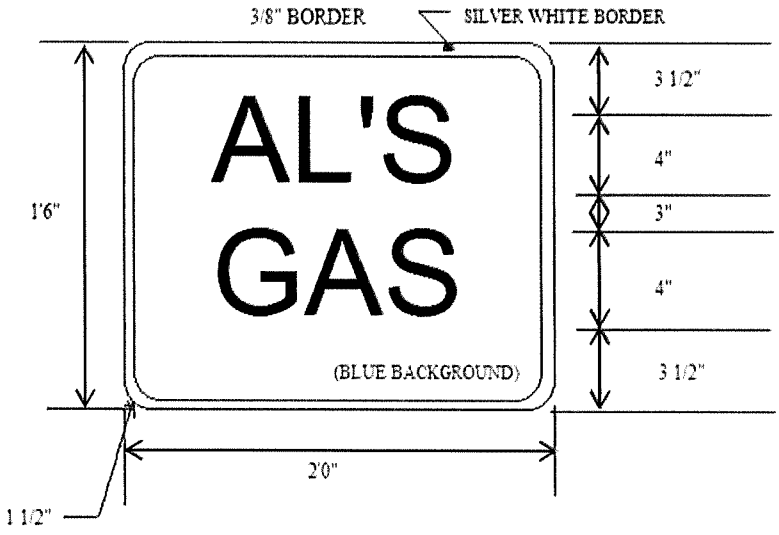


FIGURE 7: TYPICAL EXIT RAMP LOGO SIGN DETAIL
(FOR ALL MOTORIST SERVICES)

(Rule 1680-03-03-.13, continued)

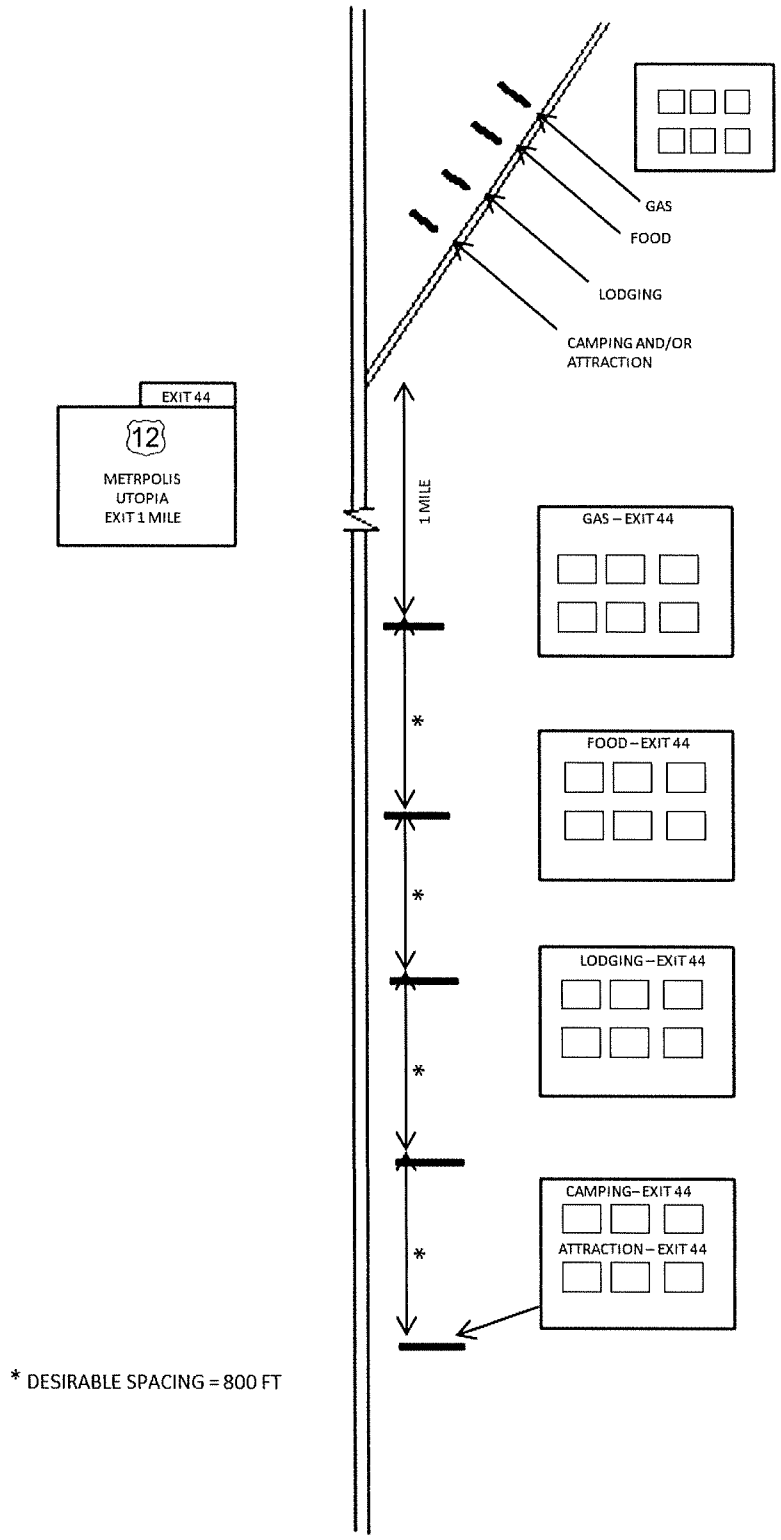


FIGURE 8: TYPICAL SIGN LOCATION DETAIL

(Rule 1680-03-03-.13, continued)

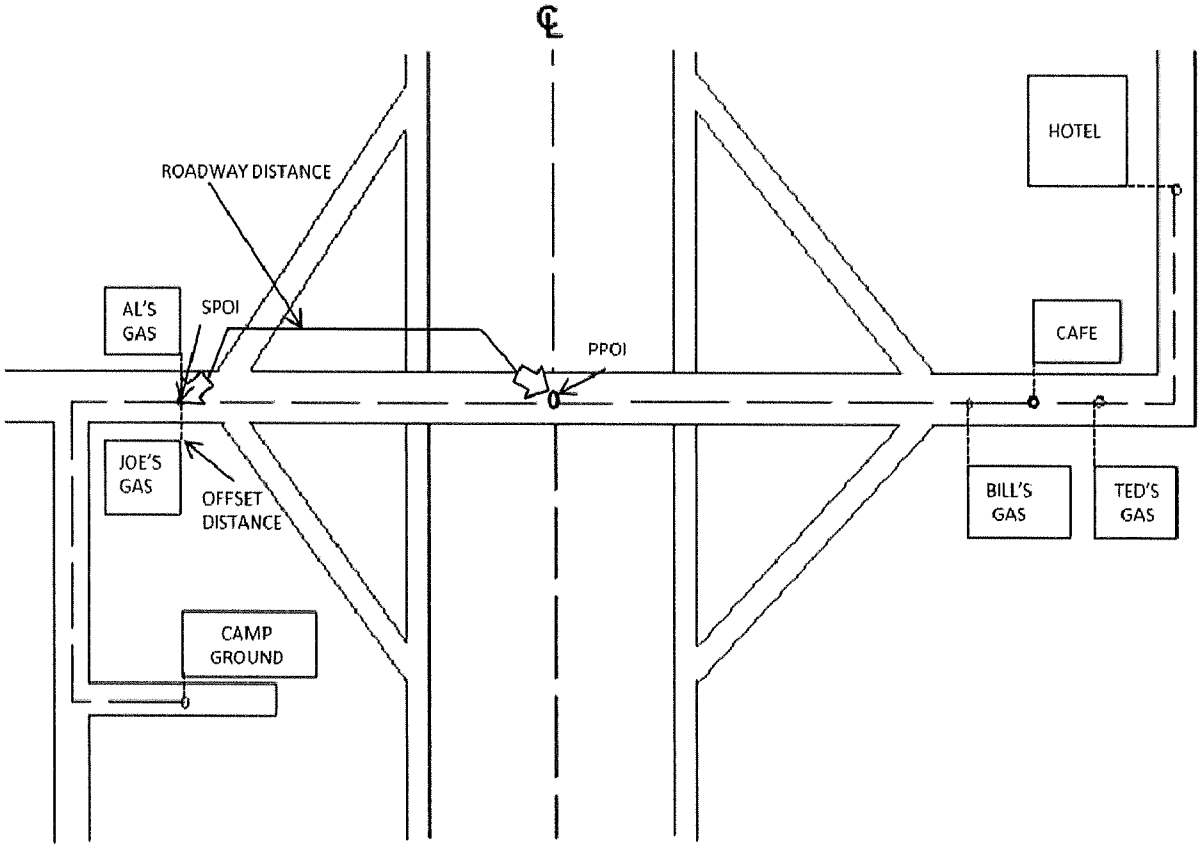


FIGURE 9

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23,1989; effective March 9, 1989. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.13 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

* 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 Tennessee Department of Transportation (board/commission/ other authority) on 03/28/18, 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: 11/01/17

Rulemaking Hearing(s) Conducted on: (add more dates). 01/04/18

Date: March 28, 2018

Signature:

Name of Officer: John C. Schroer

Title of Officer: Commissioner

ANGELA P. MARTIN NOTARY PUBLIC AT LARGE DAVIDSON COUNTY, TN

Subscribed and sworn to before me on: 3/28/18

Notary Public Signature: Angela P. Martin

My commission expires on: 1-6-2020

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

Herbert H. Slatery III
Attorney General and Reporter

5/11/2018
Date

RECEIVED 2018 MAY 15 AM 11:40 SECRETARY OF STATE

Department of State Use Only

Filed with the Department of State on: 5/15/18

Effective on: 8/13/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Board of Pharmacy
SUBJECT:	Drug Donation Repository Program
STATUTORY AUTHORITY:	Acts 2017, Public Chapter 392
EFFECTIVE DATES:	August 29, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The Tennessee Board of Pharmacy proposes a new rule chapter [Drug Donation Repository Program] to comply with 2017 Public Chapter 392, which was signed by the Governor on May 18, 2017. This Rule Chapter allows participation in the repository program for resident(s) who are indigent or uninsured and attest to the following: 1) being a Tennessee resident, 2) having an income that is below 200 percent (200%) of the federal poverty level, 3) being uninsured, 4) acknowledging that the drugs may have been donated, and 5) consenting to a waiver of the requirement for child resistant packaging. Additionally, this Rule Chapter encompasses other administrative rules required by 2017 Public Chapter 392, including: 1) requirements for medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies, 2) additional eligibility criteria for indigent or uninsured persons, 3) necessary forms for administration of the prescription drug donation repository program, including forms for use by individuals who donate, accept, distribute, or dispense the prescription drugs or supplies under the program, 4) a means by which an individual who is eligible to receive donated prescription drugs and supplies may indicate eligibility, 5) the maximum handling fee that a medical facility or pharmacy may charge for accepting, distributing, or dispensing donated prescription drugs and supplies under the program, and 6)

a list of prescription drugs that the prescription drug donation repository program will accept.

Lastly, this Rule Chapter contains exemptions from disciplinary action, civil penalties and criminal prosecution for participants in the repository program and restricts the donation of controlled substances.

***NOTE: The language of Rule Chapter 1140-17 provided in this packet does not include strikethroughs or underlining as all language within the chapter is new language.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

January 30, 2018
Tennessee Board of Pharmacy Rulemaking Hearing
Public Hearing Comments

The Tennessee Department of Health ("TDH") received seventeen written comments regarding the proposed rule chapter. On the day of the rulemaking hearing, Dr. Phil Baker, CEO and founder of Good Shepherd Pharmacy, a co-signer to the written comments, presented the written comments, orally, to the Tennessee Board of Pharmacy ("BOP"). The comments were also signed by Dr. George Wang, co-founder and director of SIRUM.

Comment #1
Dr. Baker requested the word "original" as it pertains to "original sealed and tamper evidence packaging," as indicated in Rule 1140-17-.04(4)(a), does not exclusively mean a manufacturer's original packaging. From time to time, according to Dr. Baker, a pharmacy may package a drug. Dr. Baker wished to ensure a pharmacy-created package would be accepted by the repository program.

Response
The BOP accepted this change and added the phrase "[including] unit dose packaging created by a licensed pharmacy" to Rule 1140-17-.04(4)(a) and Rule 1140-17-.04(5).

Comment #2
Dr. Baker indicated the current rule provisions regarding recalls are burdensome, especially as it relates to donors notifying the drug repository program of recalled, donated drugs. Furthermore, Dr. Baker requested for the rules to be amended to account for the varying degrees of recalls.

Response
The Board is precluded from changing the donor-notification system as outlined in Rule 1140-17-.06(5) because T.C.A. § 63-10-503(c)(1) indicates that the donor "shall make every effort, as required by rule, to notify the repository program to whom the drugs were donated of the recall." The same statutory section applies to recall notifications received by the drug repository program. The BOP determined it could not change the donor-notification system due to statutory direction.

Comment #3 and #11
Dr. Baker asked the BOP to remove the requirement of visible lot numbers on the packaging of donated drugs. The removal of this requirement would allow for an increase in the number of drugs that could be donated to the drug repository program.

Also, a request was made to add additional recall rules to indicate that all drugs dispensed without a lot number would be subject to recall in the event it is impossible to differentiate between drugs that have and have not been recalled due to the lack of a lot number.

Response
The BOP voted to remove the requirement that a repository shall only accept drugs with visible lot numbers and voted to add a requirement that drugs specified in a recall notice shall be considered recalled unless the drug has an affixed lot number as indicated in Rules 1140-17-.04(4)(c) and (f) and Rules 1140-17-.06(6) and (7). Both the removal of the lot number requirement and addition of the recall requirement were based upon the suggestions of Dr. Baker. The Board determined that in event of a recall, the public would be protected if all drugs (without corresponding lot numbers) were recalled. However, if a drug does have a visible lot number, that particular drug may survive recall as a batch that was not impacted by the recall notification.

Comment #4
Dr. Baker suggested that a pharmacist be allowed to inspect donated drugs before the drugs are dispensed, but not immediately after the drugs are received by the drug repository program via donation. This distinction would allow the pharmacist's staff to "pre-sort" donated drugs and free the pharmacist to perform other tasks.

Response

Consistent with statutory direction, the BOP voted to add the phrase "prior to dispensing" to Rule 1140-17-.05(1) which speaks to standards and procedures for inspecting and storing donated drugs.

Comment #5
Dr. Baker asked the BOP to allow "underinsured persons" (e.g. individuals with a prescription drug benefit, but the prescription drug benefit may still allow for unaffordable prescription drug coverage) to be added to the classes of individuals who may receive donated drugs. With the addition of underinsured persons, presumably, the drug repository program would be available to serve a larger segment of the population.

Response
Pursuant to T.C.A. § 63-10-501(7), an eligible individual, as defined, is someone with an income that is below two hundred percent of the federal poverty level (i.e. indigent person) or an individual who does not have insurance (i.e. uninsured person). In addition, the BOP was given rule-making authority to establish additional eligibility criteria for only indigent or uninsured persons. Given this statutory direction, the BOP voted to deny the request to allow underinsured persons to be eligible to receive donated drugs from the drug repository program.

Comment #6
Dr. Baker indicated that current draft rules allowed the maximum handling fee a repository may charge for dispensing donated drugs to be tied directly to the Medicaid dispensing fee. Due to the confusing and cumbersome nature of the Medicaid dispensing fee, Dr. Baker suggested each individual drug repository be allowed to set their own handling fee so long as the fee does not exceed the costs incurred by the drug repository in dispensing the drug.

Response
While the BOP did not adopt Dr. Baker's suggestion in total, the BOP voted to change the handling fee in order to add clarity to the handling fee rule provision as found in Rule 1140-17-.09. The BOP voted to allow a repository to charge no more than two hundred percent of the applicable tiered reimbursement rate as produced by the Bureau of TennCare.

Comment #7 and #14
Dr. Baker stated the current definition of "donor" was ambiguous and, potentially, could deter out-of-state entities (e.g. out-of-state drug repositories, non-Tennessee licensed healthcare facilities, or non-Tennessee licensed pharmacies) from donating to the Tennessee-based drug repository program.

Contrasted to the request for out-of-state entities to be able to donate to the Tennessee-based drug repository program is a request from Dr. Baker to allow the repository program to donate drugs to out-of-state repositories. From time-to-time, out-of-state repositories may experience a shortage of popular drugs and could benefit from a transfer of drugs donated to the Tennessee-based drug repository program which the Tennessee-based drug repository does not need for local patients.

Response
In draft rule form, the definition for "donor" mirrors the statutory definition for "donor" in T.C.A. § 63-10-501(6).

The BOP determined that any Tennessee-licensed pharmacy, wholesaler, or manufacturer, regardless of physical location, may donate to the Tennessee-based drug repository program. The BOP wished to conduct more research, by way of advisory counsel, to determine if non-Tennessee licensed medical facilities may be a "donor" according to the definition.

Currently, there are no restrictions in Tennessee statutory law or BOP regulations prohibiting the transfer of drugs out-of-state by a Tennessee-licensed pharmacy or health care facility. However, the transferring entity must be cognizant of the transferee's state law and federal law regarding drug transfers.

Comment #8, #13, and #17
Dr. Baker suggested, in Comment #8, the paperwork burden for the drug repository program may negatively impact participation (to be a drug repository) because the drug repository program will be maintained by a non-profit entity. Dr. Baker asked if individual drug repository programs can generate in-house forms. Dr. Baker requested edits to rules regarding (forms for) the inventory of drugs and supplies, the inspection record, and forms developed by the TDH.

In Comment #13, Dr. Baker asked the BOP for clarity regarding the requirements for destruction records. Specifically, Dr. Baker asked the BOP to include, within this rule chapter, the drug name, strength, and quantity in the destruction record for non-controlled donated drugs that are destroyed by the repository program.

For Comment #17, Dr. Baker indicated that participation by eligible persons could be diminished by requiring the drug repository program to submit information contained in the intake collection form to the TDH, as indicated in the draft rule. The intake collection form contains personal information regarding the donee's residence, income level, insurance coverage, acknowledgement that the drugs dispensed may be donated, and a waiver of "child-proof"-packaged drugs. Ultimately, Dr. Baker asked the BOP to remove the requirement for the drug repository program to submit information contained in the intake collection form.

Response
T.C.A. § 63-10-503(e)(3) instructs the TDH to adopt rules to establish necessary forms for administration of the drug repository program, "including forms for use by individuals who donate, accept, distribute, or dispense... drugs or supplies under the program[.]" Comment #8 was rejected by the BOP based upon the forgoing statutory grounds.

The BOP accepted Comment #13 and added the following to Rule 1140-17-.05(3), "which shall include, at a minimum, the drug name, strength, quantity, method of destruction, and date of destruction" regarding the destruction record of non-controlled donated drugs.

The BOP accepted Comment #17 and removed the requirement for the repository program to submit the intake collection form to the TDH.

Comment #9 and #10
Comment #9, as written, indicated that some drugs will be excluded from donation because the drugs require storage temperatures beyond normal room temperature. Drs. Baker and Wang asked the BOP, via the written comment, to adopt a suggestion that would allow for donation of temperature-controlled drugs.

Within Comment #10, Dr. Baker verbally asked for the unambiguous inclusion of non-tablet or capsule drugs which meet the drug repository program's standards for donated drugs. Dr. Baker stated that many of the most needed drugs are inhalers, patches, injectables, and or solutions.

Response
The statutory definition of prescription drug indicates the drug must be in tablet or capsule form. T.C.A. § 63-10-501(11). The BOP indicated the aforementioned statutory language precluded the BOP from allowing non-tablet or non-capsule drugs to be accepted by the drug repository program by way of edits to the draft rule language.

Comment #12
Dr. Baker stated the current draft rules could be interpreted to indicate the United States Parcel Services is the only entity that may be used when donations are made by "mail." Rule 1140-17-.04(6). Dr. Baker requested inclusion of the phrase "or any common carrier" to the forgoing rule.

Response
The BOP adopted this suggestion and added the phrase "which includes the use of any common carrier" to Rule 1140-17-.04(6).

Comment #15 and #16
In Comment #15, Dr. Baker asked the BOP to consider removing the requirement of using a reverse distributor to destroy controlled substances unintentionally donated to the drug repository program. Dr. Baker indicated it is cost prohibitive for a non-profit entity to utilize the services a reverse distributor.

In Comment #16, Dr. Baker requested the BOP to amend the rules to allow a return option for non-controlled medications donated to the drug repository program. Dr. Baker indicated, from time to time, a repository could receive a pallet of drugs which contain a rapidly-approaching expiration date. Dr. Baker stated it would be burdensome for the drug repository program to be saddled with the cost of destruction for this specific type of donation.

Response
The BOP voted to amend Rule 1140-17-.05(4) to indicate that destruction of controlled substances shall be accomplished by either using the services of a reverse distributor or by following current United States Drug Enforcement Agency regulations regarding destruction of controlled substances.

The BOP voted to amend Rules 1140-17-.05(2) and (3) to include a return option for donated drugs.

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.

This new rule does 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.

This new rule is established with clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

This new rule establishes new compliance and reporting requirements for businesses choosing to participate in the repository program. These compliance and reporting requirements are as flexible as other reporting requirements for pharmacies.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

This new rule establishes new schedules for businesses choosing to participate in the repository program, but these schedules are as flexible as other reporting requirements for pharmacies.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

The requirements for this new rule cannot be consolidated or simplified. The requirements are necessary for businesses involved in health emergencies.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

These new rules 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 new rules 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 of Pharmacy

Rulemaking hearing date: January 30, 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 are necessary to comply with 2017 Public Chapter 392, which was signed by the Governor on May 18, 2017, and which allows persons, pharmacies, and medical facilities, including long-term care facilities, as well as drug manufacturers or wholesalers licensed by the Tennessee Board of Pharmacy to donate drugs or supplies to indigent and/or uninsured Tennessee residents. Indigent and uninsured Tennessee residents and health care facilities in Tennessee will bear the benefit of these rules. Manufacturers and distributors operating in Tennessee will bear the burden of these rules.

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:**

   These rules may increase costs for reporting, recordkeeping and administrative functions for those businesses choosing to participate in the repository program; however, any such increase should be minimal.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   While small businesses choosing to participate in the repository program may face a slight increase in operating costs, any such costs should be offset by the reduction in medication waste. Additionally, these rules will provide indigent and uninsured Tennessee residents with access to medications they otherwise could not afford.

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 these rules.

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 any exemptions for 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 Tennessee Board of Pharmacy proposes a new rule chapter [Drug Donation Repository Program] to comply with 2017 Public Chapter 392, which was signed by the Governor on May 18, 2017.

This Rule Chapter allows participation in the repository program for resident(s) who are indigent or uninsured and attest to the following: 1) being a Tennessee resident, 2) having an income not exceeding 200 percent, 3) being uninsured, 4) acknowledging that the drugs may have been donated, and 5) consenting to a waiver of the requirement for child resistant packaging.

Additionally, this Rule Chapter encompasses other administrative rules required by 2017 Public Chapter 392, including: 1) requirements for medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies, 2) additional eligibility criteria for indigent or uninsured persons, 3) necessary forms for administration of the prescription drug donation repository program, including forms for use by individuals who donate, accept, distribute, or dispense the prescription drugs or supplies under the program, 4) a means by which an individual who is eligible to receive donated prescription drugs and supplies may indicate eligibility, 5) the maximum handling fee that a medical facility or pharmacy may charge for accepting, distributing, or dispensing donated prescription drugs and supplies under the program, and 6) a list of prescription drugs that the prescription drug donation repository program will accept.

Lastly, this Rule Chapter contains exemptions from disciplinary action, civil penalties and criminal prosecution for participants in the repository program and restricts the donation of controlled substances.

(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;

2017 Public Chapter 392, which was signed by the Governor on May 18, 2017.

(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 will benefit indigent and uninsured Tennessee residents by providing a program by which persons and facilities can donate unused prescription medications to these residents in need. These rules will also affect health care facilities in Tennessee by reducing the heavy costs associated with medication. Manufacturers and distributors operating in Tennessee will bear the burden of these rules. Those who appeared at the rulemaking hearing supported the rule chapter, while requesting changes included in the comments section above. There were no comments urging rejection of this new rule chapter.

(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 directly affect state or local governments.

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

Matthew Gibbs, 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;

Matthew Gibbs, 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, Matthew.Gibbs@tn.gov.

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

None.

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Sequence Number: 05-23-18
Rule ID(s): 6880
File Date: 5/31/18
Effective Date: 8/29/18

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 Board of Pharmacy
Division:	
Contact Person:	Matthew Gibbs, Assistant General Counsel
Address:	710 James Robertson Parkway, 5th Floor, Nashville, TN
Zip:	37243
Phone:	(615) 532-7924
Email:	Matthew.Gibbs@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**
1140-17	Drug Donation Repository Program
Rule Number	**Rule Title**
1140-17-.01	Definitions
1140-17-.02	Purpose
1140-17-.03	Eligibility Criteria for Program Participation as a Repository by Medical Facilities and Pharmacies
1140-17-.04	Standards and Procedures for Accepting Donated Prescription Drugs and Supplies
1140-17-.05	Standards and Procedures for Inspecting and Storing Donated Prescription Drugs and Supplies
1140-17-.06	Standards and Procedures for Dispensing Donated Prescription Drugs and Supplies
1140-17-.07	Eligibility Criteria for Individuals to Receive Donated Prescription Drugs and Supplies
1140-17-.08	Forms and Record Keeping
1140-17-.09	Handling Fee
1140-17-.10	List of Drugs and Supplies Program Will Accept.
1140-17-.11	Exemption From Disciplinary Action, Civil Liability and Criminal Prosecution.
1140-17-.12	Long-term Care Facilities

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.

New Rule Chapter 1140-17
Drug Donation Repository Program

Rule 1140-17-.01 Definitions.

In addition to the definitions contained in T.C.A. § 63-10-501, the following definitions are applicable to this chapter:

(1) "Cancer Drug" means a prescription drug that is used to treat any of the following:

(a) Cancer or the side effects of cancer; or

(b) The side effects of any prescription drug that is used to treat cancer or the side effects of cancer.

(2) "Controlled Substance" means the same as defined in T.C.A. § 39-17-402.

(3) "Department" means the Tennessee Department of Health.

(4) "Donor" means a person, pharmacy, or medical facility as well as any drug manufacturer or wholesaler licensed by the Tennessee Board of Pharmacy, who donates prescription drugs to a repository program approved pursuant to these rules.

(5) "Eligible individual" means an indigent person or an uninsured person who meets all other criteria established by these rules.

(6) "Indigent" means a person with an income that is below 200 percent (200%) of the federal poverty level (FPL) as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services.

(7) "Medical facility" means any of the following:

(a) A physician's office;

(b) A hospital;

(c) A health clinic;

(d) A nonprofit health clinic, including a federally qualified health center as defined in 42 U.S.C. § 1396d(l)(2)(B); a rural health clinic as defined in 42 U.S.C. § 1396d(l)(1); and a nonprofit health clinic that provides medical care to patients who are indigent, uninsured, or underinsured;

(e) A free clinic as defined in T.C.A. § 63-6-703;

(f) A charitable organization as defined in T.C.A. § 48-101-501; or

(g) A nursing home as defined in T.C.A. § 68-11-201.

(8) "Legend Drug" means the same as defined in T.C.A. § 53-10-101.

(9) "NDC #" means the unique national drug code number that identifies a specific approved drug, its manufacturer and its package presentation.

(10) "Nurse practitioner" means an advanced practice nurse as defined in T.C.A. § 63-7-126.

(11) "Pharmacist" means a pharmacist as defined in T.C.A. § 63-10-204.

(12) "Pharmacy" means a pharmacy as defined in T.C.A. § 63-10-204.

(13) "Physician" means an individual licensed under T.C.A. § 63-6-201 or § 63-9-104.

(14) "Physician's Assistant" means an individual licensed under T.C.A. § 63-19-105.

(15) "Prescription drug" means the same as defined in T.C.A. § 63-10-204 except the drug is only tablet or capsule form, and includes cancer drugs and anti-rejection drugs, but does not include controlled substances and drugs covered by the risk evaluation and mitigation strategy program of the federal food and drug administration

(16) "Repository" means a pharmacy or medical facility that meets the eligibility requirements of Rule 1140-17-.03.

(17) "Reverse Distributor" means an establishment that dispositions or otherwise processes saleable or nonsaleable legend drugs and controlled substances received from a pharmacy such that the legend drugs and controlled substances may be processed for credit to the purchaser, Manufacturer, or seller and disposed of for no further distribution.

(18) "Supplies" means the supplies necessary to administer the prescription drugs donated.

(19) "USP" means United States Pharmacopoeia.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

1140-17-.02 Purpose. The overall purpose of this chapter is to establish administrative rules in accordance with Tenn. Code Ann. §§ 63-10-501 et seq. relative to the following:

(1) Requirements for medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies;

(2) Additional eligibility criteria for indigent or uninsured persons;

(3) Necessary forms for administration of the prescription drug donation repository program, including forms for use by individuals who donate, accept, distribute, or dispense the prescription drugs or supplies under the program;

(4) A means by which an individual who is eligible to receive donated prescription drugs and supplies may indicate eligibility;

(5) The maximum handling fee that a medical facility or pharmacy may charge for accepting, distributing, or dispensing donated prescription drugs and supplies under the program; and

(6) A list of prescription drugs that the prescription drug donation repository program will accept.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

1140-17-.03 Eligibility Criteria for Program Participation as a Repository by Medical Facilities and Pharmacies.

(1) To be eligible for participation in the prescription drug donation repository program, a medical facility or pharmacy shall be in compliance with all applicable federal and state laws, including laws applicable to the storage and distribution of drugs and the appropriate licensure standards, and shall hold active, unencumbered, state-issued licenses or registrations in good standing. In the case of a physician's office, the physician(s) and other medical staff shall be duly licensed.

(2) A medical facility or pharmacy which intends to operate as a repository within the prescription drug donation repository program shall receive a determination of exemption from the United States internal revenue service pursuant to 26 U.S.C. § 501(c)(3) prior to making application to the Board to act as a repository. The medical facility or pharmacy shall present the exemption along with the form prescribed by the department and available on the program's web page as outlined in Tenn. Comp. R. & Regs 1140-17-.03(4).

(3) Participation in the prescription drug donation repository program is voluntary.

(4) A pharmacy or medical facility may elect to participate in the prescription drug donation repository program by providing, on a form prescribed by the department and available on the program's web page, written notification to the department of all of the following:

(a) The name, street address, and telephone number of the pharmacy or medical facility, and any state-issued license or registration number issued to the pharmacy or medical facility, including the name of the issuing agency;

(b) The name and telephone number of the responsible pharmacist, physician, physician's assistant or nurse practitioner who is employed by or under contract with the pharmacy or medical facility; and

(c) A statement, signed and dated by the responsible pharmacist, physician, physician's assistant or nurse practitioner, indicating that the pharmacy or medical facility meets the eligibility requirements under this rule and shall comply with the requirements of this chapter.

(5) Withdrawal from participation: A pharmacy or medical facility may withdraw from participation in the prescription drug donation repository program at any time by providing written notice to the department on a form prescribed by the department and available on the program's web page.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

Rule 1140-17-.04 Standards and Procedures for Accepting Donated Prescription Drugs and Supplies.

(1) A person, pharmacy, or medical facility as well as any drug manufacturer or wholesaler licensed by the Tennessee Board of Pharmacy may donate drugs or supplies to the repository program. Any individual may donate legally obtained prescription drugs or supplies to a repository if the drugs or supplies meet the requirements of this rule, as determined by a pharmacist who is employed by or under contract with a repository.

(2) No drugs that require storage temperatures other than normal room temperature as specified by the manufacturer or USP shall be donated or accepted as part of the prescription drug donation repository program. Drugs that require storage temperatures other than normal room temperature as specified by the manufacturer or USP shall not be donated or accepted because of the increased potential for these drugs to become adulterated. Excluded from this restriction are drugs donated directly from a drug manufacturer.

(3) Controlled substances shall not be donated or accepted. Pursuant to federal and state laws, a controlled substance cannot be returned or reused once the drug has been dispensed to a patient.

(4) A repository may accept a prescription drug only if all of the following requirements are met:

(a) The drug is in its original sealed and tamper-evident packaging, which includes unit dose packaging created by a licensed pharmacy. However, a prescription drug in a single-unit dose or blister pack with the outside packaging opened may be accepted if the single-unit-dose packaging is undisturbed;

(b) The drug has been stored according to manufacturer or USP storage requirements;

(c) The packaging contains the expiration date of the drug.

(d) The drug does not have any physical signs of tampering or adulteration, and there is no reason to believe that the drug is adulterated;

(e) The packaging does not have any physical signs of tampering, misbranding, deterioration, compromised integrity or adulteration; and

(f) All drugs shall be inventoried at the repository. The inventory shall include the name of the drug, strength of the drug, NDC number, quantity of the drug, expiration date of the drug, and the date of donation if the drug has been continually under the control of a health care professional. If the drug has not been continually under the control of a health care professional, the repository shall collect a donation form provided by the prescription drug donation repository program that is signed by the person making the donation or that person's authorized representative.

For purposes of this subparagraph a health care professional is any person licensed in accordance with the provisions of Title 63 by any health related board of the Tennessee Department of Health to perform any profession of the healing arts.

(5) A repository may accept supplies necessary to administer the prescription drugs donated only if all of the following requirements are met:

(a) The supplies are in their original, unopened, sealed packaging or unit dose packaging created by a licensed pharmacy;

(b) The supplies are not adulterated or misbranded; and

(c) All supplies shall be inventoried at the repository. The inventory shall include a description of the supplies, expiration date of the supplies, and the date of donation. Such inventory shall be recorded on a form provided by the department.

(6) Drugs and supplies may be donated on the premises of a repository to a person designated by the repository. Donations of prescription drugs and supplies may be made by mail, which includes the use of any common carrier. A drop box may not be used to deliver or accept donations.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

Rule 1140-17-.05 Standards and Procedures for Inspecting and Storing Donated Prescription Drugs and Supplies.

(1) A licensed pharmacist employed by or under contract with a repository shall inspect donated prescription drugs and supplies, prior to dispensing, to determine, to the extent reasonably possible in the judgment of the pharmacist, that the drugs and supplies are not adulterated or misbranded, are safe and suitable for dispensing, and are not ineligible drugs or supplies. The pharmacist who inspects the drugs shall sign an inspection record stating the above and attach it to the copy of the inventory or donor record provided with the drugs.

(2) A repository shall store donated drugs and supplies in a secure storage area under environmental conditions appropriate for the drugs or supplies being stored. Donated drugs and supplies may not be stored with non-donated inventory. When donated drugs are not inspected immediately upon receipt, a repository shall quarantine the donated drugs separately from all dispensing stock until the donated drugs have been inspected and approved for dispensing under the program, returned, or destroyed.

(3) Repositories shall return or destroy donated non-controlled substances that are not suitable for dispensing and make a record of such return or destruction which shall include, at a minimum, the drug name, strength, quantity, method of destruction, and date of destruction. A reverse distributor may be used for destruction.

(4) Controlled substances shall not be accepted for donation. Controlled substances submitted for donation shall be disposed of pursuant to DEA regulations. Destruction shall be accomplished by either the use of

a reverse distributor or by following current DEA regulations regarding destruction of controlled substances.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

Rule 1140-17-.06 Standards and Procedures for Dispensing Donated Prescription Drugs and Supplies.

(1) Donated drugs and supplies may be dispensed only if the drugs or supplies are prescribed by a health care practitioner for use by an eligible individual and are dispensed by a licensed pharmacist, physician, physician's assistant or nurse practitioner. A Tennessee licensed pharmacist shall inspect the prescription drugs and supplies to determine the prescription drugs and supplies are not adulterated or misbranded prior to dispensing.

(2) A repository shall prioritize dispensing to an individual requesting drugs through the program as follows:

(a) First, to an indigent individual; and

(b) Second, to an individual who has no active third-party prescription drug reimbursement coverage for the drug prescribed.

(3) A repository shall dispense donated prescription drugs in compliance with applicable federal and state laws and regulations for dispensing prescription drugs, including all requirements relating to packaging, labeling, record keeping, drug utilization review, and patient counseling. A medical facility or pharmacy may not dispense a prescription drug after the expiration date of the drug.

(4) The repository shall remove the original donor's identification and the name of the donor's dispensing pharmacy from the package prior to dispensing the drugs or supplies.

(5) If a donor receives official notice of a recall of a prescription drug donated pursuant to these rules, the donor shall make every effort to notify the repository to whom the drugs were donated of the recall.

(6) If an organization who is administering a drug repository program receives official notice of a recall of a prescription drug donated pursuant to these rules, the organization shall make every effort to notify the pharmacy, medical facility, or patient, if known, to whom such donated drugs were dispensed, of the recall. Drugs specified in a recall notice shall be considered recalled unless the drug has an affixed lot number which would exclude the drug from a recall.

(7) Any donor or drug repository program who receives notice of a recall shall dispose of all recalled prescription drugs pursuant to the Tennessee Board of Pharmacy rules. Drugs specified in a recall notice shall be considered recalled unless the drug has an affixed lot number which would exclude the drug from a recall.

(8) Prescription drugs or supplies donated under this program shall not be resold.

(9) Repositories may distribute drugs and supplies donated under this program to other repositories for use pursuant to the program. The repository distributing the drugs or supplies shall complete a transfer form containing the inventory information on file in accordance with Rule 1140-17-.04(4)(f).

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

Rule 1140-17-.07 Eligibility Criteria for Individuals to Receive Donated Prescription Drugs and Supplies.

(1) An individual who requests drugs from the prescription drug donation repository program shall certify to the repository that the individual is a resident of Tennessee and meets one or both of the following criteria:

(a) Is indigent.

(b) Has no active third-party prescription drug reimbursement coverage for the drug prescribed.

(2) A repository shall collect from each individual recipient a signed intake collection form provided by the department.

(a) The intake collection form shall attest that:

1. The individual is a resident of the state of Tennessee;

2. The individual's income is below 200 percent of the FPL;

3. The individual is uninsured and has no prescription coverage for the prescribed drugs;

4. The individual acknowledges that the drugs may have been donated; and

5. The individual consents to a waiver of the requirement for child resistant packaging of the Poison Prevention Packaging Act (16 C.F.R. §§ 1700-1702).

(b) The intake collection form will include an identification card to be given to the recipient for continued use for one year.

(3) The identification card given to the recipient is valid for one year or until the new federal poverty guidelines have been published for all prescriptions and supplies.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

Rule 1140-17-.08 Forms and Record Keeping.

(1) The following forms developed for the administration of this program shall be utilized by participants of the program and are available on the program's web page:

(a) Prescription drug donation repository program notice of participation or withdrawal.

(b) Prescription drug donation repository program donation, transfer, inventory or destruction record.

(c) A record of medications dispensed.

(d) Intake collection form. A repository is authorized to make available to a recipient a blank intake collection form.

(2) The identification card shall be given to the recipient by the repository, and the completed intake collection form shall be collected from the recipient by the repository.

(3) Record-keeping requirements.

(a) All records required to be maintained as a part of the prescription drug donation repository program shall be maintained for a minimum of five (5) years by participating pharmacies and medical facilities.

(b) Other records required as part of this program shall be maintained pursuant to all current applicable practice acts.

(c) Data collected by the prescription drug donation repository program from all repositories shall be submitted quarterly or upon request to the department. The data will consist of the information collected in accordance with (1) above.

(d) A repository shall submit reports to the department yearly and upon request of the department. Such reports shall include the following data:

1. Number of donors during the reporting year;

2. Number of donations during the reporting year;

3. List of prescription drugs and supplies donated during the reporting year;

4. Number of people who received donations of prescription drugs or supplies during the reporting year;

5. Total number of prescription drugs and supplies dispensed during the reporting year; and

6. Total cost to eligible individuals who received donations during the reporting year.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

Rule 1140-17-.09 Handling Fee. A repository may charge the recipient of a donated prescription drug a handling fee, not to exceed a maximum of 200 percent of the applicable tiered reimbursement rate as produced by the Bureau of TennCare, to cover stocking and dispensing costs. A prescription drug dispensed through the prescription drug donation repository program shall not be eligible for reimbursement under the medical assistance program.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

Rule 1140-17-.10 List of Drugs and Supplies Program Will Accept. All prescription drugs, excluding controlled substances, that have been approved for medical use in the United States, that are listed in the USP or National Formulary (USP/NF), and that meet the criteria for donation established by these rules may be accepted for donation under the prescription drug donation repository program.

Any compounded drug which is made into tablet or capsule form, regardless of packaging, shall not be accepted by the prescription drug donation repository program

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

Rule 1140-17-.11 Exemption From Disciplinary Action, Civil Liability and Criminal Prosecution.

(1) Except for gross negligence, willful misconduct, or bad faith, a drug manufacturer is not civilly liable or subject to criminal prosecution for injury, death, or loss to a person or property for matters related to the donation, acceptance, or dispensing of a prescription drug manufactured by the drug manufacturer that is donated under this part, including liability for failure to transfer or communicate product or consumer information or the expiration date of the donated prescription drug.

(2) Except as provided in subsection (4), a medical facility or another person who is not a drug manufacturer subject to subsection (1) is not civilly liable or subject to criminal prosecution for injury to or the death of an individual to whom a donated prescription drug is dispensed under this part except due to its own gross negligence, willful misconduct, or bad faith. The medical facility or other person who is not a drug manufacturer subject to subsection (1) is also exempt from disciplinary action related to the facility's or person's acts or omissions related to the donation, acceptance, distribution, or dispensing of a donated prescription drug under this part.

(3) Except for gross negligence, willful misconduct, or bad faith, the department of health or the board of pharmacy shall not be civilly liable or subject to criminal prosecution for injury, death, or loss to a person or property resulting from matters related to the donation, acceptance, distribution, or dispensing of a prescription drug donated pursuant to this part.

(4) The immunity and exemption provided in subsections (2) and (3) do not extend to the following:

(a) The donation, acceptance, distribution, or dispensing of a donated prescription drug under this part by a person if the person's acts or omissions are not performed reasonably and in good faith; or

(b) Acts or omissions outside the scope of the program.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 2018].

1140-17-.12 Long-Term Care Facilities. A long term-care facility licensed under title 68 may donate prescription drugs to the repository program.

Authority: Chapter 392 of the Public Acts of 2017, § 1 and T.C.A. §§ 63-10-501 through 63-10-510. [effective January 1, 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)
Debra Wilson, D.Ph	X				
Rissa H. Pryse D.Ph	X				
Katy Wright, D.Ph.	X				
Lisa Tittle	X				
Adams Rodgers, D.Ph.	X				
Kevin K. Eidson, Pharm. D.		X			
R. Michael Dickenson, D.Ph.	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Pharmacy (board/commission/ other authority) on 01/30/2018 (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: *11/28/17 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/30/2018 (mm/dd/yy)*

Date: April 4, 2018

Signature: [signature]

Name of Officer: Matthew Gibbs

Title of Officer: Assistant General Counsel Department of Health

Subscribed and sworn to before me on: 4-5-18

Notary Public Signature: [signature]

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

Agency/Board/Commission: Tennessee Board of Pharmacy

Rule Chapter Number(s): 1140-17

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

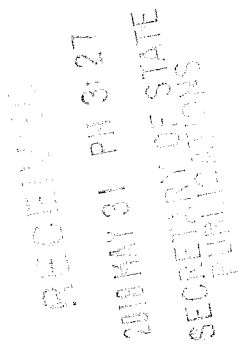
5/23/2018
Date

Department of State Use Only

Filed with the Department of State on: 5/31/18

Effective on: 8/29/18

Tre Hargett
Secretary of State



G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Board of Communications Disorders and Sciences, Council for Hearing Instrument Specialists
SUBJECT:	Hearing Instrument Specialists - General Rules Governing Qualifications and the Procedures for Licensure / Fees / Examinations / Licensure Renewal / Apprenticeship Training Program
STATUTORY AUTHORITY:	There is no federal law or regulation, or any state law or regulation that mandates the promulgation of this rule or establishes guidelines relevant thereto.
EFFECTIVE DATES:	August 12, 2018, through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	As part of this rulemaking hearing rule: The amendment to Rule 1370-02-.01 [Definitions] deletes paragraph (26) which defines the acronym NIHIS (National Institute for Hearing Instruments Specialists) because the acronym NIHIS does not appear in the rules. It also corrects a typographical error in the name of the national board defined in paragraph (25). The amendment to Rule 1370-02-.04 [Preliminary Qualifications for Licensure] deletes subparagraphs (c) and (d) in their entirety. New subparagraph (c) adds new language clarifying that to be granted reciprocity an applicant must hold an unencumbered license and must either: 1) have obtained the out of state license by passing a written and practical examination, meeting IHS standards and scoring or 2) hold a current certification by the National Board for Certification in Hearing Instrument Sciences. New subparagraph (d) clarifies that the applicant must complete a jurisprudence examination regardless of how he or she qualifies for reciprocity under subparagraph (c). The amendment to Rule 1370-02-.05 [Procedures for Licensure] deletes examination requirements for apprentice applicants. The amendment to Rule 1370-02-.06 [Fees] deletes the examination and retake fee for apprentice applicants. The amendment to Rule 1370-02-.08 [Examinations] revises rules with regard to examinations.

The amendment to Rule 1370-02-.09 [Renewal of License] revises fees owed by applicants seeking to reinstate their license.

The amendment to Rule 1370-02-.14 [Apprenticeship Training Program] deletes the language in subpart (5)(b) re regarding apprenticeship examinations, and revises language to reflect the language contained in statute.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

On May 12, 2017, the Council for Hearing Instrument Specialists held a rulemaking hearing on the Rulemaking Hearing Notice published on March 9, 2017. There were no public comments received on the proposed rules, either written or oral.

During the hearing, Charles Custer, the Council administrator, commented on the need to also amend Rule 1370-02-.08(1)(b)3 and Rule 1370-02-.08(1)(c)2 for consistency in the rules.

The Council adopted these rules in their entirety, including Mr. Custer's recommendations, on May 12, 2017, and the Board of Communications Disorders and Sciences ratified these rules on August 9, 2017.

On January 19, 2018, the Council for Hearing Instrument Specialists, at the request of its advisory attorney, voted on and approved an additional change to Rule 1370-02-.04(3)(c)-(d) which was necessary to clarify the rule for reciprocity and to comply with the settlement in *WSPTN Corp. v. Tenn. Dep't of Health*, No. 3:15-cv-00840 (M.D. Tenn. filed July 30, 2015). This change was ratified by the Board of Communications Disorders and Sciences on February 6, 2018.

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.

This rule amendment does 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.

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

This rule amendment does not establish any new compliance or reporting requirements.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

This rule amendment does not establish any new schedules or deadlines.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

This rule amendment does not establish 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.

This rule amendment does 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.

This rule amendment does 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: Tennessee Board of Communications Disorders and Sciences, Council for Licensing Hearing Instrument Specialists

Rulemaking hearing date: May 12, 2017

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 rule amendments will affect all applicants for licensure and licensees reinstating an expired license. The applicants for licensure as an apprentice will no longer be required to pay an examination fee as part of the application, as an examination is no longer required for licensure. Additionally, fees for hearing instrument specialists reinstating an expired license shall not exceed twice the renewal fee.

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:**

   These proposed rule amendments should not affect reporting or recordkeeping and do not involve administrative costs. The proposed rules remove the apprentice examination requirements, change the examination passage rate for hearing instrument specialists, and establish the International Hearing Society's sanctioned practical skills exam as the sanctioned practical skills examination for licensure, and as such, do not require reporting, recordkeeping, or other administrative costs in order to comply with the proposed rule change.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   These proposed rule amendments will make it better to do business in Tennessee, as it will be easier for apprentices to enter the workforce and employers will have more opportunity to hire apprentices.

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:**

   None.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: None.

   State: The proposed rules will bring the Council's rules into compliance with new statutory changes to the Tennessee Code Annotated

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 proposed rule amendments do not provide exemptions for 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 1370-02-.01 [Definitions] deletes paragraph (26) which defines the acronym NIHIS (National Institute for Hearing Instruments Specialists) because the acronym NIHIS does not appear in the rules. It also corrects a typographical error in the name of the national board defined in paragraph (25).

The amendment to Rule 1370-02-.04 [Preliminary Qualifications for Licensure] deletes subparagraphs (c) and (d) in their entirety. New subparagraph (c) adds new language clarifying that to be granted reciprocity an applicant must hold an unencumbered license and must either: 1) have obtained the out of state license by passing a written and practical examination, meeting IHS standards and scoring or 2) hold a current certification by the National Board for Certification in Hearing Instrument Sciences. New subparagraph (d) clarifies that the applicant must complete a jurisprudence examination regardless of how he or she qualifies for reciprocity under subparagraph (c).

The amendment to Rule 1370-02-.05 [Procedures for Licensure] deletes examination requirements for apprentice applicants.

The amendment to Rule 1370-02-.06 [Fees] deletes the examination and retake fee for apprentice applicants.

The amendment to Rule 1370-02-.08 [Examinations] revises rules with regard to examinations.

The amendment to Rule 1370-02-.09 [Renewal of License] revises fees owed by applicants seeking to reinstate their license.

The amendment to Rule 1370-02-.14 [Apprenticeship Training Program] deletes the language in subpart (5)(b) regarding apprenticeship examinations, and revises language to reflect the language contained in statute.

(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 rule amendments will affect all applicants for licensure and licensees reinstating an expired license.

(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;

WSPTN Corp. v. Tenn. Dep't of Health, No. 3:15-cv-00840 (M.D. Tenn. filed July 30, 2015).

(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 result in any increase or decrease in state or local government revenues or expenditures.

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

Mark S. Waters, Deputy 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;

Mark S. Waters, Deputy 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, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Mark.S.Waters@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
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 05-13-18
Rule ID(s): 6765
File Date: 5/14/18
Effective Date: 8/12/18

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 Board of Communications Disorders and Sciences, Council for Hearing Instrument Specialists
Division:	
Contact Person:	Mark S. Waters, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Mark.S.Waters@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**
1370-02	General Rules Governing Hearing Instrument Specialists
Rule Number	**Rule Title**
1370-02-.01	Definitions
1370-02-.04	Preliminary Qualifications for Licensure
1370-02-.05	Procedures for Licensure
1370-02-.06	Fees
1370-02-.08	Examinations
1370-02-.09	Renewal of License
1370-02-.14	Apprenticeship Training Program

RULES
OF
TENNESSEE BOARD OF COMMUNICATIONS DISORDERS AND SCIENCES
COUNCIL FOR LICENSING HEARING INSTRUMENT SPECIALISTS

CHAPTER 1370-02
GENERAL RULES GOVERNING HEARING INSTRUMENT SPECIALISTS

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1370-02-.01 DEFINITIONS. As used in this rule, the terms and acronyms shall have the following meanings ascribed to them.

(1) Advertise - Informational communication to the public in any manner to attract attention to the practice as a hearing instrument specialist. This includes, but is not limited to, business solicitations with or without qualifications, in a card, sign, or device to any person; or the causing, permitting or allowing any signs or marking on or in any building or structure, or in any newspaper, or magazine or in any directory, or on radio or television or by advertising by any other means designed to secure public attention.

(2) Applicant - an individual seeking licensure by the Council who has submitted the appropriate application and fees.

(3) Apprentice - a person who is registered with the Council, engaged in an approved licensing program, and sponsored by a hearing instrument specialist duly licensed in Tennessee.

(4) Apprentice license - a license issued for not longer than one (1) year by the Council to apprentices which authorizes the fitting and selling of hearing aids, pursuant to T.C.A. §63-17-208, under the direct supervision of a sponsoring licensed hearing instrument specialist.

(5) Board - The Board of Communications Disorders and Sciences.

(6) Consumer - That member of the public who seeks the services of a licensed hearing instrument specialist.

(7) Council - The Council for Licensing Hearing Instrument Specialists.

(8) Council Administrative Office - The office of the Unit Director assigned to the Council located at 665 Mainstream Drive, Nashville, TN 37243.

(9) Council Designee - Any person who has received a written delegation of authority from the Council to perform functions subject to review and ratification by the full Council where provided by these rules.

(Rule 1370-02-.01, continued)

(10) Clock hour - A clock hour represents (60 minutes) actual time in a continuing education activity. Providers who measure continuing education activities in "continuing education units" shall define CEU in clock hours.

(11) Closed file - An administrative action which renders an incomplete, denied, or abandoned file closed.

(12) Continuing education - Continuing education is considered to be education beyond the basic licensing education requirement and which is related to the practice of hearing instrument dispensing.

(13) Direct supervision - The requirement of a sponsoring licensee to direct, coordinate, review, inspect, and approve each act of service performed by an apprentice licensee in connection with the practice of dispensing and fitting hearing instruments, but does not require the constant actual physical presence of the sponsoring licensee, pursuant to rule 1370-02-.14.

(14) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Council receives administrative support.

(15) Examination fee - to be paid each time an examination or component of an examination is taken.

(16) Fee - money or anything of value including, but not limited to, a salary offered or received as compensation in return for rendering services.

(17) Fitting and/or dispensing hearing instruments - the evaluation or measurement of human hearing by the use of an audiometer for the purpose of making selections, adaptations and/or sale of hearing instruments. The term also includes the sale of hearing instrument and the making of impressions for earmolds to be used as part of the hearing instrument.

(18) HRB - When the acronym HRB appears in this rule, it is intended to mean the Division of Health Related Boards.

(19) He/She - In these rules, all references to the masculine gender shall also apply to the feminine gender.

(20) Hearing Instrument (Aid) - any instrument or device designed for, or offered for the purpose of, aiding or improving impaired human hearing, and any parts, attachments or accessories of such an instrument or device.

(21) Licensed Hearing Instrument Specialist (HIS) - A licensed person who engages in the fitting or selling of hearing instruments to an individual with impaired hearing.

(22) IHS - When the acronym IHS appears in the rule, it is intended to mean International Hearing Society.

(23) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an "artistically designed" license as well as other versions issued bearing an expiration date.

(24) Licensee - Any person who has been lawfully issued a license by the Council and Board to engage in the practice of dispensing and fitting hearing instruments.

~~(25) NBC-HIS - When the acronym NBC-HIS appears in this rule, it is intended to mean the National Board for Certification Hearing Instruments Specialists.~~

(Rule 1370-02-.01, continued)

(25) NBC-HIS - When the acronym NBC-HIS appears in this rule, it is intended to mean the National Board for Certification in Hearing Instruments Sciences.

~~(26) NIHIS - When the acronym NIHIS appears in this rule, it is intended to mean National Institute for Hearing Instruments Studies.~~

(26)~~(27)~~ Sell or sale - any transfer of title or of the right to use by lease, bailment, or any other contract, either oral or written, excluding transactions with distributors or dispensers.

(27)~~(28)~~ Sponsor - A licensed hearing instrument specialist who is responsible for training and supervision of an individual holding an apprentice license.

(28)~~(29)~~ Supervision - To coordinate, direct, and inspect continuously and at first hand the actions of an apprentice.

(29)~~(30)~~ Training - the instruction of an apprentice in the practice of dispensing and fitting of hearing instruments.

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Authority: *T.C.A. §§ 4-5-202, 4-5-204, ~~63-15-103,~~ 63-17-105, and 6-17-203.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.01 filed December 28, 1999; effective March 12, 2000. Amendment filed October 28, 2002; effective January 11, 2003.*

1370-02-.02 SCOPE OF PRACTICE.

(1) Nothing contained in these rules shall be construed to permit persons licensed under T.C.A. §§63-17-201 through 63-17-222 to treat the ear for any defect whatsoever in any manner nor to administer any drug.

(2) Nothing contained in these rules shall be construed to apply to physicians and surgeons duly licensed by the Tennessee Board of Medical Examiners or the Tennessee Board of Osteopathic Examination.

(3) Rights and privileges of licensure - Any person who possesses a valid unsuspended and unrevoked license has the right to use the title "hearing instrument specialist". No other person shall assume this title on any work, letter, sign, figure, advertisement, or device to indicate that the person using the same is a licensed HIS.

(4) The practice of dispensing and fitting hearing instruments includes those practices used for the purposes of selection and adaption of hearing instruments, including direct observation of the ear, testing of hearing in connection with the fitting and selling of hearing instruments, taking of earmold impressions, fitting or sale of hearing instruments, and any necessary counseling.

(5) The practice of selling hearing instruments does not include the act of concluding the transaction by a retail clerk.

(6) Any person engaging in the fitting and sale of hearing instruments for a child under eighteen (18) years of age shall abide by FDA law and guidelines regarding dispensing of hearing instruments.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, ~~63-15-103, 63-15-106,~~ 63-17-203, and 63-17-206.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Amendment filed March 1, 1990; effective April 15, 1990. Amendment filed January 9, 1991; effective February 23, 1991. Repeal and new*

rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.02 filed December 28, 1999; effective March 12, 2000.

1370-02-.03 NECESSITY OF LICENSURE. Unless an individual holds a current unrevoked or unsuspended Tennessee license, he may not engage in the sale of or practice of dispensing or fitting of hearing instruments.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, ~~63-15-105,~~ 6-17-203, and 63-17-205.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.03 filed December 28, 1999; effective March 12, 2000.*

1370-02-.04 PRELIMINARY QUALIFICATIONS FOR LICENSURE.

(1) Licensed Hearing Instrument Specialist by examination:

(a) Eighteen (18) years of age or older; and

(b) Education equivalent to two (2) years of accredited college level course work.

(2) Apprentice Hearing Instrument Specialist:

(a) Eighteen (18) years of age or older; and

(b) Education equivalent to two (2) years of accredited college level course work; and

(c) Sponsor to provide training and supervision.

(3) Licensed Hearing Instrument Specialist by reciprocity:

(a) Eighteen (18) years of age or older; and

(b) Education equivalent to two (2) years of accredited college level course work; and

~~(c) Holds a current, unrevoked or unsuspended, license from another state or country.~~

~~1. Out-of-state license issuance was based on passing the IHS examination or NBC/HIS Exam.~~

~~(i) Examination must have been proctored by a state licensing board member or designee in the state in which the applicant holds a current license.~~

~~(ii) A minimum score of seventy-five percent (75%) must have been achieved on each section of the written examination; or~~

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~~2. Applicant holds a current certification by the National Board for Certification Hearing Instruments Specialist (NBC-HIS).~~

~~3. An applicant must pass a written examination pertaining to Tennessee law relative to Hearing Instrument Specialists and also must pass a practical examination given by the Council as described in Rule 1370-02-.08.~~

~~(d) An individual whose license was not based on these requirements must file an application for Hearing Instrument Specialist by examination.~~

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(Rule 1370-02-.04, continued)

(c) Holds a current unencumbered license from another state or country and must meet one of the following:

1. Out-of-state license issuance was based on passing a written and practical examination developed in accordance with IHS standards, with an overall passing score as determined by the IHS; or

2. Applicant holds a current certification by the National Board for Certification in Hearing Instrument Sciences (NBC-HIS); and

(d) An applicant must pass the Tennessee Jurisprudence Examination.

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Authority: *T.C.A. §§ 4-5-202, 4-5-204, ~~63-15-107, 63-15-108, 63-15-111,~~ 63-17-203, 63-17-207, 63-17-208, 63-17-209, and 63-17-211.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Amendment filed March 1, 1990; effective April 15, 1990. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.04 filed December 28, 1999; effective March 12, 2000.*

1370-02-.05 PROCEDURES FOR LICENSURE.

(1) Licensed Hearing Instrument Specialist.

(a) An applicant shall obtain a current application packet from the Council's Administrative Office, respond truthfully and completely to every question or request for information contained in the form, and submit it along with all documentation and fees required by the form and this rule to the Council's Administrative Office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all materials be filed simultaneously.

(b) Applications will be accepted throughout the year and processed in the Council's Administrative Office. Supporting documents, if requested by the Council, must be received by the Council's Administrative Office within sixty (60) days of receipt of the request or the application file shall be closed.

(c) It is the applicant's responsibility to provide evidence that he has fulfilled the educational requirements by instructing his college to submit an official transcript directly to the Council's Administrative Office. The transcript must carry the official seal of the school and reference the name under which the applicant has applied for licensure. If the name under which the transcript is issued differs from the applicant's current name, documentation must be submitted which supports such applicant's name change.

(d) An applicant shall pay the nonrefundable application fee as provided in Rule 1370-02-.06 and submit the fee with the application.

(e) An applicant shall pay, at the time of application, the examination fees pursuant to Rule 1370-02-.06.

(f) Every person desiring to engage in fitting and dispensing hearing instruments shall be required to pass the examination pursuant to Rule 1370-02-.08.

(g) An applicant shall submit with his application a "passport" style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application.

(Rule 1370-02-.05, continued)

(h) An applicant shall submit documentation from a medical doctor that, in his professional opinion, the applicant is physically capable of practicing his profession.

(i) An applicant shall submit with his application a certified photocopy of his birth certificate.

(j) An applicant shall disclose the circumstances surrounding any of the following:

1. Conviction of any crime in any country, state, or municipality, except minor traffic violations.

2. The denial of licensure application by any other state or the previous or pending discipline of the licensee in any state.

(k) An applicant shall cause to be submitted to the Council's administrative office directly from the vendor identified in the Council's licensure application materials, the result of a criminal background check.

(2) Licensed Hearing Instrument Specialist by Upgrade from Apprentice Licensure Status to HIS Licensure by Examination.

(a) An individual who holds a Tennessee apprentice HIS license may, after ninety (90) days from the date of issuance of such license, submit to the Council's Administrative Office a request to upgrade to HIS licensure status by examination.

(b) Applications for upgrade will be accepted throughout the year and processed in the Council's Administrative Office.

(c) An applicant for upgrade shall obtain an application form from the Council's Administrative Office; however, an applicant will not be required to provide duplicates of documents which were submitted to support his application for apprentice.

(d) An applicant for upgrade shall submit the nonrefundable HIS application fee as provided in Rule 1370-02-.06 with his application for upgrade.

(e) An applicant for upgrade shall, at the time of application, pay the HIS examination fees as provided in Rule 1370-02-.06.

(f) An applicant for upgrade shall provide proof of sixty (60) classroom hours of approved instructions in Hearing Evaluations and/or Hearing Aid Fitting.

(g) An applicant for upgrade shall provide a photocopy of his apprentice license along with the application.

(h) An applicant for upgrade shall be required to pass the examinations pursuant to Rule 1370-02-.08 as a prerequisite to licensure.

(3) Licensed Hearing Instrument Specialist by Reciprocity.

(a) Applications will be accepted throughout the year and processed in the Council's Administrative Office.

(b) An applicant shall obtain a current application form from the Council's Administrative Office, respond truthfully and completely to every question or request for information contained in the form, and submit it along with all documentation and fees required by the form and this rule to the Council's Administrative Office. It is the intent of this rule

(Rule 1370-02-.05, continued)

that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

(c) It is the applicant's responsibility to provide evidence that he has fulfilled the educational requirements by instructing his college to submit an official transcript directly to the Council's Administrative Office. The transcript must carry the official seal of the school and reference the name under which the applicant has applied for licensure. If the name under which the transcript is issued differs from the applicant's current name, documentation must be submitted which supports such applicant's name change.

(d) An applicant shall pay the nonrefundable Application Fee as provided in Rule 1370-02-.06 and submit the fee with the application.

(e) An applicant shall pay the Examination Fee, at the time of application, pursuant to Rule 1370-02-.06.

(f) Passage of required examination(s) pursuant to Rule 1370-02-.08 is a prerequisite to licensure by reciprocity.

(g) An applicant shall submit with his application a "passport" style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application.

(h) An applicant shall provide documentation from a medical doctor that, in his professional opinion, the applicant is physically capable of practicing his profession.

(i) An applicant shall submit with his application a certified photocopy of his birth certificate.

(j) An applicant shall disclose the circumstances surrounding any of the following:

1. Conviction of any crime in any country, state, or municipality, except minor traffic violations.

2. The denial of licensure or the previous or pending discipline of a licensee by any other state or country.

(k) An applicant shall cause to be submitted to the Council's administrative office directly from the vendor identified in the Council's licensure application materials, the result of a criminal background check.

(l) An applicant must submit a copy of his current certificate or license with certificate or license number from the other state.

(m) An applicant must submit a copy of his renewal certificate with the expiration date and certificate number from the other state.

(n) The applicant shall direct the National Board for Certification in Hearing Instruments Sciences to submit evidence that he is currently certified by the NBC-HIS or the applicant shall direct the IHS to submit documentation that he has passed the written examination, pursuant to Rule 1370-02-.08.

(o) The applicant shall direct the appropriate licensing Council in each state in which he holds or has held a license to send an official statement which indicates that such license is in effect and in good standing and under what provision such license was

(Rule 1370-02-.05, continued)

issued (i.e., examination, reciprocity, grandfathering, etc.). Such documentation must specify that the written examination was proctored by a state board member, or their designee.

(p) Only those persons who hold, at the time of application, a current unsuspended or unrevoked license from the state in which they are engaged in business may apply for licensure by reciprocity.

(q) If it is determined by the Council or the Board that an applicant does not meet the reciprocity requirements, he must file an application for licensure by examination.

(4) Apprentice Licensed Hearing Instrument Specialist.

(a) Applications will be accepted throughout the year and processed in the Council's Administrative Office.

(b) An applicant shall obtain a current application form from the Council's Administrative Office, respond truthfully and completely to every question or request for information contained in the form, and submit it along with all documentation and fees required by the form and this rule to the Council's Administrative Office. It is the intent of this Rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

(c) It is the applicant's responsibility to provide evidence that he has fulfilled the educational requirements by instructing his college to submit an official transcript to the Council's Administrative Office. The transcript must carry the official seal of the school and reference the name under which the applicant has applied for licensure. If the name under which the transcript is issued differs from the applicant's current name, documentation must be submitted which supports such applicant's name change.

(d) An applicant shall pay, at the time of application, the non-refundable application fee provided in Rule 1370-02-.06.

~~(e) An applicant shall pay, at the time of application, the examination fee pursuant to Rule 1370-02-.06.~~

~~(f) Passage of the required examination(s) pursuant to Rule 1370-02-.08 is a prerequisite to licensure.~~

(e)~~(g)~~ An applicant shall submit with his application a "passport" style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application.

(f)~~(h)~~ An applicant shall provide documentation from a medical doctor that, in his professional opinion, the applicant is physically capable of practicing his profession.

(g)~~(i)~~ An applicant shall submit with his application, a certified photocopy of his birth certificate.

(h)~~(j)~~ An applicant shall provide evidence, in the form of a letter from a sponsor, that he has obtained a sponsor to provide training, direct supervision, and an outline of training.

(i)~~(k)~~ An applicant shall disclose the circumstances surrounding any of the following:

(Rule 1370-02-.05, continued)

1. Conviction of any crime in any country, state, or municipality, except minor traffic violations.

2. The denial of a licensure application or previous or pending discipline of a licensee by any state or country.

(j)(i) An applicant shall cause to be submitted to the Council's administrative office directly from the vendor identified in the Council's licensure application materials, the result of a criminal background check.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-203, 63-17-207, and 63-17-208.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Amendment filed March 1, 1990; effective April 15, 1990. Amendment filed January 24, 1991; effective March 10, 1991. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.05 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed March 17, 2006; effective May 31, 2006. Amendment filed June 29, 2007; effective September 12, 2007.*

1370-02-.06 FEES.

(1) The fees authorized by the Tennessee Council for Hearing Instrument Specialists Act (*T.C.A. §§63-17-201, et seq.*) and other applicable statutes are established as follows:

(a) Application Fee - A nonrefundable fee to be paid by all applicants. It must be paid to the Council each time an application for licensure is filed, or a license is reactivated. This fee includes the Initial License Fee and /or the fee for Licensure by Reciprocity.

(b) Council Operations Fee - A non-refundable fee to be paid by each hearing instrument specialist. This fee shall be paid by the last day in the licensee's birth month in the non-renewal year. This fee shall be effective for two (2) renewal cycles for each licensee. This fee shall expire at midnight on December 31, 2016.

(c) Duplicate License or Duplicate Certificate Fee - A nonrefundable fee to be paid when an individual requests a replacement for a lost/destroyed "artistically designed" license or a lost/destroyed renewal certificate.

(d) Examination (and Retake) Fee – A fee to be paid prior to each time an examination, or any component of an examination, is taken or retaken. The Examination (and Retake) Fee is nonrefundable if the examination, or any component of an examination, is taken or retaken. If the Examination (and Retake) Fee is paid but the examination or examination component(s) are not taken or retaken, the Examination (and Retake) Fee, except for twenty-five dollars ($25.00), shall be refunded if the applicant submits a refund request within thirty (30) days from when the examination that the applicant was scheduled to take was administered.

(e) Late Renewal Fee - a nonrefundable fee to be paid when licensee fails to timely renew his license. This is an additional fee which must be submitted along with the Licensure Renewal Fee (Biennial) and the State Regulatory Fee.

(f) Licensure Renewal Fee (Biennial) - A nonrefundable fee to be paid by all license and certificate holders prior to issuance of the "artistically designed" license on a biennial renewal basis. This fee also applies to individuals who reactivate a retired or lapsed certificate or license.

(Rule 1370-02-.06, continued)

(g) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.

(h) Written Endorsement/Verification Fee - A nonrefundable fee paid for each certification, verification, or endorsement of a licensee's record for any purpose.

(2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Council for Licensing Hearing Instrument Specialists.

(3) Fee Schedule

(Rule 1370-02-.06, continued)

(a) Hearing Instrument Specialists

	Type Fee	Amount
1.	Application Fee	$ 450.00
2.	Duplicate License or Duplicate Certificate Fee	$ 25.00
3.	Written Endorsement/Verification Fee	$ 20.00
4.	Examination Fees	
	(i) Practical - 1st attempt	$ 175.00
	(ii) Practical - Retake	$ 125.00
5.	Late Renewal Fee	$ 150.00
6.	Licensure Renewal Fee (Biennial)	$ 700.00
7.	State Regulatory Fee (Biennial)	$ 10.00
8.	Council Operations Fee (Paid in the non-renewal year)	$ 300.00

(b) Apprentice Hearing Instrument Specialist

	Type Fee	Amount
1.	Application Fee	$ 125.00
~~2.~~	~~Examination and Retake Fee~~	~~$ 125.00~~
2.~~3.~~	State Regulatory Fee	$ 10.00

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-201, 63-17-203, 63-17-210, and 63-17-215.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.06 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed June 29, 2007; effective September 12, 2007. Amendments filed April 29, 2011; to have been effective July 28, 2011.The Government Operations Committee stayed for 60 days the amendments; new effective Date September 25, 2011. Withdrawal of amendments 1370-02-.06(3)(a)1 through 7 and 1370-02-,06(3)(b) filed September 22, 2011; effective September 25, 2011. Amendments 1370-02-.06(3)(a)1 through 8 and 1370-02-.06(3)(b) were originally filed April 29, 2011 and were to have been effective July 28, 2011. However the Government Operations Committee stayed the rule for 60 days, and it was to become effective September 25, 2011. Amendment filed June 18, 2015; effective September 16, 2015.*

1370-02-.07 APPLICATION REVIEW, APPROVAL, DENIAL AND INTERVIEWS.

(1) Application for licensure will be accepted throughout the year and processed in the Council's Administrative Office.

(Rule 1370-02-.07, continued)

(2) Review of all applications to determine whether or not the application file is complete may be delegated to the Council's Unit Director, provided that approval of all applications is made and ratified by the Council and Board.

(3) A temporary authorization to practice may be issued to an applicant pursuant to *T.C.A. § 63-1-142.*

(4) If an application is incomplete when received in the Council's Administrative Office, or the reviewing Council member or Council Consultant and a Board member or the Board's Consultant determine additional information is required from an applicant before an initial determination can be made, the applicant shall be notified and the necessary information requested by the Administrative Office. The applicant shall cause the requested information to be received in the Council's Administrative Office on or before the thirtieth (30th) day after receipt of the notification.

(a) Such notification shall be sent by certified mail, return receipt requested, from the Council's Administrative Office.

(b) If the requested information is not received within the thirty (30) day period, the application file shall be closed and the applicant notified that the Council will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all applicable fees.

(c) At no time may an applicant sit for the practical examination until the Council's Consultant/Board Consultant has made the initial determination that the documentation in the application file has been accepted.

(5) If a completed application file has been denied by the Council or the Board, the action shall become final and the following shall occur:

(a) A notification of the denial shall be sent to the applicant by the Council's Administrative Office by certified mail, return receipt requested. Specific reasons for the denial will be stated, such as incomplete information, unofficial records, failure of examination, and other matters judged insufficient for licensure, and such notification shall contain all the specific statutory and rule authorities for the denial.

(b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (*T.C.A. §§ 4-5-201, et seq.*) to contest the denial and the procedure necessary to accomplish that action.

(6) If the Council or Board finds that it has erred in the issuance of a license, the Council will give written notice by certified mail, return receipt requested, of intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to Rule 1370-02-.07(5)(b).

(7) If all requirements for licensure are not completed within twelve (12) months from the date of receipt of the application, written notification will be mailed to the applicant, and the application file will be closed. Once the file has been closed, no further Council action will take place until a new application is submitted. Failure to complete all forms, provide requested information, submit all fees, take or retake required examinations within the specified time frame will be just cause for the application file to be closed. This action may be made by the Council's Unit Director.

(Rule 1370-02-.07, continued)

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 4-5-301, 63-1-142, ~~63-15-103, 63-15-111,~~ 63-17-105, 63-17-203, 63-17-205, 63-17-211, and 63-17-213.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.07 filed December 28, 1999; effective March 12, 2000. Amendment filed April 17, 2003; effective July 1, 2003.*

1370-02-.08 EXAMINATIONS. All applicants for licensure as a hearing instrument specialist or for registration as an apprentice hearing instrument specialist must successfully complete the applicable examinations described in this rule. All other requirements for licensure or registration must be successfully completed before the Council will approve an applicant to take the examinations.

(1) Hearing Instrument Specialist

~~(a) Written Examination - The Council adopts as its written licensure examination the International Hearing Society's sanctioned examination or its successor examination.~~

(a) Written Examination - The Council adopts as its written licensure examination the International Hearing Society's examination or its successor examination.

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1. The passing score shall be the overall passing score as determined by the International Hearing Society.

2. If the applicant is currently licensed or has been licensed in another state as a hearing instrument specialist, the applicant shall direct the National Board for Certification in Hearing Instruments Sciences to submit evidence that he is currently certified by the NBC-HIS or the applicant shall direct the IHS to submit documentation that he has passed the written examination as provided in this rule.

~~(b) Practical Skills Examination - Successful completion of the written examination requirements must be accomplished before the Council will approve an applicant to take the practical skills examination.~~

(b) Practical Skills Examination - Successful completion of the written examination requirements must be accomplished before the Council will approve an applicant to take the practical skills examination. The Council adopts as its practical skills examination the International Hearing Society's practical skills examination or its successor examination.

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~~1. All applicants will be required to demonstrate knowledge in audiogram interpretation, advanced audiometric techniques, and unless successfully completed pursuant to subparagraph (2) (b) for registration as an apprentice, earmold impression technique.~~

1. All applicants will be required to demonstrate knowledge in audiogram interpretation, advanced audiometric techniques, and earmold impression technique.

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2. Applicants may be required to bring the following to the practical skills examination:

(i) An audiometer, audiogram forms, and proof of the audiometer's current calibration; and

(Rule 1370-02-.08, continued)

(ii) An otoscope; and

(iii) All materials needed to make an ear impression; and

(iv) Equipment needed to program, troubleshoot, or modify hearing instruments and ear molds; and

(v) Red and blue ink pens; and

(vi) An individual to be the subject for the ear impression and the hearing test.

~~3. The passing score shall be a minimum of seventy-five percent (75%) on each section of the practical skills examination.~~

3. The passing score shall be the overall passing score as determined by the International Hearing Society.

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(c) Jurisprudence Examination

1. Applicants will be tested on their knowledge of the HIS statute, Title 63, Chapter 17 of the T.C.A., and Council rules and regulations.

~~2. The passing score shall be a minimum of seventy-five percent (75%).~~

2. The passing score shall be a minimum of seventy percent (70%).

~~(2) Apprentice Hearing Instrument Specialist~~

~~(a) Written Examination~~

~~1. Applicants will be tested on the content of the IHS Basic Course for Independent Study.~~

~~2. The passing score shall be a minimum of seventy-five percent (75%) on each section of the written examination.~~

~~(b) Practical Skills Examination~~

~~1. Applicants will be tested on basic audiometric technique and earmold impression technique.~~

~~2. Applicants may be required to bring the following to the practical skills examination:~~

~~(i) An audiometer, audiogram forms, and proof of the audiometer's current calibration; and~~

~~(ii) An otoscope; and~~

~~(iii) All materials needed to make an ear impression; and~~

~~(iv) Equipment needed to program, troubleshoot, or modify hearing instruments and ear molds; and~~

~~(v) Red and blue ink pens; and~~

(Rule 1370-02-.08, continued)

~~(vi) An individual to be the subject for the ear impression and the hearing test.~~

~~3. The passing score shall be a minimum of seventy-five percent (75%) on each section of the practical skills examination.~~

~~(c) Jurisprudence Examination~~

~~1. Applicants will be tested on their knowledge of the HIS statute, Title 63, Chapter 17 of the T.C.A., and Council rules and regulations.~~

~~2. The passing score shall be a minimum of seventy-five percent (75%).~~

~~(d) Successfully completing the written, practical, and jurisprudence examinations will qualify the applicant for apprenticeship if all other requirements have been met, pursuant to Rule 1370-02-.05.~~

(2)~~(3)~~ Fees - Initial and retake examination fees, pursuant to Rule 1370-02-.06, must be received in the Council's Administrative Office prior to the examination date, except as provided in Paragraph (4).

(3)~~(4)~~ Examination Retakes and Limitations

(a) An applicant who fails any section of either the written examination or the practical skills examination will be retested in the section(s) failed only.

(b) On or before the thirtieth (30th) day from receipt of the examination results, the applicant shall submit to the Council his retake fee. Failure to do so will result in the application file being closed. If closed, no further Council action will take place until a new application is received pursuant to the rules governing the application process, including payment of all fees.

(c) After three (3) failures of the written or practical skills examinations, the applicant must wait for twelve (12) months before sitting for a retake. During these twelve (12) months, the applicant must receive training assistance from a Tennessee licensed hearing instrument specialist. Within ninety (90) days of the applicant's notification of the third (3rd) examination failure, the applicant must notify the Council in writing of the name of the Tennessee licensed hearing instrument specialist who will provide the training.

(4)~~(5)~~ Examination Proctors

(a) The Council, or its designated representatives, shall administer all examinations. The Council shall take any actions necessary to insure impartiality.

(b) Any Council member administering the practical skills examination may elect to recuse himself from administering the practical skills examination to a particular applicant.

(c) Any applicant taking the practical skills examination may, upon written request, have a Council member recused from administering such applicant's practical skills examination. The written request of the applicant should be received in the Council's Administrative Office at least ten (10) days prior to the scheduled examination.

(5)~~(6)~~ Examination Dates and Sites - The location of the examinations shall be designated in advance by the Council and such shall be held not less than annually at such time and place as specified by the Council, if there are applicants eligible for the examinations. Examinations shall be given at other times as, in the opinion of the Council, the number of applicants warrants.

(Rule 1370-02-.08, continued)

(6)~~(7)~~ Examination Results - Examination results will be mailed to the applicant. Results are not provided by telephone, facsimile, or e-mail.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-201, 63-17-203, 63-17-208, 63-17-209, and 63-17-210.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.08 filed December 28, 1999; effective March 12, 2000. Repeal and new rule filed April 17, 2003; effective July 1, 2003. Amendment filed July 10, 2006; effective September 23, 2006.*

1370-02-.09 RENEWAL OF LICENSE.

(1) Renewal Application.

(a) The due date for license renewal is the expiration date indicated on the licensee's renewal certificate.

(b) Methods of Renewal

1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.

(c) To be eligible for license renewal, an individual must submit to the Council's Administrative Office on or before the due date for renewal all of the following:

1. A completed and signed renewal application form;

2. The renewal and state regulatory fees as provided in Rule 1370-02-.06;

(d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.

(2) Reinstatement of an Expired License.

(a) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licensure processed pursuant to Rule 1200-10-1-.10.

(b) Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:

~~1. Payment of all past due renewal fees and state regulatory fees, pursuant to Rule 1370-02-.06; and~~

(Rule 1370-02-.09, continued)

1. Payment of renewal fee and state regulatory fee, pursuant to Rule 1370-02-.06; and

2. Payment of the Late Renewal fee, pursuant to Rule 1370-02-.06; and

3. Provide documentation of successfully completing continuing education requirements for every year the license was expired, pursuant to Rule 1370-02-.12; and

4. Provide calibration of equipment certificates for each audiometer used at his/her place of business for every year the license was expired, pursuant to Rule 1370-02-.12.; and

(c) License reinstatement applications hereunder shall be treated as license applications, and review and decisions shall be governed by Rule 1370-02-.07.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-17-105, 63-17-203, 63-17-214, and 63-17-216.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.09 filed December 28, 1999; effective March 12, 2000. Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed June 29, 2007; effective September 12, 2007.*

1370-02-.10 SUPERVISION. Direct Supervision as used in T.C.A. §63-17-206(b) is defined so as to require a sponsoring licensee to direct, review, and approve each act of service performed by an apprentice licensee in connection with the practice of dispensing and/or fitting hearing instruments, but does not require the constant actual physical presence of the sponsoring licensee.

(1) A sponsor must review and co-sign all hearing tests and ear mold impressions given by an apprentice.

(2) A sponsor must review and co-sign all bills of sale prepared by an apprentice.

(3) A sponsor must keep a record of hearing tests and bills of sale prepared by an apprentice.

(4) These records must be at all times during normal business hours available for on-site inspection(s) by a Council member or designee during the first ninety (90) days of the apprenticeship period.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, ~~63-15-103, 63-15-106, 63-15-108, 63-15-114,~~ 63-17-203, 63-17-206, 63-17-208, and 63-17-214.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.10 filed December 28, 1999; effective March 12, 2000.*

1370-02-.11 RETIREMENT AND REACTIVATION OF LICENSE

(1) A licensee who does not plan to practice in Tennessee and who therefore does not intend to use the title "licensed hearing instrument specialist" may apply to convert an active license to inactive ("retired") status. An individual who holds a retired license will not be required to renew their license or to satisfy the renewal requirements.

(2) A person who holds an active license may apply for licensure Retirement in the following manner:

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(Rule 1370-02-.11, continued)

(a) Request in writing from the Council's Administrative Office an Affidavit of Retirement Form; and

(b) Complete and submit the Affidavit affirming that, while in retired status, the licensee will not practice or in any way indicate or imply that he holds an active Tennessee license or use within the State of Tennessee any words, letters, titles, or figures which indicate or imply that he is a licensed hearing instrument specialist.

(3) A person who holds a retired license may apply to reactivate his license in the following manner:

(a) Submit a written request to the Council's Administrative Office for licensure reactivation;

(b) Pay the current licensure renewal fee and state regulatory fee as provided in Rule 1370-02-.06 and, if retirement was pursuant to Rule 1370-02-.09 and reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Council will require payment of the late renewal fee, licensure renewal fees, and state regulatory fees as provided in rule 1370-02-.06; and

(c) Comply with the continuing education provision of Rule 1370-02-.12 applicable to reactivation of retired license.

(4) Upon receipt of the request, renewal application, fees, and continuing education documentation, the Council shall consider the renewal application.

(5) License reactivation applications hereunder shall be treated as license applications, and review and decisions shall be governed by Rule 1370-02-.05, including payment of the application fee.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, ~~63-15-103, 63-15-113,~~ 63-17-203, and 63-17-213.* ***Administrative History:*** *(For history prior to November, 1987 see page 1.) New rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.11 filed December 28, 1999; effective March 12, 2000.*

1370-02-.12 CONTINUING EDUCATION, CALIBRATION CERTIFICATES, AND BILLS OF SALE.

(1) Basic Requirements:

(a) Continuing Education

1. Each licensee registered with the Council is required to successfully complete twenty (20) hours of continuing education during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year.

2. Two (2) hours of the twenty (20) hour requirement shall pertain to Tennessee statutes and rules concerning hearing instrument specialists.

3. For new licensees, submitting proof of successful completion of the written and practical skills examinations, pursuant to Rule 1370-02-.08, shall be considered proof of sufficient preparatory education to constitute continuing education credit for the first calendar year of licensure.

(b) Calibration Certificates - Each licensee registered with the Council is required to retain calibration of equipment certificates for each audiometer used at his/her place of business during the calendar year.

(Rule 1370-02-.12, continued)

practical sections of the examination given by the Council in lieu of fulfilling the continuing education requirement. The current examination fee, pursuant to rule 1370-02-.06, will be applicable.

(c) Reinstatement of Expired Licensure – No person whose license has expired may have his/her license reinstated without submitting evidence of continuing education. The continuing education hours documented at the time of reinstatement must equal the hours required, had the license remained in an active status, and must have been begun and successfully completed before the date of reinstatement.

(d) Continuing education hours obtained as a prerequisite for reactivating or reinstating a license may not be counted toward the calendar year requirement.

(5) Violations

(a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements, or who does not or can not adequately substantiate completed continuing education hours with the required documentation, may be subject to disciplinary action.

(b) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.

(c) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.

(d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (5) (b) above may be subject to disciplinary action.

(e) Continuing education hours obtained as a result of compliance with the terms of a Council Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-203, and 63-17-214.* ***Administrative History:*** *Original rule filed December 2 1980; effective June 16, 1981. Repeal filed September 24, 1987; effective December 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.12 filed December 28, 1999; effective March 12, 2000. Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed October 12, 2004; effective December 26, 2004. Amendment filed October 31, 2005; effective January 14, 2006. Amendment filed July 10, 2006; effective September 23, 2006. Amendment filed January 29, 2013; effective April 29, 2013.*

1370-02-.13 UNETHICAL CONDUCT. The Council and the Board have the authority to deny, revoke or suspend for a period of time, or assess by monetary fine any person holding a license to practice as a hearing instrument specialist. "Unethical Conduct" shall include, but is not limited to, the following offenses:

(1) Violation of laws regarding the fitting and dispensing of hearing instruments in any other state by a person licensed by this Council, while he is visiting or residing in such other state, shall be considered as unethical conduct by the Council.

(2) A hearing aid product or instrument may be guaranteed against mechanical or electronic defects or poor workmanship, but the degree of help from the use of or the results obtained in the wearing of a hearing aid are dependent upon uncontrollable factors, including the proper use or operation of the device. Therefore, any guarantee, warranty or representation

(Rule 1370-02-.13, continued)

expressed or implied as to the degree or amount of help or improvement shall be considered deceptive or misleading.

(3) Failure of a license holder to abide by the terms of any contract or agreement concerning the sale or dispensing of hearing instruments.

(4) Engaging in unfair or deceptive acts specifically prohibited by T.C.A. §47-18-104(b) of the Tennessee Consumer Protection Act of 1977, while engaging in the business enterprise which is the practice of dispensing and fitting hearing instruments.

(5) The obtaining of any fee or the making of any sale by fraud or misrepresentation.

(6) Using, causing, or promoting the use of any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive or untruthful.

(7) Advertising a particular model, type or kind of hearing aid for sale, when purchasers, responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised.

(8) Representing that the services or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when it is not true, or using the word "doctor" or like words, abbreviations or symbols which tend to denote the medical profession when such use is not accurate.

(9) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors or stimulants in such manner as to adversely affect the person's ability to practice.

(10) Permitting another to use his license.

(11) To defame competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or falsely to disparage the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies, or services.

(12) To exhibit competitive products in his shop or in his advertising in such manner as to falsely discredit them or to represent falsely that competitors are unreliable.

(13) To quote prices of competitive hearing instruments or devices without disclosing that they are not the current prices or to show, demonstrate, or represent competitive models as being current models when such is not the fact.

(14) To imitate or simulate the trademarks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers.

(15) To use in advertising the name, model name, or trademark of a particular manufacturer of hearing instruments in such manner as to imply a relationship with the manufacturer which does not exist or otherwise to mislead or deceive purchasers or prospective purchasers.

(16) To use any trade name, corporate name, trademark, or other trade designations which have the capacity and tendency or effect of misleading or deceiving purchasers as to the name, nature, or origin of any product of the industry, or of any material used therein, or which is false, deceptive, or misleading in any other material respect.

(Rule 1370-02-.13, continued)

(17) No licensee shall allow an apprentice, agent, servant, employee, or other representative who does not hold a current or unsuspended license to advertise or otherwise make representations to the public that he offers services included in the practice of dispensing and fitting hearing instruments as defined in T.C.A. §63-17-201 or the rules and regulations of the Council.

(18) Failure to comply with the continuing education requirement as set by the Council or falsely reporting CE hours attended.

(19) Violation of any rule or statute of the Council.

Authority: *Public Chapter 389, Acts of 1989 and T.C.A. §§ 4-5-202, 4-5-204, 63-1-116, 63-1-134, ~~63-15-117, 63-15-120,~~ 63-17-203, 63-17-219, and 63-17-222.* ***Administrative History:*** *Original rule filed January 9, 1991; effective February 23, 1991. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.13 filed December 28, 1999; effective March 12, 2000.*

1370-02-.14 APPRENTICESHIP TRAINING PROGRAM.

(1) Any person wishing to practice the profession of Hearing Instrument Specialist dispensing and who intends to fulfill the requirements via the apprenticeship provision shall register with the Council pursuant to rule 1370-02-.05.

(2) Apprenticeship training must be supervised by a Tennessee licensed Hearing Instrument Specialist who possesses a current, unsuspended and unrevoked Tennessee license and who dispenses on the premises.

(3) Changes in the information provided in the original apprentice application shall be reported to the Council in writing within ten (10) working days of such change.

(4) Pursuant to T.C.A. §63-17-208(d) the period of apprenticeship training must be no longer than one (1) calendar year from date of issuance of the apprenticeship license. The apprentice license cannot be extended or renewed.

(5) Sponsor Supervision

(a) A licensed HIS may supervise no more than two (2) apprentices concurrently.

~~(b) The apprentice shall function under the direct supervision, as provided in rule 1370-02-.10 of the sponsoring licensed HIS for a period of at least ninety (90) days after passage of the examinations, pursuant to rule 1370-02-.08(2). During the ninety (90) day period, the sponsoring HIS must make the final selection and fitting of the hearing aid.~~

(b) The apprentice shall function under the direct supervision, as provided in rule 1370-02-.10, of the sponsoring licensed HIS for a period of at least three (3) months after the date of issuance of the apprentice license. During the three (3) month period, the sponsoring HIS must make the final selection and fitting of the hearing aid.

(c) At no time may an apprenticeship continue the apprentice training program without the sponsorship of a licensed HIS and such sponsorship being recorded in writing with the Council's Administrative Office.

(d) An apprentice license shall not be issued unless the applicant shows to the satisfaction of the Council that he/she will be supervised and trained by a person who holds a valid Tennessee HIS license.

(e) Prior to up-grading by an apprentice to a licensed Hearing Instrument Specialist, he must show proof of having obtained sixty (60) classroom hours of course work approved by the National Institute for Hearing Instrument Studies.

(f) Violation of or departure from any rule set forth by apprenticeship will be grounds for disciplinary action and/or civil penalties pursuant to Rules 1370-02-.13 and .15.

(6) HIS licensure.

Ninety (90) days after an apprentice license is issued, an individual so licensed may make application to the Council to upgrade to HIS licensure status and to take the written and practicum examinations pursuant to rule 1370-02-.05(1) and 1370-02-.08(1).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, ~~63-15-103, 63-15-109 through 63-15-111,~~ 63-17-105, 63-17-203, 63-17-206, 63-17-208, 63-17-209, 63-17-210, and 63-17-211.* ***Administrative History:*** *Original rule filed January 9, 1991; effective February 23, 1991. Repeal and new rule filed April 29, 1992; effective June 13,*

1992. Repeal and new rule renumbered from 0760-1-.14 filed December 28, 1999; effective March 12, 2000.

(Rule 1370-02-.15, continued)

preclude the presiding officer from presiding at further proceedings for issuance of subpoenas in the matter.

(III) The Council shall do the following:

I. By a vote of two thirds (2/3) of the members to which the Council is entitled, issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry, or quash or modify an existing subpoena by a majority vote; and

II. Sign the subpoena as ordered to be issued, quashed or modified.

2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case being heard with an Administrative Law Judge from the Secretary of State's office presiding, this definition shall not apply and all such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.

(d) Subpoena Forms

1. All subpoena shall be issued on forms approved by the Council.

2. The subpoena forms may be obtained by contacting the Council's Administrative Office.

(e) Subpoena Service - Any method of service of subpoenas authorized by the Tennessee Rules of Civil Procedure or the rules of the Tennessee Department of State, Administrative Procedures Division may be utilized to serve subpoenas pursuant to this rule.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-203, and 63-17-219.* ***Administrative History:*** *Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.15 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed February 20, 2002; effective May 6, 2002. Amendment filed October 12, 2004; effective December 26, 2004. Amendment filed October 18, 2004; effective January 1, 2005. Amendment filed June 29, 2007; effective September 12, 2007.*

1370-02-.16 LICENSE.

(1) Issuance - Upon the Council determining that an applicant for licensure has successfully met all the requirements as set forth in T.C.A. §63-17-201, et seq., and these rules, and upon receipt within thirty (30) days of notification in writing of such status, the applicant is required to submit to the Council's office the initial license fee pursuant to Rule 1370-02-.12.

(2) Display of License - Every person engaged in the fitting and dispensing of hearing instruments in this state shall display his license in a conspicuous place in his principal office and, whenever required, exhibit such license to the Council or its authorized representative.

(3) Replacement License - A licensee whose "artistically designed" document or wall license has been lost or destroyed may be issued a new wall license upon receipt of a written request in the Council Administrative Office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original license, a recent photograph which has been signed by the licensee on the back, and the required fee pursuant to Rule 1370-02-.06. This process shall be accomplished by the Council's Unit Director.

(Rule 1370-02-.16, continued)

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, ~~63-15-103,~~ 63-1-109, ~~63-15-105, 63-15-111,~~ 63-17-203, 63-17-205, and 63-17-211.* ***Administrative History:*** *Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.16 filed December 28, 1999; effective March 12, 2000.*

1370-02-.17 CHANGE OF ADDRESS AND/OR NAME.

(1) Before engaging in the practice of fitting or selling hearing instruments, each licensee shall notify the Council in writing of the address of his primary business where he is to engage, or intends to engage, in the fitting or selling of hearing instruments.

(2) If any changes occur in his place of business, the licensee must notify the Council's Administrative Office in writing within thirty (30) days of such change and reference the individual's name, profession, and license number. Failure to give such notice of the business address change shall be deemed just cause for disciplinary action by the Council.

(3) Each person holding a license who has had a change of address shall file in writing with the Council his current mailing address, giving both old and new address. Such requests should be received in the Council's Administration Office no later than thirty (30) days after such change has occurred and reference the licensee's name, profession, and license number.

(4) Change of name - A Licensee registered with the Council shall notify the Council's Administrative Office in writing, within thirty (30) days of a name change. A copy of the official document evidencing the name change shall be included. Such request must reference the licensee's profession and license number.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-1-108, ~~63-15-112,~~ 63-17-203, and 63-17-212.* ***Administrative History:*** *Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.17 filed December 28, 1999; effective March 12, 2000.*

1370-02-.18 MANDATORY RELEASE OF CLIENT RECORDS.

(1) Upon written request from a client or the client's authorized representative, licensees shall provide a complete copy of the client's records or summary of such records maintained by the licensee within ten (10) working days.

(2) The individual requesting the records shall be responsible for payment of a reasonable fee in advance to the licensee for copying and mailing of the records.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, and 63-17-203.* ***Administrative History:*** *Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.18 filed December 28, 1999; effective March 12, 2000.*

1370-02-.19 COUNCIL MEETINGS, OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

(1) The Council may elect annually from its membership a chairperson and a secretary who each shall hold office for one (1) year or until the election and qualification of a successor.

(a) Chairperson - presides at all Council meetings.

(b) Secretary - who along with the Council administrator shall be responsible for correspondence from the Council.

(Rule 1370-02-.19, continued)

(2) Council meetings - The Council shall meet at least once each year at a place and time determined by the Chair, and shall also meet at such other times and places as may be appropriate.

(3) The Council has the authority to select a Consultant, as approved by the Board, who shall serve as a Consultant to the Division.

(4) Records and Complaints

(a) All requests, applications, notices, other communications and correspondence shall be directed to the Council's Administrative Office. Any requests or inquiries requiring a Council decision or official Council action except documents relating to disciplinary actions or hearing requests must be received fourteen (14) days prior to a scheduled Council meeting and will be retained in the Administrative Office and presented to the Council at the Council meeting. Such documentation not timely received shall be set over to the next Council meeting.

(b) All records of the Council, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Council's Administrative Office.

(c) Copies of public records shall be provided to any person upon payment of the cost of copying.

(d) Complaints made against a licensed practitioner become public information only upon the filing of a notice of charges by the Department of Health.

(e) All complaints should be directed to the Investigations Section of Health Related Boards.

(5) Screening Panels - The Council adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

(6) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-17-105, ~~63-15-203,~~ 63-17-219 and 63-17-220.* ***Administrative History:*** *Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.19 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed July 10, 2006; effective September 23, 2006.*

1370-02-.20 ADVERTISING.

(1) All advertisements shall adhere to the proscriptions specifically set out in Rule 1370-02-.13 governing Unethical Conduct.

(2) Advertising Records and Responsibility

(a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any

(Rule 1370-02-.20, continued)

advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.

(b) Any and all advertisements are presumed to have been approved by the licensee named therein.

(c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of one (1) year from the last date of broadcast or publication and be made available for review upon request by the Council or its designee.

(d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.

***Authority**: T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-17-105, and 63-17-203. **Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-116, and 63-17-203. **Administrative History:** Original rule filed December 28, 1999; effective March 12, 2000. Amendment filed July 10, 2006; effective September 23, 2006.*

1370-02-.21 RECORDS, SERVICES AND TESTS.

(1) Records

(a) Client's Record. The record for each client shall include a case history, the results of all required tests and a legend (key) explaining the symbols of results used in the audiogram. Records of the required test and dispensing procedures shall be maintained as a part of the client's file and shall show also the model number or name, serial number, type of circuit response or any adjustment made on instruments that have adjustable circuits. Such records shall be maintained and preserved for a minimum of three (3) years after the last entry in the records.

(b) Orientation Program. Every hearing aid client shall be offered at the site of the sale a personalized counseling program provided by the HIS or an individual licensed by the Council. The counseling program shall be provided with each new fitting and designed to ensure that proper use and operation of the instrument are understood by the client.

(c) Earmold. Every air conduction fitting that requires an earmold shall include a properly fitting custom earmold except in cases where, in the dispenser's judgment, the client would be better fitted without the use of a new mold. In special fittings where an earmold is not required, such shall be noted in the record.

(d) Examination of the Ear. The dispenser shall make an examination of the client's external ears by means of an otoscope, or other instrument designed for that purpose, before any audiometric test is made and before and after the making of an earmold impression. Any abnormality detected by this inspection must be reported to the client and the client advised to seek medical advice and this shall be recorded on the test record.

(2) Bill of Sale for hearing equipment - To insure that appropriate follow up services are available to consumers in Tennessee, licensees shall deliver to each person supplied with a hearing instrument a bill of sale which contains each of the following:

(Rule 1370-02-.21, continued)

(a) The signature of the licensed hearing instrument specialist, the address of the specialist's regular place of business, the specialist's license number with an expiration date.

(b) The make and model of the hearing instrument supplied and the amount charged including a description, i.e., new, used, rebuilt.

(c) Clear statement of terms of sale including provisions required by T.C.A. § 63-17-217.

(d) Name and address of the Council.

(e) Statement that the Council will receive complaints on any matter relating to the fitting and dispensing of hearing instruments.

(f) If the licensee has no location in Tennessee, an outline of follow up services must be made available to Tennessee residents who purchase the dealer's services within Tennessee.

(3) Tests

(a) Puretone Audiometry

1. Thresholds shall be determined for each ear with air and bone conducted puretone stimuli. Air conduction stimuli must include 0.5, 1, 2, and 4K Hertz. Bone conduction stimuli must include .05, 1, 2, and 4K Hertz. On a client whose bone conduction threshold has been previously charted and that chart is a part of the client's permanent record, the licensee, at his discretion, may omit any new bone conduction testing, if there has been no appreciable change in the air conduction thresholds.

2. Appropriate masking must be used with air and bone conducted stimuli whenever necessary to obtain valid results.

(b) Discrimination Tests. There shall be a measurement of the client's speech discrimination ability at each ear using widely recognized test material prior to fitting. Appropriate masking must be used with speech stimuli whenever necessary to obtain valid results.

(c) Post-Fitting Tests. There shall be a measurement of the client's hearing ability using widely recognized test material while the client is wearing the selected hearing aid(s) adjusted for the selection gain, M.P. output, and frequency response.

(d) Tests for Tolerance. There shall be a measurement of the client's tolerance for amplified auditory stimuli using speech, puretones, or a complex signal representative of the speech spectrum (0.5, 1 and 2K Hz) or a method deemed acceptable by the Council.

(e) Omitted Tests.

1. The required tests may be omitted only under the most unusual circumstances, such as the inability of the client to perform the task.

2. When a fitting is being made upon referral, the specified tests may be omitted if the referring source has forwarded to the dispenser copies of those test results. However, these tests must have been performed within ninety (90) days. The licensed dispenser who omits specified tests and accepts tests performed by

(Rule 1370-02-.21, continued)

referring professional shall orally inform and conspicuously set forth in the sales contract that the hearing aid dispenser is not responsible for the validity and accuracy of the tests.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, ~~63-15-101, 63-15-103, 63-15-110, 63-15-114, 63-15-115,~~ 63-17-201, 63-17-203, 63-17-210, 63-17-214, and 63-17-215.* ***Administrative History:*** *Original rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-01-.20 filed December 28, 1999; effective March 12, 2000.*

* 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)
Thomas Stewart	X				
Randy Williams	X				
Dr. Frederick Rayne				X	
Jerry L. Hall	X				
Lordy Dell Smith	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Communications Disorders and Sciences, Council for Hearing Instrument Specialists (board/commission/ other authority) on 05/12/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Vacant					
Mary Velvet Buehler	X				
Carrie M. Crittendon	X				
Julie Anne Crosby	X				
Richard E. Morton	X				
Debby H. Starr	X				
Dr. Kimberly Vinson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Communications Disorders and Sciences (board/commission/ other authority) on 08/09/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Thomas Stewart				X	
Jackie Miller	X				
Dr. Bruce Fetterman	X				
Jerry L. Hall	X				
Lordy Dell Smith	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Communications Disorders and Sciences, Council for Hearing Instrument Specialists (board/commission/ other authority) on 01/19/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jean Brandon	X				
Mary Velvet Buehler	X				
Carrie M. Crittendon	X				
Julie Anne Crosby	X				
Richard E. Morton	X				
Debby H. Starr	X				
Dr. Kimberly Vinson				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted

by the Board of Communications Disorders and Sciences (board/commission/ other authority) on 02/06/2018 (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: *03/09/17 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *05/12/17, 08/09/17, 01/19/18, 02/06/18 (mm/dd/yy)*

Date: 3/13/2018

Signature: Mark S. Waters

Name of Officer: Mark S. Waters

Title of Officer: Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 3-13-18

Notary Public Signature: Suzanne Mechkowski

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI NOTARY PUBLIC STATE OF TENNESSEE SUMNER COUNTY

Agency/Board/Commission: Board of Communications Disorders and Sciences, Council for Hearing Instrument Specialists

Rule Chapter Number(s): 1370-02

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

5/9/2018
Date

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PUBLICATIONS

Filed with the Department of State on: 5/14/18

Effective on: 8/12/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Water Quality, Oil and Gas
DIVISION:	Water Resources
SUBJECT:	Effluent Limitations and Standards
STATUTORY AUTHORITY:	Congress repealed the Clean Water Act provision (33 U.S.C. § 1311(b)(2)(B)) in 1981 and this rule, promulgated in accordance with Tennessee Code Annotated, Sections 69-3-101 et seq. is being amended to be consistent with federal law.
EFFECTIVE DATES:	August 22, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking hearing rule rescinds a requirement for pollutant discharge permits that is based on a provision of the Clean Water Act that was repealed by Congress in 1981, has never been implemented by the EPA or the Board of Water Quality, Oil and Gas, and if implemented could impose excessively high treatment costs on municipal sewage treatment plants, depending on how the rule is interpreted. The Clean Water Act required municipal sewage treatment plants to comply with secondary treatment requirements by 1977 and with best practicable waste treatment technology limits by 1983. Congress repealed the Clean Water Act provision (33 U.S.C. § 1311 (b)(2)(B)) in 1981 due to the excessively high cost of implementation. Although the federal regulation is still compiled in the Code of Federal Regulations (40 C.F.R. § 125.3), it has no legal effect because it is tied to the non-existent statutory deadline.

Public Hearing Comments

One member of the public attended the public hearing, but chose not to testify. The Department received one comment letter containing five comments concerning this rulemaking.

Comment 1: The concept of "best practicable" pollution control technology is well-understood and should remain part of Tennessee's POTW regulations.

Response 1: The term "best practicable waste treatment technology" ("BPWTT") is not defined in federal law. Although it may be possible to analogize to other types of treatment-based permitting, there are no published federal standards, which is a fundamental requirement to achieve the uniformity intended for technology-based treatment requirements. In particular, the United States Environmental Protection Agency has not promulgated federal guidelines concerning BPWTT, although it has done so for other technology-based requirements based on "practicability."

This lack of published federal guidelines for BPWTT creates an internal conflict in Tennessee's rules that will be remedied through this rulemaking. Rule 0400-40-05-.09(1) establishes numeric technology-based limitations for POTWs, which are based on secondary treatment or the performance of domestic waste stabilization lagoons, that are required to be achieved "in the absence of federal guidelines." Although Rule 0400-40-05-.09(1)(b) provides for the development of case-by-case technology-based limits based on best professional judgment in the absence of published federal guidelines, this rule applies only to industrial discharges and not to POTWs. There is no mechanism for the development of consistent and non-arbitrary BPWTT-based effluent limitations in permits.

Given this inconsistency, the problems inherent in implementing an undefined technology-based treatment requirement in a non-arbitrary manner, and Congress' choice to rescind this requirement, the Board does not agree this requirement should remain in Tennessee's rules.

Comment 2: Tennessee can include more stringent requirements than the Clean Water Act. Several other states include some form of "best practicable waste treatment technology" requirements or definitions in their regulations.

Response 2: The commenter is correct that Tennessee may choose to impose more stringent requirements than the Clean Water Act and the regulations promulgated by EPA. However, this is not the Board's intention with respect to technology-based limits at POTWs at this time. Although the commenter references several other states that have adopted some version of BPWTT, this list reflects a relatively small minority of states and does not explain how they actually implement this requirement in their permits.

Comment 3: This rulemaking cannot exclude POTWs from other requirements of Tennessee and federal law to achieve water quality standards on a timely basis.

Response 3: This rulemaking solely addresses technology-based permitting requirements. Nothing in this rulemaking affects water quality-based permitting requirements.

Comment 4: The commenters request a concise statement explaining its position of whether "the anti-backsliding principal" applies to this rulemaking.

Response 4: Anti-backsliding applies to permitting, not to rulemaking.

Rule 0400-40-05-.08(j) sets out Tennessee's anti-backsliding provision, including a list of exceptions. Similarly, the Antidegradation Statement requires justification and demonstration of lack of feasible alternatives for new or increased discharges of pollutants above the level of de minimis degradation. The Division of Water Resources reviews each renewal permit to determine whether effluent limitations, standards, and conditions are at least as stringent as those in the previous permit, and if not, whether an exception to anti-backsliding applies. That determination is made on a permit-by-permit basis.

Comment 5: The commenters dispute that requiring POTWs to implement BPWTT would result in an "excessively high cost of implementation."

Response 5: The Board disagrees with the comment, especially given the undefined nature of BPWTT. Moreover, the comment misstates the rulemaking notice, which merely stated that Congress repealed BPWTT in 1981 due to excessively high cost.

The commenters cite existing POTW performance that exceeds secondary treatment and more stringent water quality-based permit limits to argue that BPWTT could be economically achieved. However, they present no evidence that these existing conditions comply with the amorphous BPWTT standard, or that limitations based on BPWTT would not impose high costs disproportionate to their benefits. To determine the cost of compliance with BPWTT would require a definition of the standard and extensive studies of treatment technologies, their effectiveness, their cost, and their likely impact on Tennessee POTWs, many of which currently operate lagoon-based systems that are unlikely to constitute BPWTT.

Moreover, this rulemaking is primarily based on the objective of eliminating an out-of-date rule that was based on a standard rescinded by Congress decades ago. This rulemaking also eliminates internal inconsistencies in Rule Chapter 0400-40-05 concerning technology-based limits for POTWs.

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 rulemaking affects publically-owned treatment works and 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)

The Board of Water Quality, Oil and Gas anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenue for 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 proposed rule rescinds a requirement for pollutant discharge permits that is based on a provision of the Clean Water Act that was repealed by Congress in 1981, has never been implemented by the EPA or the Board of Water Quality, Oil and Gas, and if implemented could impose excessively high treatment costs on municipal sewage treatment plants, depending on how the rule is interpreted.

The Clean Water Act required municipal sewage treatment plants to comply with secondary treatment requirements by 1977 and with best practicable waste treatment technology limits by 1983. Congress repealed the Clean Water Act provision (33 U.S.C. § 1311(b)(2)(B)) in 1981 due to the excessively high cost of implementation. Although the federal regulation is still compiled in the Code of Federal Regulations (40 C.F.R. § 125.3), it has no legal effect because it is tied to the non-existent statutory deadline.

(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;

Congress repealed the Clean Water Act provision (33 U.S.C. § 1311(b)(2)(B)) in 1981 and this rule, promulgated in accordance with Tenn. Code Ann. §§ 69-3-101 et seq. is being amended to be consistent with federal law.

(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;

This proposed rule directly affects publically-owned municipal sewage treatment plants and these entities did not comment on this rule amendment.

(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 Board of Water Quality, Oil and Gas is not aware of any.

(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 rulemaking will not result in an increase in expenditures or decrease in revenues for state and local governments.

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

Vojin Janjic
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
(615) 532-0670
Vojin.Janjic@tn.gov

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

Emily Urban

Assistant General Counsel
Office of 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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

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

The Board of Water Quality, Oil and Gas is not aware of any requests.

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Nashville, TN 37243
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Sequence Number: 05-22-18
Rule ID(s): 10828
File Date: 5/24/18
Effective Date: 8/22/18

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 of Water Quality, Oil and Gas
Division:	Water Resources
Contact Person:	Vojin Janjic
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0670
Email:	Vojin.Janjic@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**
0400-40-05	
Rule Number	**Rule Title**
0400-40-05-.08	Effluent Limitations and Standards

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.

Chapter 0400-40-05
Permits, Effluent Limitations and Standards

Amendments

Subparagraph (c) of paragraph (1) of Rule 0400-40-05-.08 Effluent Limitations and Standards is amended by deleting it in its entirety and substituting instead the following:

(c) Reserved. ~~For publicly owned treatment works, effluent limitations shall be designed to require application of the best practicable waste treatment technology.~~

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

* 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)
Dr. Gary G. Bible (Oil and Gas Industry)	X				
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)	X				
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)	X				
Jill E. Davis (Municipalities)	X				
Mayor Kevin Davis (Counties)	X				
Derek Gernt (Oil or Gas Property Owner)	X				
C. Monty Halcomb (Environmental Interests)				X	
Charlie R. Johnson (Public-at-large)	X				
Judy Manners (Commissioner's Designee, Department of Health)	X				
John McClurkan (Commissioner's Designee, Department of Agriculture)	X				
Frank McGinley (Agricultural Interests)	X				
D. Anthony Robinson (Manufacturing Industry)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 04/17/2018, 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: *11/30/17*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/25/18*

Date: April 17, 2018

Signature: James W. Cameron III

Name of Officer: James W. Cameron III

Title of Officer: Board Chairman

CAROL L. GRICE
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: April 17, 2018

Notary Public Signature: Carol L Grice

My commission expires on: March 3, 2020

Agency/Board/Commission: Board of Water Quality, Oil and Gas

Rule Chapter Number(s): 0400-40-05

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

5/23/2018
Date

Department of State Use Only

Filed with the Department of State on: 5/24/18

Effective on: 8/22/18

Tre Hargett
Secretary of State

RECEIVED
2018 MAY 24 PM 3:35
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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Austin Peay State University
DIVISION:	
SUBJECT:	Student and Student Organization Conduct and Disciplinary Sanctions
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-101 et seq., 49-7-123(a)(1), and 49-8-203
EFFECTIVE DATES:	August 13, 2018 through June 30, 2019
FISCAL IMPACT:	Not applicable.
STAFF RULE ABSTRACT:	This rule describes that students are expected to conduct themselves as law-abiding members of each community at all times and authorizes the President Austin Peay State University to take such action as may be necessary to maintain campus conditions and preserve the integrity of APSU and its educational environment. The rule further prescribes what disciplinary action can be taken against a student for violation of the policies and regulations which occur on APSU owned, leased or otherwise controlled property; while participating in international or distance learning programs; and off campus, when the conduct impairs, interferes with, or obstructs any APSU activity or the mission, processes, and functions of APSU. Finally, the rule describes the due process procedures for a student who wishes to contest a suspension or expulsion of a student or student organization from APSU.

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 only affect students enrolled at Austin Peay State University and no small businesses will be impacted by their promulgation.

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 rules only affect students enrolled at Austin Peay State University and will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This rule describes that students are expected to conduct themselves as law-abiding members of each community at all times and authorizes the President of Austin Peay State University to take such action as may be necessary to maintain campus conditions and preserve the integrity of APSU and its educational environment. The rule further prescribes what disciplinary action can be taken against a student for violation of the policies and regulations which occur on APSU owned, leased or otherwise controlled property; while participating in international or distance learning programs; and off campus, when the conduct impairs, interferes with, or obstructs any APSU activity or the mission, processes, and functions of APSU. Finally, the rule describes the due process procedures for a student who wishes to contest a suspension or expulsion of a student or student organization from APSU.

(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. §§ 4-5-101 et seq., 49-7-123(a)(1), and 49-8-203.

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

All students enrolled at Austin Peay State University will be affected by this rule. The Board 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;

Not applicable.

(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;

Not applicable.

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

Dr. Gregory Singleton
Vice President for Student Affairs
Austin Peay State University

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

Dannelle Whiteside
General Counsel
Austin Peay State University

Dr. Gregory Singleton
Vice President for Student Affairs
Austin Peay State University

(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

Dannelle Whiteside General Counsel Austin Peay State University 931-221-7580 whitesided@apsu.edu Dr. Gregory Singleton Vice President for Student Affairs Austin Peay State University 931-221-7341 singletong@apsu.edu

(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 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: 05-14-18
Rule ID(s): 6766
File Date: 5/15/18
Effective Date: 8/13/18

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:	Austin Peay State University
Division:	
Contact Person:	Dannelle Whiteside
Address:	601 College Street, P.O. Box 4628 Clarksville, TN
Zip:	37044
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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**
0240-05-02	Student and Student Organization Conduct and Disciplinary Sanctions
Rule Number	**Rule Title**
0240-05-02-.01	APSU Policy Statement
0240-05-02-.02	Disciplinary Offenses
0240-05-02-.03	Academic and Classroom Misconduct
0240-05-02-.04	Disciplinary Sanctions
0240-05-02-.05	Disciplinary Procedures

Rules
of
Austin Peay State University

Chapter 0240-05-02
Student and Student Organization Conduct and Disciplinary Sanctions

0240-05-02-.01 APSU Policy Statement
0240-05-02-.02 Disciplinary Offenses
0240-05-02-.03 Academic and Classroom Misconduct
0240-05-02-.04 Disciplinary Sanctions
0240-05-02-.05 Disciplinary Procedures

0240-05-02-.01 APSU Policy Statement.

(1) Austin Peay State University ("University" or "APSU") students are expected to conduct themselves as law-abiding members of the community at all times. Admission to APSU carries with it special privileges and imposes special responsibilities apart from those rights and duties enjoyed by non-students. In recognition of the special relationship that exists between APSU and the academic community which it seeks to serve, the APSU Board of Trustees (the Board) has authorized the President of APSU (the President) to take such action as may be necessary to maintain campus conditions and preserve the integrity of APSU and its educational environment.

(2) Pursuant to this authority and in fulfillment of its duties to provide a secure and stimulating atmosphere in which individual and academic pursuits may flourish, the Board of Trustees has developed the following regulations, intended to govern student conduct on the APSU campus. The University under the jurisdiction of the Board of Trustees is directed to implement policies subject to, and consistent with, these rules. In addition, students are subject to all federal, state, and local laws and ordinances. If a student's violation of such laws or ordinances also adversely affects APSU's pursuit of its educational objectives, APSU may enforce its own regulations regardless of any proceedings instituted by other authorities. Conversely, violation of any section of these rules may subject a student to disciplinary measures by APSU whether or not such conduct simultaneously violates state, local or national laws.

(3) For the purpose of these rules, a "student" shall mean any person who is admitted and/or registered for study at APSU for any academic period. This shall include, but not be limited to any period of time following admission and/or registration, but preceding the start of classes for any academic period. It will also include any period which follows the end of an academic period through the last day for registration for the succeeding academic period, and during any period while the student is under suspension from APSU. Finally, "student" shall also include any person subject to a period of suspension or removal from campus as a sanction which results from a finding of a violation of the policies, rules, and regulations governing student conduct. Students are responsible for compliance with the Policies on Student Conduct and with similar APSU policies at all times.

(4) Disciplinary action may be taken against a student for violation of the policies, rules, and regulations which occur on APSU owned, leased or otherwise controlled property, while participating in international or distance learning programs, and off campus, when the conduct impairs, interferes with, or obstructs any APSU activity or the mission, processes, and functions of APSU. The University may enforce their own rules regardless of the status or outcome of any external proceedings instituted in any other forum, including any civil or criminal proceeding.

(5) These rules, and related material incorporated herein by reference, are applicable to student organizations as well as individual students. Student organizations are subject to discipline for the conduct and actions of individual members of the organization while acting in their capacity as members of, or while attending or participating in any activity of, the organization.

(6) Confidentiality of Discipline Process. Subject to the exceptions provided pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA) and/or the Tennessee Open Records Act, a student's disciplinary files are considered educational records and are confidential within the meaning of those Acts.

Authority: T.C.A. §§ 4-5-101 et seq.,49-8-203, and § 10-7-501 et seq.

0240-05-02-.02 Disciplinary Offenses.

(1) Generally, through appropriate due process procedures, APSU disciplinary measures may be imposed for conduct which adversely affects APSU's pursuit of its educational objectives, which violates or shows a disregard for the rights of other members of APSU's academic community or which endangers property or persons on APSU, or APSU-controlled property.

(2) Individual or organizational misconduct which is subject to disciplinary sanction may include but not be limited to the following examples:

(a) Conduct dangerous to self or others. Any conduct, or attempted conduct, which poses a direct threat to the safety of others or where the student's behavior is materially and substantially disruptive of APSU's learning environment;

(b) Hazing. Violations of this section include any act of hazing on or off the Austin Peay State University campus or APSU controlled property, by an Austin Peay State University individual, group of individuals or registered student organization. Hazing means any intentional or reckless act on or off the property of any higher education institution by one (1) student acting alone or with others which is directed against any other student, that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger such student's mental or physical health or safety. Hazing does not include customary athletic events or similar contests or competitions, and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organizations;

(c) Discrimination or Discriminatory Harassment. Any individual or group act against another individual or group in violation of Board of Trustee policies, as well as federal and/or state laws prohibiting discrimination and discriminatory harassment, including, but not limited to, APSU Policy 5:003;

(d) Disorderly Conduct. Any individual or group behavior which is abusive, obscene, lewd, indecent, violent, excessively noisy, disorderly, or which unreasonably disturbs or may reasonably provoke other groups or individuals (this may include, but not be limited to verbal abuse, nonverbal gestures and inappropriate behavior resulting from the use of being under the influence of alcohol or drugs), etc.;

(e) Obstruction of or Interference with APSU Activities or Facilities. Any intentional interference with or obstruction of any APSU program, event, or facility including, but not limited to the following:

1. Any unauthorized occupancy of APSU or APSU-controlled facilities or blockage of access to or from such facilities;

2. Interference with the right of any APSU member or other authorized person to gain access to any APSU or APSU-controlled activity, program, event or facility;

3. Any obstruction or delay of a campus security officer, public safety officer, police officer, firefighter, EMT, or any University official in the performance of his or her duty;

4. Any form of disruptive behavior in the classroom, during any campus event; or

5. Activity or at any location on campus;

(f) Misuse of or Damage to Property. Any act of misuse, vandalism, malicious or unwarranted damage or destruction, defacing, disfiguring or unauthorized use of property belonging to APSU or property being used, rented, owned or leased by a student, group of students or officially registered student organization not owned by APSU;

(g) Theft, Misappropriation, or Unauthorized Sale. Any act of theft, misappropriation, or unauthorized possession, use or sale of APSU property or any such act against a member or organization of the APSU community or a guest of APSU;

(h) Misuse of Documents or Identification Cards. Any forgery, alteration of or unauthorized use of APSU documents, forms, records or identification cards, including the giving of any false information, or withholding of necessary information, in connection with a student's admission, enrollment or status at APSU or; failure to carry the APSU ID card at all times or to show it upon proper request;

(i) Firearms and Other Dangerous Weapons. Any possession of or use of firearms, dangerous weapons of any kind on APSU property or APSU controlled property. Firearms or dangerous weapons include, but are not limited to: rifles, handguns, replica/toy guns, BB guns, pellet guns, stun guns, non-culinary knives with a blade greater than four (4) inches, martial arts equipment, paint ball guns, water guns, bows and arrows, etc., or other objects with the intent to cause bodily harm, including mace and/or pepper spray;

(j) Explosives, Fireworks, and Flammable Materials. The unauthorized possession, ignition or detonation of any object or article which would cause damage by fire or other means to persons or property or APSU controlled property or possession of any substance which could be considered to be and used as fireworks;

(k) Alcoholic beverages. The use and/or possession of alcoholic beverages and/or public intoxication on APSU-owned or controlled property, violation(s) of any local ordinance or state or federal law concerning alcoholic beverages, on or off campus, or a violation of the terms of the Austin Peay State University Drug-Free Policy Statement. It shall not be a violation for students twenty-one (21) years of age or older to consume alcohol within areas designated by the president where alcohol is permitted to be served. In addition, officially registered student organizations that

sponsor events off campus, where alcoholic beverages are present and available for consumption, must adhere to all local, state and federal laws concerning alcoholic beverages and must follow APSU's Risk Management Guidelines for Student Organizations;

(l) Drugs. The unlawful possession or use of any drug, controlled substance or drug paraphernalia (including, but not limited to, any prescription drug, stimulant, depressant, narcotic or hallucinogenic drug or substance, or marijuana), or sale or distribution of any such drug or controlled substance, or a violation of any terms of the APSU Drug-Free Policy Statement;

(m) Gambling. Participation in any gambling or gambling-related activities on campus or on APSU controlled property or property being used, rented or leased by a student, group of students or officially registered student organization not owned by APSU that have not been approved and/or administered in accordance with the laws and regulations of the State of Tennessee. Any permitted gambling or gambling-related activity, e.g. raffles, must also be operated under the auspices of the APSU's Foundation;

(n) Financial Irresponsibility. Failure to promptly meet financial responsibilities to APSU including, but not limited to, knowingly passing a worthless check or money order in payment to APSU or to a member of the APSU community acting in an official capacity;

(o) Unacceptable Conduct in hearings. Any conduct at an APSU hearing involving contemptuous, disorderly behavior, or the giving of false testimony or other evidence at any hearing;

(p) Failure to Cooperate with University Officials. Failure to comply with directions of APSU officials acting in the performance of their duties;

(q) Violation of general rules and regulations. Any violation of the general rules and regulations of the University as published in an official APSU publication, including but not limited to, the intentional failure to perform any required action or the intentional performance of any prohibited action;

(r) Attempts and aiding and abetting the commission of offenses. Any attempt to commit any of the offenses listed in this document, or the aiding and abetting of the commission of any of the offenses (an attempt to commit an offense is defined as the intention to commit the offense coupled with the taking of some action toward its commission);

(s) Violations of state or federal laws. Any violation of state or federal laws or regulations proscribing conduct or establishing offenses, which laws and regulations are incorporated herein by reference;

(t) Violation of imposed disciplinary sanctions. Intentional or unintentional violation of a disciplinary sanction officially imposed by a APSU official or a constituted body including, but not limited to, sanctions contained herein;

(u) Violations of APSU Residence Hall or Apartment policies or regulations. The violation of any policies or regulations which appear in printed materials distributed

to resident students (i.e., housing license agreements, handbooks for resident students, etc.);

(v) Sexual Battery/Rape. Any act of sexual battery or rape as defined by state law;

(w) Sexual Misconduct. An offense including acts of sexual assault, domestic violence, dating violence and/or stalking as defined in APSU Policy 6:001. All matters involving allegations of sexual misconduct will be governed by the procedures set forth in APSU Policy 6:001;

(x) Tobacco. Smoking, inclusive of electronic smoking devices and vapors, in all APSU buildings, grounds and state-owned vehicles is prohibited (except in otherwise designated areas as provided in APSU policy 99:022). Regardless of whether classes are in session, smoking is prohibited in all buildings, grounds and state-owned vehicles twenty-four (24) hours a day, year round. Students who want to use smoke-free tobacco products may do so thirty (30) feet from each building exit and entrance. Smoke-free tobacco product use is prohibited in APSU buildings and state-owned vehicles.

(y) Pets. With the exception of service animals, emotional support animals, and animals used for academic research purposes, animals are prohibited on campus except in designated housing areas. Students are required to provide the Office of Disability Services with medical documentation in requesting an accommodation for an emotional support animal.

(z) Filing a false complaint or statement. Any behavior whereby a student knowingly submits a false complaint or statement alleging a violation of these regulations by a student or organization or APSU employee.

(aa) Academic Misconduct. Plagiarism, cheating, fabrication or collusion. For purposes of this section the following definitions apply:

1. Plagiarism. The adoption or reproduction of ideas, words, statements, images, or works of another person as one's own without proper attribution.

2. Cheating. Using or attempting to use unauthorized materials, information, or aids in any academic exercise or test/examination. The term academic exercise includes all forms of work submitted for credit or hours.

3. Fabrication. Unauthorized falsification or invention of any information or citation in an academic exercise.

4. Facilitation or Collusion. Assisting or attempting to assist another to violate a provision of APSU's student code of conduct regarding academic misconduct.

(bb) Unauthorized Duplication or Possession of Keys. Making, causing to be made or the possession of any key for an APSU facility without proper authorization.

(cc) Litter. Dispersing litter in any form onto the grounds or facilities of the campus;

(dd) Abuse of Computer Resources and Facilities. Misusing and/or abusing computer resources including, but not limited to the following:

1. Distribution or use of a student and/or another person's identification to gain access to APSU computer resources,

2. Use of APSU computer resources and facilities to violate copyright laws, including, but not limited to, the act of unauthorized distribution of copyrighted materials using institutional information technology systems,

3. Unauthorized access to a computer or network file, including but not limited to, altering, using, reading, copying, or deleting the file,

4. Unauthorized transfer of a computer or network file,

5. Use of computing resources and facilities to send abusive or obscene correspondence,

6. Use of computing resources and facilities in a manner that interferes with normal operation of the APSU computing system,

7. Use of computing resources and facilities to interfere with the work of another student, faculty member, or APSU official,

8. Violation of any published information technology resources policy,

9. Unauthorized peer-to-peer file sharing;

(ee) Unauthorized Access to APSU Facilities and/or Grounds. Any unauthorized access and/or occupancy of APSU facilities and grounds is prohibited, including, but not limited to, gaining access to facilities and grounds that are closed to the public, being present in areas of campus that are open to limited guests only, being present in academic buildings after hours without permission, and being present in buildings when the student has no legitimate reason to be present;

(ff) Unauthorized Surveillance. Making or causing to be made unauthorized video or photographic images of a person in a location in which that person has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian. This includes, but is not limited to, taking video or photographic images in shower/locker rooms, residence hall rooms, and men's or women's restrooms, and storing, sharing, and/or distributing of such unauthorized images by any means;

(gg) Rollerblading/Skateboarding. Rollerblading/skateboarding and other coasting devices must comply with APSU Policy 4:013.

(3) Disciplinary action may be taken against a student for violations of the foregoing rules which occur on APSU owned, leased or otherwise controlled property, or which occur off-campus when the conduct impairs, interferes with, or obstructs any APSU activity or the missions, processes and functions of APSU. In addition, disciplinary action may be taken on the basis of any conduct, on or off campus which violates local, state or federal laws, which violate APSU policies for student organizations, or which poses a substantial threat to persons or property within the APSU community. Each student shall be responsible for

his/her conduct from the time of application for admission through the actual awarding of a degree including periods prior to or between semesters. Conduct occurring while a student is registered or enrolled at APSU, but not discovered until after the awarding of a degree is actionable under these provisions and may result in the retroactive application of a disciplinary sanction. Should a student withdraw from APSU with disciplinary action or academic misconduct action pending, the student's record may be encumbered by the appropriate APSU office until the proceedings have been concluded.

Authority: T.C.A. §§ 4-5-101 et seq., 49-7-123(a)(1), 49-8-203, and 10-7-501.

0240-05-02-.03 Academic and Classroom Misconduct.

(1) The instructor has the primary responsibility for control over classroom behavior and maintenance of academic integrity, and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive conduct or conduct that violates the general rules and regulations of APSU. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further disciplinary action can be effected only through appropriate procedures established by the Division of Student Affairs.

(2) Academic dishonesty may be defined as any act of dishonesty in academic work. This includes, but is not limited to, plagiarism, the changing or falsifying of any academic documents or materials, cheating and giving or receiving of unauthorized aid in tests, examinations or other assigned work. Students guilty of academic misconduct, either directly or indirectly through participation or assistance, are immediately responsible to the instructor of the class. Penalties for academic misconduct will vary with the seriousness of the offense and may include, but are not limited to, a grade of "F" on the work in question, a grade of "F" in the course, reprimand, probation, suspension and expulsion. The student will be advised of his/her rights. The student may accept the instructor's finding, grade reduction, and/or other sanction and waive his/her hearing right. In the event a student believes he/she has been erroneously accused of academic misconduct, he/she may request a hearing. Hearings will be conducted pursuant to the procedures set forth at Rule 0240-05-02-.05, Disciplinary Procedures, below. If the student is found responsible for the allegation(s) of academic misconduct, the grade as assigned by the instructor will stand. Should the hearing source absolve the student of the allegations of academic misconduct, the faculty member will reassess the student's grade based upon the hearing source's finding. When necessary, grade changes will be made administratively.

(3) Students may appeal a grade assignment associated with a finding of academic misconduct, as distinct from a student disciplinary action, through appropriate APSU academic grade appeal procedures. Courses may not be dropped pending the final resolution of an allegation of academic misconduct.

(4) Disruptive behavior in the classroom may be defined, but is not limited to, behavior that obstructs or disrupts the learning environment (e.g., repeated outbursts from a student which disrupts the flow of instruction or prevents concentration on the subject taught, failure to cooperate in maintaining classroom decorum, the presence of non-enrolled visitors in the classroom [see APSU Policy No. 3:032, Minors on Campus Policy], etc.), the continued use of any electronic or other noise or light emitting device which disturbs or interrupts the concentration of others (e.g., disturbing noises from beepers, text messaging, cell phones, palm pilots, laptop computers, games, etc.).

(5) Class attendance and punctuality requirements are established by the faculty through the printed syllabus for each course. Students are expected to attend class regularly and on time and are responsible for giving explanations/rationale for absences and lateness directly to the faculty member for each course in which they are enrolled. In cases where student absences are the result of emergency circumstances (e.g., death in the family, a student's serious injury or incapacitating illness), for which student(s) are unable to make immediate contact with faculty, the student may contact the Central Student Affairs office for assistance in providing such immediate notification to faculty. However, the student remains responsible for verifying the emergency circumstances to faculty and for discussing arrangements with faculty for possible completion of coursework requirements, if feasible.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203.

0240-05-02-.04 Disciplinary Sanctions.

(1) Austin Peay State University (APSU) shall adopt and publish a policy, providing notice of potential disciplinary sanctions applicable to both individuals and organizations. The policy may include any appropriate sanction subject to prior review by the APSU Office of Legal Affairs and approval by the Board of Trustees. Upon a determination that a student or student organization has violated any of the disciplinary offenses set forth in these rules, disciplinary policies, or the general policies, disciplinary sanctions may be imposed, either singly or in combination, by the appropriate school officials. (Note: Final results of disciplinary proceedings for violations that include violent acts or non-forcible sex offenses, as defined by Tennessee law, may be released without permission of the student perpetrator.)

(2) Definition of Sanctions. The following provides a non-exhaustive list of possible sanctions with corresponding definitions:

(a) Restitution. Restitution may be required in situations which involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. When restitution is required, the student or student organization is obligated by the appropriate judicial authority to compensate a party or parties for a loss suffered as a result of disciplinary violation(s). Any such payment in restitution shall be limited to actual cost of repair, replacement or financial loss;

(b) Warning. The appropriate APSU official may notify the student or student organization that continuation or repetition of specified conduct may be cause for other disciplinary action;

(c) Reprimand. A written or verbal reprimand or censure may be given to any student or student organization whose conduct violates any part of these rules and provides notice that any further violation(s) may result in more serious penalties;

(d) Restriction. A restriction upon a student's or organization's privileges for a period of time may be imposed. This restriction may include, but is not limited to, the following: denial of the right to represent APSU in any way, denial of the use of APSU facilities and/or parking privileges, restriction of participation in extracurricular activities, restriction of organizational privileges including registration, and restriction of the transfer of academic credit from another institution;

(e) University Probation. Continued enrollment of a student or student organization on probation may be conditioned upon adherence to these rules. Any student or organization placed on probation will be notified of such in writing, either in hard copy or electronic, and will also be notified of the terms and length of probation. Probation may include restrictions upon the extracurricular activities of a student or organization. Any conduct in violation of these rules while on probationary status or the failure to comply with the terms of the probationary period may result in the imposition of a more serious disciplinary sanction;

(f) Suspension. If a student or student organization is suspended, he/she or the organization is separated from APSU for a stated period of time with conditions for readmission stated in the notice of suspension;

(g) Expulsion. Expulsion entails a permanent separation from APSU. The imposition of this sanction is a permanent bar to the student's readmission, or a student organization's recognition to APSU. A student or organization that has been expelled may not enter APSU property or facilities without obtaining prior approval from an appropriate campus official with knowledge of the expulsion directive;

(h) Interim or Summary Suspension. As a general rule, the status of a student or student organization accused of violations of these rules should not be altered until a final determination has been made in regard to the charges. Interim or Summary suspension may be imposed upon a finding by the appropriate APSU official that the continued presence of the accused on campus constitutes an immediate threat to the physical safety and well-being of the accused or of any other member of the APSU community or its guests, destruction of property, or substantial disruption of classroom or other campus activities. In any case of interim suspension, the student, or student organization, shall be given an opportunity at the time of the decision, or as soon thereafter as reasonably possible, to contest the suspension;

(i) Housing Probation. A resident or student organization placed on housing probation is deemed not to be in good standing with the housing community, and his/her continued residence is conditioned upon adherence to these rules and the Housing Contract. Any resident placed on probation shall be notified in writing of the terms and length of the probation. Probation may include restrictions upon the activities of the resident, including any other appropriate special condition(s). Any conduct of a similar or more serious nature in violation of the probation shall result in suspension from housing;

(j) Housing Suspension and Forfeiture. A resident or student organization suspended from housing may not reside in, visit, or make any use whatsoever of a housing facility or participate in any housing activity during the period for which the sanction is in effect. A suspended resident shall be required to forfeit housing fees (including any unused portion thereof and the Housing deposit). A suspended resident must vacate the housing unit within forty-eight (48) hours. Housing suspension shall remain a part of the student's disciplinary record;

(k) Service to the University. A student or student organization may be required to donate a specified number of service hours to APSU, by way of performing reasonable tasks for the appropriate APSU office or official. This service shall be commensurate to the offense the student is guilty of violating (i.e., service to maintenance staff for defacing APSU property);

(l) Special Educational Program. A student or student organization may be required to participate in any special educational programs relevant to the offense, to attend special seminars or educational programs or to prepare a project or report concerning a relevant topic;

(m) Smoking and Clean Air Policy Violation. There will be graduated fines imposed for violation of the Smoking and Clean Air policy:

1. First Offense- $25.00

2. Second Offense- $50.00

3. Third Offense or more- $100.00 and for additional Disciplinary Charges;

(n) Interim or Summary Suspension from Campus Housing. Though as a general rule, the status of a student or student organization accused of violations of these regulations should not be altered until a final determination has been made in regard to the charges against him or her, interim suspension from campus housing may be imposed upon a finding by the appropriate APSU official that the continued presence of the accused in Austin Peay State University housing constitutes an immediate threat to the physical safety and well-being of the accused, or of any other member of the APSU community or its guests, or the destruction of property. A final determination of the charges against any student or student organization summarily suspended from campus housing shall be made through appropriate hearing procedures within seven (7) class days of such housing suspension during which time the accused shall forfeit the right to reside in or visit campus housing facilities. The accused student shall be permitted to attend classes during this interim period.

(o) Referral for Intervention, Assessment and/or Counseling. The student is mandated to visit the appropriate APSU official for an initial intervention and assessment which may be followed by required participation and a prescribed plan of action or treatment plan. Parents or legal guardians may be notified;

(p) Fines. Penalties in the form of fines may be enforced against a student or an organization whenever the appropriate hearing officer(s) or hearing body deems necessary. The sanction of fines may be imposed in addition to other forms of disciplinary sanctions. Failure to pay fines to the Business Office within two weeks of the decision will result in further disciplinary action;

(q) Letter of Apology. A student or student organization may be required to write a letter of apology to APSU or its guests, another student or student organization, faculty or staff member, or any other constituent affected by the behavior for which the student or student organization has been found responsible. The letter shall be written and sent within seven (7) class days of notification of sanction and copies to the appropriate hearing body or official;

(r) Revocation of Admission, Degree, or Credential; and,

(s) Any alternate sanction deemed necessary and appropriate to address the misconduct at issue.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203.

0240-05-02-.05 Disciplinary Procedures.

(1) Hearing Procedures:

(a) Procedures conforming to the Uniform Administrative Procedures Act. All cases which may result in (i) suspension or expulsion of a student or student organization from APSU for disciplinary reasons, or (ii) revocation of registration of a student organization during the term of the registration are subject to the contested case provisions of the Uniform Administrative Procedures Act (UAPA) T.C.A. 4-5-301 et seq. and shall be processed in accordance with the uniform contested case procedures adopted by the Board of Trustees, unless the student or student organization waives those procedures in writing and elects to have his or her case heard by either the University Hearing Board or an Administrative Hearing.

(b) Cases which are not subject to the contested case procedures under the Uniform Administrative Procedures Act and cases in which a student or student organization has waived the contested case procedures in writing shall be processed in accordance with APSU Hearing Procedures. APSU has established two (2) alternate APSU Hearing Procedures:

1. A hearing conducted by one (1) or more Student Affairs Administrators; or

2. A hearing conducted by the University Hearing Board. (Note: This option shall be available until the final ten (10) class days of each semester, or the final five (5) class days of the second summer term, during which time all disciplinary hearings will be conducted by appropriate Student Affairs Administrators, except those subject to UAPA procedures as selected by the accused student or student organization.)

(c) Cases which are not subject to the contested case procedures under the Uniform Administrative Procedures Act and which involve very minor first offenses by students or student organizations may be discussed informally with students or student organizations. In such cases, no formal record will be maintained in the judicial records of APSU. The Dean of Students or other designee, appointed by the Vice President for Student Affairs, shall note the name of the student or student organization involved in his/her personal records. The purpose of this notation is only to determine a student's or student organization's prior involvement in a minor offense, when and if a second offense occurs at a later date. If the student or student organization is subsequently involved in another violation of regulations, at the discretion of the hearing body, this Informal Record will become a part of the student's or student organization's Formal Disciplinary Records.

(d) Alternative resolution methods may include, but are not limited to, mediation, diversion programs and/or negotiated resolutions.

(e) Jurisdiction of Cases to be heard by Student Affairs Administrators:

1. All formal cases involving incidents which occur in APSU residence halls and/or apartments and which involve on-campus residents shall be heard by the Residence Life staff or designee.

2. All other formal cases shall be heard by the Dean of Students for Student Affairs, or appropriate designee, except in cases where such staff member

is unavailable or has a bias toward either party in the pending case. In such cases the Senior Student Affairs Officer shall assign one (1) or more Student Affairs Administrators to hear the case.

(2) Commencement of Disciplinary Proceedings.

(a) A student or student organization accused of violating APSU disciplinary policies shall be called before the Dean of Students or designee, appointed by the Vice President for Student Affairs, for a preliminary conference at which the student or organization will be orally advised of the following:

1. The charges against him/her/or organization;

2. The rights afforded to him/her/or organization by the hearing procedures which are available;

3. The hearing procedure options available; and

4. The responsibilities of the accused student or organization in the disciplinary procedures.

(b) A student or organization may waive the right to a preliminary conference and an oral explanation of the items listed in (2) (a) above.

(c) Once advised of the hearing options, the accused student or organization may elect to accept the finding and sanction from the Dean of Students or designee, or elect a hearing pursuant to UAPA (where appropriate), or a hearing before the University Hearing Board.

(d) The election must be made within three (3) class days of receipt of notice of pending charges against him/her /or organization by completing, and signing, and Election of Procedure form and/or waiver form. Once the election is made, the decision is final and may not be changed during the course of the hearing.

(e) All matters involving allegations of impermissible discrimination, harassment, or retaliation will be governed by the procedures outlined in an APSU policy that reflects the requirements of that Guideline.

(f) All matters involving allegations of sexual misconduct and/or stalking will be governed by the procedures outlined in APSU policy 6:001: Sexual Violence and Stalking.

(3) APSU Hearing Rights. These rights shall be afforded the accused student/organization in all APSU Hearings before the appropriate Student Affairs administrator or the University Hearing Board.

(a) The right to choose the appropriate hearing option. (This right must be exercised within three (3) class days of the presentation of charges. Note: This option shall be available until the final ten (10) class days of each semester, or the final five (5) class days of the second summer term, during which time all discipline hearings will be conducted by appropriate Student Affairs administrators, except those subject to UAPA procedures.)

(b) The right to written notice, by hard copy or email, of the time and place of the hearing at least three (3) days in advance of the hearing. A justified delay may be granted. (This right may be waived in writing by the accused student/organization.)

(c) The right to a written statement of the charges in time and detail sufficient to enable the student/organization to prepare a defense.

(d) The right to be accompanied by an advisor of the student's/organization's choice, but such advisor participation shall be limited to advising the student/organization.

(e) The right to a statement of the possible sanctions that may be imposed as a result of a finding of a violation of the Code, at least three (3) days in advance of the hearing.

(f) The right to present witnesses in the student's/organization's behalf and to question any witnesses presented against the student. The student/organization is responsible for the attendance of any witnesses to be present in the student's /organization's behalf.

(g) The right to be informed in writing, delivered either by mail, in person or via email, of:

1. The final administrative decision in the case.

2. The proper procedure for appeal.

(h) The right to be provided copies, upon request and in accordance with APSU Policy, of all complaints, reports, witness statements and other written materials used in determining the charges.

(4) Rights of Complainant and/or Victim.

The APSU member (student, faculty or staff) who authors "complaints" or "statements" as a victim in the alleged violation shall have the following rights:

(a) To be notified of his/her rights prior to making a statement.

(b) To be informed that any written statement made or signed will be shared with the accused student/organization and that the accused student/organization may request a copy of the statement.

(c) To attend the hearing.

(d) To have an advisor present during the hearing.

(e) To be given the opportunity to question all witnesses and the accused during the hearing.

(f) To be provided a copy of any statement he/she has written or dictated to others.

(g) To be able to submit a list of witnesses to be called to the hearing.

(h) To be permitted to drop the charges only up to the date of the hearing.

(i) To be notified of the outcome of the hearing, including the finding concerning responsibility and any sanctions taken.

(5) APSU Hearing Procedures.

(a) Hearings before a Student Affairs Administrator. The appropriate Student Affairs Administrator shall act as hearing officer in the hearing, shall determine students/organization's innocence or guilt and shall apply sanctions as appropriate.

(b) Hearings before the University Hearing Board. Procedures for the Board include the following:

1. The University Hearing Board shall be composed of nine (9) persons: five (5) students, (two (2) automatically selected from the Student Tribunal Justices of the Student Government Association, and three (3) selected at large from the student body who meet the same qualifications and are selected via the same procedures as those for Student Tribunal Justices as listed in the APSU SGA Constitution), two (2) faculty and two (2) administrators, all appointed by the President, for a term of one (1) academic year. Additionally, student, faculty and administrator alternate members shall be selected to serve in the absence of regular members and shall be appointed by the President for a term of one (1) academic year.

2. The Chair of the Board shall be appointed by the President.

3. A minimum of five (5) members of the Board are required to hear a disciplinary case, composed of at least two (2) students, one (1) faculty member, and one (1) administrator.

4. The Dean of Students shall train and advise all regular and alternate members of this Board in appropriate disciplinary procedures.

5. The hearing shall be conducted consistent with the rights described above in paragraphs (3) and (4) of this rule.

6. All hearings shall be closed unless the respondent and the complainant both elect in writing to have an open hearing.

7. Formal rules of evidence shall not be applicable. The adjudicating body may exclude evidence which in its judgment is immaterial, irrelevant, or unduly repetitious.

8. The standard of proof required to overturn a finding of violation of the Student Discipline Policy made by the Dean of Students, or designee, shall be the preponderance of the evidence and the charged student bears the burden of proof.

9. The hearing source shall issue a written decision within three (3) class days after the conclusion of the hearing.

10. The student will be advised in writing via ASPU email (and USPS mail if requested by the student) of the University Hearing Board or Student Affairs

Administrator decision and all sanctions imposed as a result of the disciplinary hearing.

11. Any sanction imposed as a result of a hearing conducted under the Code shall be effective immediately upon written notification of the student/organization unless the hearing authority deems a stay of such sanction desirable pending appeal.

12. In any case where the decision results in separation from APSU, the decision shall be reviewed by the Senior Student Affairs Officer prior to notifying the Office of the Registrar and the Academic Department in which the student has been enrolled.

(6) Appeals.

(a) The student may appeal a decision of the University Hearing Board or the Student Affairs Administrator to the Senior Student Affairs Officer, or designee.

(b) An appeal in writing setting forth grounds for the appeal and addressed to the appropriate appellate authority must be received in the Office of the Senior Student Affairs Officer within three (3) class days after the student/organization is notified of the sanction imposed at any hearing or appellate level.

(c) Appeals shall be limited to the following grounds on the following issues:

1. Were procedures properly followed in the hearing?

2. Was the evidence presented at the hearing determined by "preponderance"?

3. Was the sanction imposed proportional to the violation?

4. New information, not available at the time of the original hearing, has become available which would substantially alter the outcome of the hearing.

(d) Review shall be based solely on a consideration of the record generated through the hearing together with the written appeal document and relevant attachments filed by the student.

(e) Appellate Authority. The Senior Student Affairs Officer, or designee, shall have the authority to do any of the following upon review of an appeal:

1. Sustain the previous decision including the penalty imposed;

2. Sustain the previous decision but impose a greater or lesser penalty;

3. Remand the case for further consideration; or

4. Reverse the previous decision.

(f) The Senior Student Affairs Officer shall issue a written decision within ten (10) class days after the appeal is filed by the student.

(g) The decision of the Senior Student Affairs Officer is final.

(7) Student Organization Disciplinary Procedures.

Sanctions against Student Organizations. Any registered student organization may be given a warning, reprimand, placed on probation, suspension, or restriction or may have its registration withdrawn by the Dean of Students, or by a Student Affairs Administrator appointed by the Senior Student Affairs Officer. Such actions may be taken after having a hearing conducted in accordance with the procedures outlined in these rules for disciplinary procedures. In the case of Withdrawal of Registration of an organization, the procedures to be used will be the contested case provisions of the Tennessee Uniform Administrative Procedures Act, unless those provisions have been waived in writing by an authorized representative of the student organization. Such action may be taken for any one of the following reasons:

(a) The organization fails to maintain compliance with the initial requirements for registration.

(b) The organization ceases to operate as an active organization.

(c) The organization requests withdrawal.

(d) The organization operated or engaged in any activity in violation of the policies, rules, and regulations of APSU, of any governing body of federal or state laws.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203.

* 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)
Billy Atkins	X				
Katherine Cannata					
Larry Carroll	X				
Don Jenkins	X				
Gary Luck	X				
Valencia May	X				
Robin Mealer	X				
Mike O'Malley	X				
Nell Rayburn	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by Austin Peay State University on 12/1/17, 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.

VERONICA JACKSON
STATE OF TENNESSEE NOTARY PUBLIC
MONTGOMERY COUNTY

Date: 4/18/18

Signature: Alisa White

Name of Officer: Dr. Alisa White

Title of Officer: President, APSU

Subscribed and sworn to before me on: April 18, 2018

Notary Public Signature: Veronica Jackson

My commission expires on: December 16, 2020

Agency/Board/Commission: Austin Peay State University

Rule Chapter Number(s): 0240

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

5/7/2018
Date

Department of State Use Only

Filed with the Department of State on: 5/15/18

Effective on: 8/13/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
DIVISION:	
SUBJECT:	Standards for School Administered Child Care Programs
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-1-302 and 49-1-1101 through 49-1-1109
EFFECTIVE DATES:	August 1, 2018 through June 30, 2019
FISCAL IMPACT:	This rule will not impact state and local government revenues or expenditures.
STAFF RULE ABSTRACT:	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 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. These revisions were made to align the Standards for Child Care Centers and School-Age Child Care Programs Rule with recent changes to the Child Care Development Block Grant Program.

Regulatory Flexibility Addendum
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not Applicable

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 rules 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;

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 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.

These revisions were made to align the Standards for Child Care Centers and School-Age Child Care Programs Rule with recent changes to the Child Care Development Block Grant Program.

(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 requires the state board to set standards for school administered child care programs. 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).

(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 administered child care programs across the state are most directly affected by this rule. Montessori schools and the Montessori Alliance of Tennessee urged rejection of this rule because they claim that it prevents Montessori schools from providing the comprehensive system of Montessori Education that parents have chosen for their children. Specific concerns include the definition for mixed age group, the ratios and proposed group size. The rule was adjusted between readings to account for some of their concerns. 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;

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 rule will not impact state and local government revenues or expenditures.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@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

Elizabeth Taylor
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707
Elizabeth.Taylor@tn.gov

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Nashville, TN 37243
(615)-532-3528

(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 Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 05-03-18
Rule ID(s): 6759
File Date: 5/3/18
Effective Date: 8/1/18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to 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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Pkwy 1st floor
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. 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-.02	Definitions
0520-12-01-.05	Ownership, Organization, and Administration
0520-12-01-.06	Supervision
0520-12-01-.07	Staff
0520-12-01-.09	Program
0520-12-01-.10	Health and Safety
0520-12-01-.13	Transportation

Redline

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-.02 DEFINITIONS.

For purposes of this Chapter the following definitions are applicable:

(1) Administrative Hearing. A hearing that is held under the Uniform Administrative Procedures Act at T.C.A. § 4-5-101, *et seq.* 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 of Education (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 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 of Education 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 Annual 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, 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 (5) 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 chapter 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.

(30) School-administered. A program that is serving five (5) or more 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. § 49-6-301.

(31) Staff. Full and part-time teachers, employees, or unpaid volunteers of the program. (32)Teacher. The person, persons, entity or entities directly responsible for providing for the supervision, protection, and basic needs of the child.

(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.

(34) Toddler. A child who is ~~twelve~~ eleven (~~12~~11) months through twenty-three (23) months of age.

(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.

(36) Youth. A person who is ten (10) years of age through seventeen (17) years of age.

Authority: *T.C.A. §§ 4-5-201 et seq., 49-1-201(c)(24), 49-2-203(b)(11), 49-2-203(b)(11)(B), 49-1-302(l), 49-1-1102, 49-6-101 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. Emergency rule filed August 30, 2010; effective through February 26, 2011. Amendment filed December 21, 2010; effective March 21,*

2010. 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. Amendments filed November 2, 2017; effective February 1, 2018.

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 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 custodial parent. Students transported to the program pursuant to 0520-12-01-.13 may be signed in and out by the appropriate staff person. School-age students may sign themselves into the program. 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 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 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, and conferences, courses, and workshops attended in the preceding 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~~ passed annual drug screen; and

    (iii) Verification of Cardiopulmonary Resuscitation (CPR) and First Aid certifications.

(g) Staff records shall be maintained for at least one (1) year following the separation of the staff from the program.

(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 of 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. Amendments filed November 2, 2017; effective February 1, 2018.*

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.(m) The program shall maintain a plan, approved by the Department that enables a teacher in an emergency situation to call a second 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 standards set forth in this chapter.~~on the age of the child on August 15th.~~

(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 adult is not required by the adult: child ratio rules contained in this Chapter, a second 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 – ~~11m~~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.

(d) For children three (3) years through pre-kindergarten, class assignment shall be determined on the child's age on August 15th.

(e) 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. 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) 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 Size	Adult: Child Ratio
Infant – 36 months	Ratio and Group size remains the same	
3-4 year olds	22	1:13
4-5 year olds	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.

(b) 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) 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) A minimum of two (2) adults is required for any off-site activity.

(e) Programs shall maintain a system utilizing an off-site attendance roll which tracks the whereabouts of each child while off the premises.

(f) 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. Amendments filed November 2, 2017; effective February 1, 2018.*

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.

(3) Every staff person, both paid and unpaid, who is under the age of twenty-one (21) years must be supervised by an adult while in the presence of children. Exception: Before and after school programs.

(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.

(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, and policies for receiving and dismissing children.

(6) Within the first two (2) weeks on the job, 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.

(7) All training shall be documented in the program's records and be available for review by the Department's staff at any time.

(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.

(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.

(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.

(c) Within the first thirty (30) days of employment by a program, a director shall complete an orientation provided by the Department of Education.

(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, directors shall complete at least thirty (30) hours of professional development.

1. Six (6) hours of the professional development shall be in administration management or supervisory training and six (6) hours shall be in developmentally appropriate literacy practices.

(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, assistant directors shall complete at least thirty (30) hours of professional development.

1. Six (6) hours of the professional development shall be in developmentally appropriate literacy practices.

(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, 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) 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. ~~The Tennessee Frameworks for Evaluation process for licensed, pre-kindergarten (certified in early childhood education) shall be accepted as the performance evaluation requirement of this subsection.~~

(12) Substitute teachers shall meet the following criteria:

(a) Substitutes shall comply with the same orientation requirements defined by these rules for all program staff.

(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 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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. Amendments filed November 2, 2017; effective February 1, 2018.*

0520-12-01-.09 PROGRAM.

(1) Educational activities shall be based on developmentally appropriate educational practices.

(a) Infant/Toddler classrooms ages six (6) weeks through 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;

3. Engage in meaningful conversations with teachers;

4. Engage in touching, feeling, and identify a variety of known and unknown objects;

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

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 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 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 ~~thirty~~ fifty (~~30~~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. Amendments filed November 2, 2017; effective February 1, 2018.*

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 (1) 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;

9. Meningococcal meningitis;

10. Chicken Pox; ~~and~~

11. Hand, foot and mouth disease (HFMD); and

12. 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.

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.

(i) Before any teacher can assume duties of any type in an infant room they must be oriented in the foregoing SIDS procedures.

(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.

(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, no sharp edges, splinters, nails sticking out, no 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/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/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. Amendments filed November 2, 2017; effective February 1, 2018.*

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 (4'9") 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 (4'9") 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 "S" endorsement 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. § 55-10-401;

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.

(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 (13) 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.~~An adult monitor, in addition to the driver, is required on the vehicle for the transportation children ages six (6) weeks through Pre-K.~~

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) pre-kindergarten 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 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. Amendments filed November 2, 2017; effective February 1, 2018.*

*** 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)
Chancey	X				
Cook	X				
Edwards	X				
Ferguson				X	
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education (*board/commission/other authority*) on 05/24/2017 (*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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 4/9/18

Signature:

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

SUSAN L. LIVERMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 4/9/18

Notary Public Signature: Susan L. Liverman

My commission expires on: 8-4-2020

State Board of Education Rules Chapter 0520-12-01 – Standards for Child Care Centers and School Age Child Care Programs
Rules 0520-12-01-.01 through 0520-12-01-.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

4/20/2018
Date

Department of State Use Only

Filed with the Department of State on: 5/3/18

Effective on: 8/1/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
DIVISION:	
SUBJECT:	Administration of Medication for Adrenal Insufficiency
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-50-1603
EFFECTIVE DATES:	August 1, 2018 through June 30, 2019
FISCAL IMPACT:	This promulgation of these amendments will not have a fiscal impact on a state or local government revenues and expenditures.
STAFF RULE ABSTRACT:	On March 23, 2017, Governor Haslam signed Public Chapter 84 (2017) that requires the State Board of Education to adopt rules allowing for the administration of medication that treats adrenal insufficiency for students while at school. This new rule sets forth definitions, training requirements for LEAs and school personnel, and procedures for administering medication for adrenal insufficiency should an adrenal crisis occur. **NOTE**: This rule contains all new language; therefore, the new language is not underlined in the redline copy.

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.

Not applicable

Impact on Local Governments

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

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

On March 23, 2017, Governor Haslam signed Public Chapter 84 (2017) that requires the State Board of Education to adopt rules allowing for the administration of medication that treats adrenal insufficiency for students while at school. This new rule sets forth definitions, training requirements for LEAs and school personnel, and procedures for administering medication for adrenal insufficiency should an adrenal crisis occur.

(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. § 49-50-1603 mandates that the state board of education, in consultation with the department of health, the board of nursing, the board of pharmacy, and the department of children's services, adopt rules for the administration of medication that treats adrenal insufficiency by school personnel trained in accordance the requirements set out in the T.C.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;

Students and parents of students who have adrenal insufficiency and LEAs are most affected by this rule. Parents of students with adrenal sufficiency have urged adoption of this rule. LEAs have neither urged adoption nor rejection of the rule. The State Board of Education and the Department of Education urge adoption of 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;

This promulgation of these amendments will not have a fiscal impact on a state or local government revenues and expenditures.

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

Elizabeth Taylor
Elizabeth.Taylor@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;

Elizabeth Taylor
Elizabeth.Taylor@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

Elizabeth Taylor
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Elizabeth Fiveash
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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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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 05-06-18
Rule ID(s): 6760
File Date: 5/3/18
Effective Date: 8/1/18

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:	Elizabeth Taylor
Address:	Andrew Johnson Tower, 1st Floor 710 James Robertson Pkwy Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@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**
0520-01-13	Administrative of Medication for Adrenal Insufficiency
Rule Number	**Rule Title**
0520-01-13-.01	Definitions
0520-01-13-.02	Training
0520-01-13-.03	Administration of Medication

NEW RULE

Chapter 0520-01 State Board of Education Rules, Regulations and Minimum Standards for the Operation of the Public School System is amended by adding the following as a new chapter and shall read as follows.

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-13

ADMINISTRATION OF MEDICATION FOR ADRENAL INSUFFICIENCY

0520-01-13-.01 Definitions
0520-01-13-.02 Training
0520-01-13-.03 Administration of Medication

0520-01-13-.01 DEFINITIONS

For purposes of this Chapter the following definitions are applicable:

(1) "Adrenal crisis" means a sudden, severe worsening of symptoms associated with adrenal insufficiency, such as: severe pain in the lower back, abdomen, or legs; vomiting; diarrhea; dehydration; low blood pressure; or loss of consciousness.

(2) "Adrenal insufficiency" means a hormonal disorder that occurs when the adrenal glands do not produce enough adrenal hormones.

(3) "IHP" means Individualized Healthcare Plan.

(4) "LEA" means Local Education Agency.

(5) "Nurse practitioner" means a nurse practitioner licensed under T.C.A. title 63, chapter 7.

(6) "Physician" means a physician licensed under T.C.A. title 63, chapter 6 or 9.

(7) "School personnel" means any person employed by a Local Education Agency (LEA).

Authority: T.C.A. § 49-50-1603. ***Administrative History:***

0520-01-13-.02 TRAINING

(1) If an LEA has been informed by a parent or guardian that a student in a school of the LEA has adrenal insufficiency, the LEA shall train school personnel at the school who will be responsible for administering the medication for the treatment of adrenal crisis.

(2) Trained personnel shall be available to each student identified as having adrenal insufficiency whose parent or guardian has provided the medication for treatment of adrenal crisis.

(3) An LEA shall provide training to any school personnel who volunteer to receive the training and to be responsible for the administration of the medication for the treatment of adrenal crisis.

(4) Training on the treatment of adrenal insufficiency shall be coordinated by the LEA and shall be conducted under the supervision of a physician or nurse practitioner or by any other health care

professional licensed under T.C.A. title 63 as delegated by a supervising physician or nurse practitioner.

(5) The training shall include, at a minimum, the following:

(a) General information about adrenal insufficiency and the dangers associated with adrenal insufficiency;

(b) Recognition of the symptoms of a person who is experiencing an adrenal crisis;

(c) The types of medications that are available for treating adrenal insufficiency; and

(d) Proper administration of medications that treat adrenal insufficiency.

(6) LEAs shall maintain a written record of all school personnel who have completed such training.

(7) A person who has successfully completed training in the treatment of adrenal insufficiency may possess the medication and necessary paraphernalia for administration of medication. Trained school personnel may administer the medication to the student for whom the medication is prescribed if the student is suffering an adrenal crisis when a school nurse or other licensed health care professional is not immediately available.

(8) Trained school personnel shall:

(a) Be familiar with the IHP for each student with adrenal insufficiency in the school and become familiar with:

1. The student's baseline activity level, attitude, and behavior;

2. The conditions that place additional stress on the body (such as illness or injury) that may trigger an adrenal crisis;

3. The student's past history with adrenal crisis; and

4. The medication and administration route that is prescribed to the student from his or her physician to use during an adrenal crisis.

(b) Understand the symptoms of adrenal crisis including unconsciousness, extreme lethargy, or nausea and vomiting.

(c) Understand the student's 504 Plan, Individualized Education Program, or other education plan, if applicable.

(d) Practice universal precautions and infection control procedures.

(e) Comply with all state and federal privacy laws.

(9) An LEA shall not require school personnel who have not received appropriate training to administer medication.

Authority: T.C.A. § 49-50-1603. ***Administrative History:***

0520-01-13-.03 ADMINISTRATION OF MEDICATION

(1) If it is determined a student is suffering from an adrenal crisis and the school nurse or other licensed health care professional is not available, the trained school personnel shall:

(a) Instruct someone to call 911 and the student's parent or guardian.

(b) Administer the medication and wait with the student until help arrives. Do not leave the student unattended.

(c) Turn the student on his or her side and monitor the student's breathing.

(d) Give the empty vial to the Emergency Medical Responders when they arrive.

(2) Medication shall be stored safely and in a location that is readily available and in close proximity of the student.

(3) School transportation and activities such as field trips or other out-of-school functions shall be taken into account in the LEA policy regarding treatment of adrenal crisis.

(4) The student's IHP team may consider allowing a student to carry his/her own medication in certain circumstances. The IHP team shall take into account the student's age and maturity when making this determination.

Authority: T.C.A. § 49-50-1603. ***Administrative History:***

* 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)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				
Wiseman	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 01/26/2018, 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.

SUSAN L. LIVERMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: 4/9/18

Signature: Elizabeth Taylor

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 4/9/18

Notary Public Signature: Susan L. Liverman

My commission expires on: 8-4-2020

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): 0520-01-16 Administration of Medication for Adrenal Insufficiency

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

4/20/2018
Date

Department of State Use Only

Filed with the Department of State on: 5/3/18

Effective on: 8/1/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Human Services
DIVISION:	
SUBJECT:	Standards for Group Child Care Homes
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 71-4-501, et seq. and 42 U.S. Code § 9585(c)
EFFECTIVE DATES:	July 30, 2018 through June 30, 2019
FISCAL IMPACT:	N/A
STAFF RULE ABSTRACT:	These rules amend the childcare licensing and report card rules. The combined child care rules were reorganized into two categories - those applicable to all agencies and those applicable to centers, family homes, group homes, and drop-in centers. The following rules were moved into separate sections: Procedures for Obtaining a License, Criminal Background Check and State Registry Review Procedures, Record Keeping, Incident Reporting, Duty to Report Child Abuse and Neglect, and Emergency Preparedness. Licensure Provision Amendments – allow the Department to deny license to an individual if previously a member of management at an agency where the license had been denied or revoked; requirements for multiple agencies operating at the same location; fees and applications should be submitted 60 days in advance of license expiration. Staff Requirements – qualifications for staff were amended to require drug testing policies for staff with contact with children; teachers to be annually evaluated; updated first aid and CPR requirements; updated training requirements with substantial modifications in response to public comments received; use of a developmental checklist to conduct parent meetings; a state law background check amendment requiring substitutes providing services for more than 36 hours to have a background check and

physical exam; and requiring staff personal belongings to be inaccessible to children. Educators sixteen years of age may be used to meet ratios if they are always under direct supervision.

Sleep Procedures – Safe sleep procedures were updated with an expanded description of prohibited soft bedding. Infants are to be touched every 15 minutes while sleeping. Crib requirements were updated to comply with safety standards.

Food Service Rules – food served should be inaccessible to children until prepared appropriately for the age group; USDA guidelines should be followed if serving food; crock pots are prohibited for warming bottles, but bottle warming devices are permitted.

Playground requirement – require a fall zone of at least six (6) feet around all climbing equipment; protective surfaces should have a protective surface recognized by CPSC as a shock absorbing resilient material maintained with a minimum average of 6 inches.

Program, Language and Literacy requirements – tummy time requirements for infants; reading to infants and toddlers; and using developmentally appropriate techniques to engage children. Restraining devices should not be used for more than 15 minutes except during meal times.

Transportation – allow agencies that aren't licensed to transport to transport for up to four (4) field trips per calendar year; a provision was added allowing an agency to use a qualifying replacement vehicle for up to fourteen (14) business days without inspection by the Department of Safety.

Report Card Rules – add a new component entitled Child Health and Well-being; increase criteria for each of the levels; language was added to clarify that all agencies are eligible to receive at least the base rate of reimbursement paid through the Child Care Certificate Program if they enter into the contract with the Department to participate in the program; change to reflect that licensing enforcement actions will disqualify an agency from a star rating; no option to continue to retain bonus payments.

Legal Enforcement Actions – definition of Suspension was modified; civil penalty schedule was increased for an injury to a child due to negligence or internal disregard of licensing law or regulations $500-$700; and violations due

to negligence or intentional disregard of regulations that results in children leaving the agency premises without supervision or children left unsupervised may carry a civil penalty of $750-$1,000. Additional items were added to the list of major violations.

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.

Following are comments received either orally or in writing at the public hearing(s) concerning the above rules or which were received within the time permitted for submission of comments following the hearing, together with the responses of the Department of Human Services. Similar or identical responses have been grouped together for purposes of response:

Comment 1 (Minimum Age for a Primary Educator):
Several comments were received regarding the change in the minimum age for a primary caregiver from age eighteen (18) to age twenty-one (21) in the following rules: 1240-04-01-.06(3)(f); 1240-04-01-.11(1)(d); 1240-04-01-.20(2)(a); 1240-04-01-.21(2)(a); 1240-04-01-.22(5)(a)-(b); and 1240-04-01-.23(6)(b).

Many commenters noted that this would cause an immediate staffing hardship on their agencies because they employed staff under age twenty-one (21) and would have difficulties meeting the adult:child ratio requirements. Multiple comments also indicated that this would ultimately lead to increased costs that would then be passed on to parents.

Other commenters focused on the fact that they felt that if an individual under the age of twenty-one (21) was properly trained and otherwise qualified there was no reason they should be prohibited from being a primary educator. It was also noted that the period between eighteen (18) and twenty-one (21) years of age is a critical period for recruiting, training, and developing individuals interested in child care as a career path.

Response:
The Department agrees with the concerns raised by the comments regarding the potentially negative impact such a change would have on child care providers and believes that the negative impact outweighs any positive effects on children health, safety, and development.

As such, the rule provisions providing for the minimum age for a primary educator has been revised to return to the existing minimum age of eighteen (18).

Comment 2 (Training Requirements):
Several comments were made regarding the new training hours and requirements contained in the proposed rules for all educators.

Response:
The Department took all of these comments in to consideration and reduced the number of training hours required for all educators in the licensing rules, and added options other than maintaining a current CDA. Some increased training hour requirements remain in the star quality rules to receive a higher star rating.

The Department took all of these comments into consideration in reducing the number of required orientation and training hours to ease the burden on providers. The Department is also committed to working with our partners that provide training to update, enhance, and increase training opportunities through collaboration with our post-secondary education system, and to increase the availability of training opportunities to all providers to make it more accessible and relevant. The Department is committed to working towards providing training opportunities to providers in a number of forums, including access to more online training opportunities to make the relevant training more accessible and user-friendly. The requirement for specific business training has been removed from the rules.

In addition to reducing the training hours the training topics have been reorganized within each section to provide clarification on the required on-going trainings health and safety trainings. The pre-service trainings were reorganized to clarify items that are required prior to having contact with children.

Comment 3 (Health and Safety):
Regarding Rule 1240-04-01-.12, Health and Safety, several comments were received requesting that the requirement to have all staff CPR and first aid certified be removed because the requirement would be costly to meet and unnecessary. Another comment received on this topic was that thirty (30) days from hiring/employment was not a long enough time period to obtain the required training.

Response:
In response to these comments, this requirement was changed to require that at least one staff member with a current certification in CPR and first aid to be on site at all times, and to require all other staff to have first aid training and CPR training but not a certification.

The timeframe during which staff are required to obtain the required training has been modified to allow ninety (90) days versus thirty (30) days.

Comment 4 (Agency Staff Qualifications):
Several comments were received regarding agency staff qualifications, and the increased qualification requirements, contained in Rule 1240-04-04-.06(4).

Response:
The Department made changes in response to this comment by removing the requirements for more advanced degrees and educational levels from the licensing rules, as the Department understands that this would pose a burden on current providers who may have staff that have relevant experience, but do not possess the requisite degrees.

Professional Development opportunity for teaching staff ensures that their knowledge and skills reflect the ever-changing knowledge base. Children greatly benefit from teachers who prepared and knowledgeable about current child development research. Based on the comments received, however, it was determined that imposing this rule would have the effect of several agencies having to try to find new staff with the advanced degrees, and not being able to retain current staff possessing specific childcare experience in the profession.

Comment 5 (Driver Certification):
One commenter was concerned that he requirement for drivers to obtain Department of Safety certification had been removed from the rules.

Response:
This requirement has not been removed and is found at Rule 1240-04-01-.17(10)(f)(2)(i).

Comment 6 (Background Checks):
Regarding Rule 1240-04-01-.06, providing for general staff requirements, comments were received regarding why background checks had to be performed prior to working, the background check requirements for substitutes, and background checks requirements for volunteers (particularly in consideration of the large pool of volunteers utilized by Head Start programs).

Response:
The requirement for volunteers to obtain background checks was removed from the rule requirements, but the requirement that volunteers are never left with unsupervised access to children remains in the rules.

Background checks for substitutes are required by Tenn. Code Ann. § 71-3-507, and cannot be removed from the rule, which was modified to reflect the statutory annual maximum of thirty-six (36) hours before a background check is required for a substitute. Additionally, the requirement to background check employees before beginning work is required by statute and cannot be modified.

Comment 7 (Annual Evaluations):
Comments were received regarding the requirement to have annual teacher evaluations, and in particular, the

need to evaluate on developmentally appropriate practices pursuant to proposed Rule 1240-04-01-.06(1)(b).

Response:
The requirement to evaluate the use of developmentally appropriate practices was removed from the rule.

However, the requirement to perform annual evaluations remains in the rule, as annual evaluations provide a comprehensive approach for teacher's professional growth and development

Comment 8 (License Renewal):
Regarding the procedures to obtain a license contained in Rule 1240-04-01-.04, multiple comments were received.

Commenters wanted the requirement to apply sixty (60) days before license expiration removed.

Commenters also argued that the penalty for not timely renewing should be removed.

Comments were also received expressing concerns about receiving license applications by email and the cost associated with having to print them.

Response:
The requirement to apply sixty (60) days prior to the license expiration date has not been changed in response to these comments. The Department has to assess each childcare agency during that license renewal period, and the sixty (60) day time frame will allow the Department to do so.

The penalty for failing to apply sixty (60) days in advance was removed from the rules, and the license will only terminate if not renewed prior to the expiration date.

The rules do not address or specifically require that application packets be received via any specific method of delivery. Rather, it is current Department practice that licensing packets can be sent via mail or email by the program evaluators, depending on what is most convenient for the child care providers.

Comment 9 (Requirements for Licensure as a Child Care Agency):
Multiple comments were received regarding various requirements found in Rule 1240-04-01-.03 Requirements for Licensure as a Child Care Agency.

Comments were received from programs operating in the public school system seeking clarification (or expressing concern) and how the rules regarding multiple agencies/programs operating at the same location would apply to them.

Commenters also requested clarification about how this rule would apply to field trips and offsite activities.

Response:
The rules, regarding two child care agencies operating at the same location, were drafted to be flexible, as they allows such operation so long as the other agency is not unlicensed, unregulated or exempt (unless approved in advance by the Department). The agencies may share building space and playground space, but the playground space may not be used at the same time. This is a safety concern regarding proper supervision of children within each program, and as such these rules have not been modified.

The rule regarding shared space does not apply to field trips or offsite activities if the agencies are at the same offsite or field trip location.

Comment 10 (Drug Testing Policy):
Commenters wanted the agency drug testing policy found in Rule 1240-04-01-.05(8) removed because of cost implications.

Other commenters requested that the requirement to keep such records for five (5) years after an employee's termination to be reduced because they argued five (5) years is an unnecessary and burdensome length of time.

Response:
The requirement to develop and maintain a drug testing policy is a safety measure/concern, so this will not be removed from the rules in response to this comment.

The requirement to keep the records for five (5) years found in T.C.A. 71-3-514(c) and, as such, cannot be modified.

Comment 11 (Parent Communication and Conferences/Meetings):
Multiple comments regarding Rule 1240-04-01-.05(9)(g), regarding the use of developmental checklists/progress reports and parent-teacher conferences, were received.

Some commenters requested that the requirement to maintain the checklist/progress report should be removed.

One commenter requested to remove the requirement for school-age programs to use developmental checklist and to allow programs to use their own checklists instead of one provided by DHS.

Multiple commenters also requested to reduce the number required annual parent-teacher conferences, arguing that quarterly conferences were unnecessary and would be burdensome to both families and agency staff.

Response:
The requirement to use a developmental checklist approved by the Department as a guide for conducting individual parent meetings to discuss the child's progress and development was kept in the rule. It is important for parents to receive information about the status of their child's development; however, this requirement is not intended to require agencies to make an assessment of the child. Instead the developmental checklists are simply to be used as a guide for a discussion with the parent during the parent conference. During the conference the parent and agency can jointly review the checklist and share their mutual observations about how the child's development matches up with the milestones on the checklist. The Department will provide technical assistance to agencies regarding this requirement.

In response to the comment regarding school-age programs, the requirement to use developmental checklists for school-age children was removed, and the language was amended to allow for flexibility as to which developmental checklist to use.

The required number of parent/teacher conferences was modified to require an annual parent/teacher conference instead of quarterly conferences.

Comment 12 (Legal Documentation Required for Removing a Child from a Facility):
A comment was received regarding Rule 1240-04-04-.05(9)(n)(2), with a request that the provision be amended by adding that the Department should be required to provide copies of any placement agreements, court orders, etc.

The commenter also requested that a provision be added to allow the agency to request the services of a security officer as needed, and that the costs should be reimbursed by the Department.

Response:
No change was made in regards to this comment. Childcare agencies should ask the investigator or law enforcement officer for a copy of the voluntary placement agreement, court order, or other legal documentation allowing them to remove the child from the facility.

If the agency feels that a security officer is needed, they will have to obtain and pay for the security officer and may do so at their own discretion. As such, no change will be made in response to this comment.

Comment 13 (Reading to Infants and Toddlers):
A few commenters requested that the requirement in Rule 1240-04-01-.15 to read to infant and toddlers, individually, daily be removed from the rule, or that they be permitted to read to a few children in a group, as reading individually to every child every day would impractical and divert too much of caregivers' time needed for

other duties.

Response:
In response to the concerns raised in these comments, the Department modified the provision to allow reading individually or in small groups daily.

Reading to children daily is very important for their development, but the Department agrees that reading to each child individually may not always be possible. Allowing educators the option to read to small groups instead of just an individual child will meet the objective, and make it more manageable for agency staff

Comment 14 (Specialized Services):
Regarding Rule 1240-04-04-.05(9)(k), specialized services, a request was made to have "specialized services" defined.

Response:
A definition for "specialized services" was added to Rule 1240-04-01-.02.

Comment 15 (Posting – Non-Smoking):
A comment was received regarding Rule 1240-04-04-.12(14)(a) and the specific "no smoking" posting language requirements, requesting the rule only require posting stating that no smoking is allowed on the premises.

Response:
No change was made in response to this comment, as the rule needs to address each specific area because not all areas are covered by the TN Non-Smoker Protection Act.

Comment 16 (Posting – Personal/Contact Information):
There were concerns regarding the requirement in Rule 1240-04-04-.05 to post a personal contact number for after-hours contact(s).

Response:
The Department modified this provision to reflect that an after-hours agency contact number should be provided to parents (not posted) for emergency purposes.

Comment 17 (Expulsion Policy):
Regarding Rule 1240-04-04-.05(13), a request was made to remove the expulsion policy rule and requirements.

Response:
No change was made in response to this comment, as all agencies should have expulsion policies in place pursuant to federal law.

The Department will develop an expulsion policy and supporting expulsion documentation form for agencies use.

Comment 18 (Data Reporting):
Multiple comments were received regarding Rule 1240-04-01-.05(14) Data Reporting.

Commenters wanted the reporting period modified to annual versus quarterly.

Commenters also requested that child abuse be defined under this section.

Another commenter asked that if the rule intended to address abuse that occurred at that facility, it should be clarified to say so.

Response:
This provision has been modified to require reporting as requested by the Department in response to this comment, as opposed to a specified frequency, as neither federal nor state law requires a specific data reporting

period, and to ease the administrative burden on agencies.

Child abuse is defined in the Department of Children's Services statutes and rules, and does not need to be defined in these rules. Thus, no change will be made in response to this comment.

The intent of the rule is to cover any suspected abuse or neglect as required by Department of Children's Services, not just that which may have occurred at the facility. As such, no change is necessary in response to this comment.

Comment 19 (Communication):
Commenters requested that the Department remove specific language that must be used while diapering an infant, Rule 1240-04-01-.12, and while serving lunch, Rule 1240-04-01-.13.

Response:
In response to this comment, the Department modified the language to be less proscriptive while also providing examples of developmentally appropriate practices during diapering and serving lunch that supports the child's development and learning. The new language focuses on the importance of fostering warm, sensitive, and responsive interactions with children during daily routines. Having daily developmentally appropriate conversations with the young children is critical for their language development. The rule was modified to reflect best practices to support positive development.

Comment 20 (Staff Record Requirements):
A commenter requested clarification as to how often tuberculosis (TB) testing has to be repeated under Rule 1240-04-01-.08(3).

Another commenter requested removal of the physical examination requirement and background check requirement for volunteers, as these are unnecessary, impractical, and burdensome.

Response:
The Department removed the "repeat TB testing" language from the rule as it was unnecessary to require staff to repeat TB testing at three year intervals without some other indication for the need for such a test. In addition, the Department only requires TB testing for staff if a screening demonstrates certain risk factors that indicate such a test is necessary.

In response to the second comment, the Department removed both the physical examination and background check requirements for volunteers, as these are not federal or state statutory or regulatory requirements.

Comment 21 (Incident Reporting):
Multiple comments regarding Rule 1240-04-01-.09, Incident Reporting, were received.

Some commenters interpreted the rule as requiring full body checks as children entered daycare.

Others commenters requested clarification as to whether reporting of incidents should be to their local program evaluator instead of the hotline.

Commenters also requested to only require annual child abuse reporting training (not semi-annual because) the laws do not change that often on this topic and thus does not justify this increased frequency.

Response:
The rule requires notification of serious injuries or illness to the parent immediately and does not require any "full body checks" of children upon entering the facility.

The standard for reporting incidents has not changed, and all such serious incidents should be reported to the hotline.

In response to the comments suggesting only annual child abuse reporting training, the Department concurs and the rule has been modified accordingly.

Comment 22 (Administering Medications):
A request was made to allow all staff educators not just a designated staff person to administer over the counter preventative products such as diaper creams, as provided in Rule 1240-04-01-.12(13)(b).

Response:
All applications of medications must be documented and applied by designated staff persons for safety purposes. An agency may choose to designate multiple staff persons for this purpose—it is not limited to one staff member. As such, no change was made in response to this comment.

Comment 23 (Diapering):
Regarding Rule 1240-04-01-.12(15), Diapering, one commenter was concerned that hand-washing is no longer required in the rule after every diaper change.

Response:
This requirement still appears in the rule at Rule 1240-04-01-.12(15)(g), requiring adults to wash their hands following each diaper change.

Comment 24 (Bottle Warmers):
A request was made to amend Rule 1240-04-01-.13 which prohibits bottle warmers.

Response:
Crockpots will still be prohibited as this is a safety concern. The Department modified the requirements to allow bottle warmers at agency discretion. The Department received multiple comments on this provision, and due to the concerns of providers regarding how they could efficiently warm bottles while tending to other infants, decided to leave in a provision allowing bottle warmers at the agency's discretion. Providers should take care to ensure such bottle warmers are completely inaccessible to infants at all times to prevent injury.

Comment 25 (Food Preparation):
A request was made to modify the provision found in Rule 1240-04-01-.13(2) regarding preparing food in an appropriate manner for the age/development group being served.

In addition, a request was made to modify the rule to be clear that we are referring to checking an infant's mouth for food before napping, not all children.

Response:
No change was made regarding the provision requiring food to be served in an appropriate manner for the child that you are serving for safety reasons and choking prevention.

The rule was modified to ensure to reflect the intent to check the mouth of an infant/toddler (not all children) before a nap.

Comment 26 (Nutritional Needs and Federal Guidelines):
Regarding Rule 1240-04-01-.13(4), Nutritional Needs, a request was made to modify this provision because facilities do not want to adhere to USDA nutrition guidelines if they are not participating in the food program.

Another comment expressed concern that the rule will not allow teachers to have special occasions for the children.

Response:
No change was made in response to this comment, as following USDA Child and Adult Care Food Program (CACFP) nutritional guidelines is appropriate for the health of children in the care of facilities, regardless of whether they are participating in a food program.

In regards to "special occasions," there is nothing in the USDA's Child and Adult Care Food Program (CACFP)

nutritional guidelines or the language of the rule itself that should be interpreted as prohibiting such "special occasions."

Comment 27 (Space for Nursing Mothers):
A request was made to modify Rule 1240-04-01-.13(5), which requires that a space shall be provided for nursing mothers who wish to come in and nurse their infants.

Response:
This provision will remain in the rule, and no change will be made in response to this comment. Nursing mothers should have the opportunity to come feed their infants if they wish to do so during the day. The space could be a separate room, or merely a corner of the room where the mother can cover up and comfortably feed her infant.

Comment 28 (Supervision around Bodies of Water):
A request was made to modify Rule 1240-04-01-.11(5) with a note that this would mean a wading pool is a body of water.

Response:
The rule does not define wading pool but provides that it should be approved by the local health department before use. This is a safety concern, and no change will be made in response to this comment.

Comment 29 (Safe Sleep Supervision Procedures):
Regarding Rule 1240-04-01-.11(6), safe sleep supervision procedures, a request was made to modify the requirement to physically touch an infant every fifteen (15) minutes to check breathing, body temperature, and position. Another commenter requested that they be allowed to use receiving blankets again.

Response:
No change was made in response to these comments as checking the infant every fifteen (15) minutes is a safe sleep concern and a SIDS prevention measure, as is removing any additional items, including blankets, from the crib.

Comment 30 (Playground Equipment and Outside Play):
The following comments were made regarding Rule 1240-04-01-.14(3), regarding playground equipment:

Request to remove the resilient surface requirement of six (6) inches as this differs from playground standards.

A request was made to simplify the procedures for leaving the classroom when the playground is immediately adjacent to the classroom.

Concern was expressed that the fall zone should be the standards found in the "Handbook for Public Playground Safety."

Concern was expressed that the requirement to have the chain twice the length on the sides of swings is difficult to meet.

Response:
The Department's responses are as follows:

No change was made in response to this comment. The Consumer Product Safety Commission requires a minimum of six inches of resilient surface coverage regardless of the height of the playground equipment. Most playground equipment at childcare facilities is at the height requiring six (6) inches of resilient surface. If facilities have equipment with a fall height of more than ten (10) feet, providers should utilize the CPSC guide for resilient surface material.

No change was made in response to this comment as the only requirement is a roll call before and after leaving the playground, which should not be burdensome. Not requiring a roll call prior to leaving the classroom and upon arrival at the playground is a safety concern as children could be left behind in either the classroom or the

playground.

No change was made in response to this comment. The fall zone requirements ensure the safety of children while utilizing playground equipment and are sufficient for ensuring safety.

No change was made in response to this comment. The requirement for swing chain length was maintained at the same level for the safety of children utilizing playground equipment.

Comment 31 (Designated Rest Area):
A comment was made regarding the requirement in Rule 1240-04-01-.14(4) to have a designated rest area for children who want to rest, and that the provider (a family home) did not have enough space to provide a separate rest area for children when it was not rest time for all children.

Response:
No change to the rules was made in response to this comment. The rest area can be as simple as separate corner with a mat or cot available for children who wish to rest during the day at a different time.

Comment 32 (Program, Language and Literacy Development):
Regarding Rule 1240-04-01-.15, Program, Language and Literacy Development, comments were received about multiple aspects of this rule.

Concern is that require paperwork will take away from our interaction with the children, because teachers are more aware of their children needs than the Department.

Regarding behavior management techniques, one commenter said children's behaviors are not always positive and I believe this promotes childhood bullying.

One commenter asked whether this rule applies to an after-school program that has less than three (3) hours with the children a day. The concern articulated was how to provide a curriculum appropriate for children in after-care only.

Another commenter argued that engaging children on the specifics of the day should be a "best practice" not a licensing requirement.

The Department of Mental Health and Substance Abuse Services recommended including creative activities (e.g. art) in addition to writing as one of the daily areas of teacher focus for pre-school children under Rule 1240-04-01-.15(1)(g)(2).

Response:
No change was made in response to the comment expressing concern that the paperwork required will take a substantial amount of time spent interacting with children. The Department wants to ensure high quality childcare for all children in care. Developing and maintaining a curriculum with planned activities and experiences that promote learning and social emotional development promotes quality care for all children and ensure that developmentally appropriate activities and experiences are provided for the children.

Positive behavioral management techniques are the only acceptable form of behavior management in a home or facility. No change was made in response to this comment as negative forms of behavioral management are not acceptable in a childcare facility. The rule will ensure that all children's social-emotional and behavioral health are being fostered in a literacy enriched quality learning environment.

In response to the question regarding after-school/after-care: the requirement applies to all programs, including after-school programs. It is still important for all programs to have developed a developmentally appropriate curriculum for the after-school program. The curriculum should address programming for the limited amount of time that children are in aftercare.

In response to this comment, the language was amended to remove the specific language and to provide that educators will engage children in a developmentally appropriate manner.

With respect to the comment from Mental Health suggesting that we add creative activities in addition to writing in the preschool requirements for curriculum, the Department has added such provision as the Department agrees that time for creative activities is a vital part of a developmentally appropriate curriculum for preschoolers.

Comment 33 (Restraining Devices):
Regarding Rule 1240-04-01-.15(1)(i) & (j), one commenter asked whether there was an exception to the fifteen (15) minute limit for use of any type of restraining device for meal/lunch/snack time.

Another comment received indicated that this provider's children would scream unless kept in their swings.

Response:
No change to the rules was made in response to this comment, as the rules already contain an exception for the use of high chairs for a time period longer than 15 minutes during meal/lunch/snack time in subsection (j)(1).

Educators should be engaging the infants in other activities, including reading, tummy time, and other developmentally appropriate activities, and should not use restraining devices for lengthier amounts of time. As such, the fifteen (15) minute limit has not been modified based on this comment.

Comment 34 (Television and Electronic Media):
Regarding Rule 1240-04-04-.15(2), the Department of Health recommended wording exceptions to the currently drafted provisions, to avoid screen time for children eighteen (18) months and younger and to limit the time to one (1) hour per day for others and for educational or physical activities use only. Children attending less than a full day program shall be limited to a proportionate amount of such viewing.

Another commenter was concerned with the rule prohibiting TV for children under the age of two (2).

Response:
No change was made in response to this comment, as the currently drafted rules currently contain these prohibitions, including a provision prohibiting any television viewing for those children aged two (2) and under, and limiting the screen time to one (1) hour for others.

With respect to the second comment, no change was made in response to this comment, as the rule already contains an exception for the use of media during transition times when there is a single educator. The example given was during preparation of a meal and the time duration was limited to just the transition time period.

Comment 35 (Outdoor Play and Playground Routines):
Regarding Rule 1240-04-01-.15(3) Outdoor Play and Playground Routines, the following comments were received:

Department of Health recommended providing outdoor play opportunities for children in care more than (3) daylight hours when the temperature range, after adjustment for wind chill and heat index, is between thirty-two degrees and ninety-five degrees Fahrenheit (32°F and 95°F) and not raining; and further suggested that the time allotted for physical activity should be: toddlers sixty (60) to ninety (90) minutes; preschoolers ninety (90) to one hundred twenty (120) minutes of moderate to vigorous physical activity.

Some comments expressed concern and sought clarification regarding part-day programs and how much outside time is appropriate.

Comments also expressed concern that playground time was required to be teacher directed half of the time and child directed the other half because children should be free to use their imagination and to do what they want to do outside.

Response:
The Department's responses are as follows:

No changes were necessary in response to the Department of Health's comment(s), as the rules already

incorporated these suggestions.

With respect to the comment made regarding part-day programs, the time frames allotted for physical activity and outdoor play opportunities for part-time programs, the time frames should be adjusted proportionately to the length of the program day, as all of the rule notes and bases the figure on an 8 hour day of care.

In response to the comment regarding teacher-directed play, the rule was modified to allow for agency flexibility in the proportion of teacher-directed and child-directed physical activity play, as the Department also believes that giving the children the freedom to direct physical activity play is an important tool for children and encourages creative thinking.

Comment 36 (Reclining Rest Period):
The following comments were received regarding Rule 1240-04-01-.15(4), Reclining Rest Period:

One commenter said that this rule should not apply to school-age children because children in school do not get a reclining rest period.

Another commenter felt that toddlers and preschoolers being allowed to sleep "on demand" rather than at the same time will "create chaos."

The Department of Health agreed that each child shall be allowed to form his or her own patterns of sleep and further commented in regards to infants: infants shall sleep in a crib containing only a firm crib mattress and tight-fitting mattress sheet; infants shall be placed on their backs and alone in the crib; cribs shall be void of all objects including bedding, pillows, toys, and bumper pads; and infants shall not be permitted to sleep in car seats, swings, or any other space that is not a crib or portable crib. The Department of Health added that violation of this rule may result in suspension, revocation, or denial of the agency's ability under its license to provide infant care.

Response:
The Department's responses are as follows:

The rule does not require school-agers to take a nap every day, just that the children be offered the opportunity for a reclining rest period when in care for more than six (6) hours. The rule also does not require a reclining rest period be offered to school-agers if they are participating only in before-and-after care, nor does the rule apply on field trips. The rule specifically applies to all children in care for six (6) or more hours. As such, no change is necessary in response to this comment.

Toddlers and preschoolers may still have a specified rest period; the rule just requires that they have a rest space to go to if they are tired at other times of the day.

No change was made in response to the comments received from the Department of Health, as the rules already contain crib requirements that mirror the above suggestions and federal requirements at Rule 1240-04-01-.11(6).

Comment 37 (Behavior Management and Guidance):
Regarding Rule 1240-04-01-.15(5), Behavior Management and Guidance, the Department of Mental health agrees with this section and encourages language that says that children will be given developmentally appropriate instructions/expectations for activities/routines throughout the day/time at the facility.

Response:
The educators shall make provision for constructive guidance and the setting of limits that the child can understand which foster the child's ability to be self-disciplined, as appropriate to the child's age and development.

Comment 38 (Positioning of Cots, Cribs and Sleeping mats):
With respect to Rules 1240-04-01-.22(7)(b) and 1240-04-01-.23(8)(b), regarding positioning of cots, cribs and sleeping mats, comments were received stating that the requirement to have cribs and cots to be eighteen (18) inches apart was difficult and expressing concern with the amount of space the some agencies have.

Other commenters were confused as to how this lined up with another requirement that they be thirty-six (36) inches apart.

Response:
The requirement for spacing is eighteen (18) inches in the licensing rules is the minimum requirement for licensing and is based on health and safety considerations. As such, this requirement is not being removed or modified. The spacing promotes both safe sleep and child health/well-being.

The other thirty-six (36) inch spacing requirement referred to is found in the star quality/assessment provisions as a factor to attaining a higher star rating.

Comment 39 (Transportation):
The following comments were received regarding the transportation requirements found in Rule 1240-04-01-.17:

A concern is that the start and stop time for loading/unloading the children should be recorded with a check mark, because there is no reason to initialing sixty (60) times.

Regarding alternate vehicle usage, a commenter noted that they appreciated this added rule, as they had been hoping the state would adopt provisions for if a regular vehicle is temporarily out of commission. The commenter requested to know the specifications on what can be used as alternate vehicle.

One commenter stated it was their understanding that drivers of child care services are no longer needed to have safety training by a certified Sheriff.

Regarding the requirement to have a working flashlight on the school bus, a commenter argued that since daycare providers do not transport the children at night, this rule is pointless.

Response:
The Department's responses are as follows:

The Department will provide a sample form that provides options for recording loading/unloading that may alleviate some of the administrative burden on providers. No change was made in response to this comment.

The requirements applicable to a regularly used school bus would be the same requirements applicable here to a substitute vehicle, minus the Department of Safety inspection requirement. This will allow providers to utilize a substitute bus if their regular transportation vehicle is unavailable. No change was made in response to this comment.

The training is still required pursuant to Rule 1240-04-01-.17(10)(c), so no change to the rules was necessary.

The requirement to have a working flashlight exists for safety reasons—during winter, children may be transported in the dark, and the school bus should have a working flashlight. This is a safety requirement, and no change to the rules was made in response to this comment.

Comment 40 (Communicable Disease Protection):
Regarding Rule 1240-04-01-.19, Sick Child Care, a comment was made that there appears to be a contradiction in the rule because it required a child be separate from other children if they show any symptoms of illness but then later states that children shall not be isolated unless written instructions from a medical professional.

A comment was also received regarding Rule 1240-04-01-.12(17) expressing concern that the rule reads as if staff with signs of communicable disease shall not be present, but seems to include viral STDs, AIDS/HIV, Herpes, and other communicable diseases that have no cure but treatment can suppress.

Response:
The Department does not believe the rule is contradictory because one provision applied to just sick care facilities; however, this type of care has now been eliminated from the rules as has any contradiction.

With regards to staff, the rule was modified to reflect the intent that if staff show any signs of the communicable

diseases specified in the list provided in 1240-04-01-.12(12)(c) they should not be present at the agency.

Comment 41 (Inspections):
Comments were received from providers in respect to Rules 1240-04-01-.03(1) and 1240-04-01-.16(1), expressing concern with being inspected by state entities when the location is the home.

Response:
The inspections are conducted by the Department of Commerce and Insurance and the Department of Health pursuant to our contracts with them, and are necessary safety measures for fire and home safety. No change was made in response to this comment.

Comment 42 (Prohibition of Reptiles and Amphibians):
With respect to the prohibition against reptiles and amphibians in Rule 1240-04-01-.16(10)(d)(15), there is no risk of salmonella if the children cannot access the animal. This rule hinders learning opportunities for many schools that have lizards and frogs for the children to view for science opportunity.

Response:
This is a safety concern, and no change will be made in response to this comment.

Comment 43 (Primary Educator Required On-Site at All Times):
Regarding the requirement to have the primary educator on-site at all times, contained in Rules 1240-04-01-.21(2)(e) and 1240-04-01-.20(2)(f), one commenter stated that this is difficult due to appointments, errands that need to be run, and the fact that some caregivers are in school.

Response:
The provision has been revised, based on the concerns and possible impact noted in this comment, to only require that a staff member meeting the "educator" (as opposed to "primary educator") qualification requirement(s) be present at all times. This will alleviate the burden on those home providers who sometimes need to schedule another educator to care for the children for short periods of time.

Comment 44 (Backpack/Bag Checking):
We received numerous comments on the requirements to check backpacks. This provision is not in the rules but was contained in error in the rules summary.

Response:
This requirement is not contained in the rules. No change will be made in response to this comment.

Comment 45 (Star Quality Advisory and Standards Committees):
We received comments regarding the role of the star quality advisory committee and the standards committee in this rulemaking process.

Response:
The star quality advisory committee has not yet been convened to address changes in star quality rules. The standards committee has been recalled and is being asked to review these rules as amended pursuant to comments to suggest any additional changes needed. No change to the rules is necessary in response to this comment.

Comment 46 (Discrepancies with Department of Education Requirements):
We received comments that there are discrepancies between the Department of Education and the Department of Human Services requirements.

Response:
There may be some areas where our regulations differ from the Department of Education, but we regulate different types of facilities. We will look into these differences further to see if additional modifications to align

these better can be made; however, no change to the rules is necessary in response to this comment.

Comment 47 (Ratio Requirement Variance):
Multiple comments were received regarding Rules 1240-04-01-.21(1)(a)4 and 1240-04-01-.22(1)(b)1), requesting clarify on what it means regarding allowing DHS to terminate ten percent (I0%) variance and requires fire approval, if necessary.

Response:
For group homes, this means that the home may exceed the ratio requirements by up to ten percent no more frequently than three days per week (does not apply to infant and toddler groups), but the Department may decide to not allow this in individual cases in conjunction with other violations. No change will be made in response to comments on this rule.

Comment 48 (Special Needs Children):
One commenter noted concern that none of the policies seem to address special needs children.

Response:
Special needs children are addressed and woven into the standard rules; they no longer have a separate rule just addressing their needs as we want to integrate them into the regular classrooms and all activities. The following statement was added to the rules to address this comment: If children with special needs are enrolled, Section 504 of the federal Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) guidelines shall be consulted regarding the number of caregivers that a reasonable accommodation of a child's disability may require.

Comment 49 (Parental Consent for Toilet Training):
A commenter suggested that parental consent to start toilet training does not need to be in the rules.

Response:
The rule provides that toilet training shall be accomplished in cooperation with the parents, and communication with parents shall be maintained throughout the process, so that the effort is a joint effort and decision. No change will be made in response to comments on this rule.

Comment 50 (Direct Supervision):
One commenter asked for clarity as to the term "direct supervision" in regards to sixteen (16) year-olds and meeting the adult:child ratio requirements: The rule says sixteen (16) year-olds may be used to meet ratio but they must always be under direct supervision, so what is direct supervision?

Response:
Direct supervision means the sixteen (16) year old is never left alone with children and always under the supervision of another educator. No change to the rules is necessary in response to this comment.

Comment 51 (Home Schooling):
With respect to Rule 1240-04-01-.05(6), Home Schooling, a commenter asked for clarity on the provision that home schooling should not take place during child care hours unless there is a "qualified" primary educator in addition to the home schooling parent/guardian, and does this still apply if the home schoolers are within the ratio.

Response:
Qualified educator means they meet the requirements for a homeschool educator. Home schooling should not take place during child care hours unless a qualified child care primary educator is present, in addition to the home schooling parent/guardian. This rule still applies if the home schoolers are within the ratio. No change will be made in response to comments on this rule.

Comment 52 (CCDF Funding):
A comment was received from a provider who wanted to know why we are worried about CCDF funding now.

Response:
The rules are not specifically about CCDF funding. However, the CCDBG Reauthorization requires states to be in compliance with federal requirements some which must be addressed in state rules.

Comment 53 (Age Requirement for Picking Up Children from Facilities):
A commenter requested to have the eighteen (18) year-old minimum age requirement to pick up children taken out of proposed Rule 1240-04-01-.11(d)(1) due to concerns about unnecessarily preventing sixteen (16) and seventeen (17) year-old licensed family members from picking up children.

Response:
The Department agrees with the concerns about the unintended impact of this change, and this requirement was remove, accordingly.

Comment 54 (Sign-In/Sign-Out Sheets):
Comments were received requesting to remove the requirement that parents must print their name at sign-in/sign-out rather than cursive from Rule 1240-04-01-.11.

Response:
This requirement for the parent/guardian to actually print their name has been removed in response to this comment. The rule now simply requires that the sign-in/sign-out sheet have a space for both their printed anme and signature.

Comment 55 ("Renovation" and "New Construction"):
Comments were received asking for clarity as to the definitions of "Renovation" and "New Construction" because these terms have been redefined recently in the OMB Uniform Guidance. A commenter suggested that major renovations should require additional approvals, but minor renovations like replacing a toilet or painting a classroom should not.

Response:
Construction should be defined in accordance with the rules and regulations of the Department of Commerce and Insurance, located at Rule 0870-02-03.01(1)(b). That definition explains what is meant by a renovation or construction. No change will be made in response to comments on this rule.

Comment 56 (Program Evaluators):
Our agency has been written up by our Program Evaluator for a parent skipping a line on a form and writing on the next one. This is not regulation of childcare but playing "Gotcha" with agencies.

Response:
This is a training issue that we will address with our program evaluators. No change to the rules is necessary in response to this comment.

Comment 57 (Report Card Requirements):
The following comments were received in regards to the Report Card Rules contained in Chapter 1240-04-07:

Commenters stated that the report card changes will cause good providers to quit or to keep children without a license.

Other expressed concern that daycare providers are required to have every lead teacher to obtain high school diploma just to receive 1 star.

Comments were received expressing concern that many providers will not get a CDA which will reduce the states number of 3 star providers.

One commenter requested to have assessments completed by the Licensing Evaluator who is in our programs at various times of the day unannounced.

An agency commented that they had a problem with gold sneakers being mandatory for participation, and the wording should exclude after school programs.

Response:
The Department's responses are as follows:

A number of changes were made to the report card rules in response to these comments, lessening some of the requirements to reach certain levels. The main requirements remained the same, as the star quality program exists to promote the highest quality childcare for our children, and the requirements to obtain star levels should be above licensing baseline requirements.

This requirement was amended to one educator in each class having a high school diploma or the equivalent. The Department made this change in response to provider comments about the difficulty in obtaining a level one assessment review if this was increased.

The requirement has been removed from Level 1 and 2, and only applies to Level 3 for the CDA requirement. This will alleviate the burden for those agencies who want to reach a Level 1 or Level 2 assessment, but maintain the requirement for the highest level of assessment rating.

The assessment should be conducted separately from licensing visits to maintain the integrity of the assessment process and the Environmental Rating Scales. Thus, no change was made in response to this rule.

Gold Sneaker requirements promote healthy children, and the requirements differ for programs operating less than a full day.

Comment 58 (Written Lesson Plans and After-School Programs):
A commenter asked whether the requirement in 1240-04-01-.22 to provide written lesson plans for each group of children apply to after-school programs.

Response:
The requirement applies to all programs, but the lesson plans for after care programs should be developmentally appropriate for school-age children.

Comment 59 (Parent Engagement Strategies):
A commenter asked whether the Department would provide agencies with parent engagement strategies to use pursuant to Rule 1240-04-01-.05(5)(e).

Response:
Each provider may engage parents in the manner that works best for that particular agency and set of parents. The strategies may differ from agency to agency, but may include items such as newsletters to parents, parent information meetings, etc., but family engagement is critical to program quality.

Comment 60 (Children's Records):
A comment was received regarding Rule 1240-04-01-.08, Children's Records, asking that we consider the plight of homeless families and add language to allow homeless children a grace period to obtain a well-child exam.

Response:
Rule 1240-01-04-.08(c) contains an exemption for children of homeless families and/or children in state custody, allowing them to receive care prior to providing required documentation as determined by the Department, and was amended in response to this comment to allow a sixty (60) grace period.

Comment 61 (Immunization Records):
One commenter requested to allow for school-age children to have a parent statement on file regarding immunizations in Rule 1240-04-01-.08(2)(e) rather than the actual documentation as this is already required by schools.

Response:
In response to this comment, the Department drafted an exception allowing parents of school-age children to submit a parent statement regarding current immunizations instead of the actual records.

Comment 61 (Record Modification/Correction):
A comment was received, noting that the requirement in Rule 1240-04-01-.08 that records be altered by striking through the incorrect information, writing the correct information, and including the date of correction and initials of persons making the change was "good practice," but records also noting that records be updated digitally. The commenter added that they had been written up for a parent skipping a line on a form and writing on the next one.

Response:
This provision has been modified in response to this comment to allow the agency to pre-print the parent/guardian's name, with the parent/guardian signing the child in/out. Keeping accurate records is important.

Comment 62 (Agency Finances):
A comment was received disputing the Department's right/need to see financial records for the facility as required in Rule 1240-04-01-.05(2).

Response:
Financial records are required upon application to ensure that the facility has sufficient funding to operate a safe agency for the benefit of the children. As such, no change will be made in response to this comment.

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 rules impact child care centers, group child care homes, family child care homes, and drop-in child care centers regulated by the Department of Human Services. The current number of these facilities governed by this rule is estimated as follows: Child Care Centers =1,701, Drop-in Child Care Centers = 9, Group Child Care Homes = 352, Family Child Care Homes = 266, Total of All Licensed Facilities = 2,319.

The required training hours required for all educators in the licensing rules are anticipated to have a negligible fiscal impact on providers, as the Department is committed to working with our partners that provide training to update, enhance, and increase the training opportunities provided through Department funding for providers.

Any increased cost associated with the resilient surfacing requirement is limited to Group and Family Child Care Homes, because Child Care Centers already meet this standard and Drop-in Child Care Centers do not have outdoor play areas. Although the rule requires resilient surfacing for some types of playground equipment, the rule does not require specific types of equipment on playgrounds. Therefore, home providers may choose to lessen the impact of the resilient surfacing requirement by limiting the kinds of equipment that require resilient surfacing.

The projected reporting, recordkeeping, and administrative costs required for compliance with the rule is minimal because most changes represent only minor tweaks to the existing agency procedures. There is a new requirement for reporting serious incidents to the Department via the toll free child care hotline. This reporting process, however, requires a modest amount of time on the provider's part and is less time intensive than many other reporting procedures.

The primary purpose of licensing is the protection of children while under the care of agencies licensed by the Department of Human Services. The basic requirements in this rule seek to maintain the adequate health, safety, and supervision of children while in a licensed care setting. The secondary purpose of licensing is to promote developmentally appropriate child care. The rule was drafted with the primary and secondary purpose in mind. Exemption from the requirements contained in this rule works against the purposes of licensing and could place children at risk of harm.

Programs participating in the Star Quality Program may have additional expenditures associated with acquiring CPR and first aid Certification to achieve either one, two, or three stars.

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 rules will have no projected 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;

These rules amend the childcare licensing and report card rules. The combined child care rules were reorganized into two categories—those applicable to all agencies and those applicable to centers, family homes, group homes, and drop-in centers. The following rules were moved into separate sections: Procedures for Obtaining a License, Criminal Background Check and State Registry Review Procedures, Record Keeping, Incident Reporting, Duty to Report Child Abuse and Neglect, and Emergency Preparedness.

Licensure Provision Amendments--allow the Department to deny license to an individual if previously a member of management at an agency where the license had been denied or revoked; requirements for multiple agencies operating at the same location; fees and applications should be submitted 60 days in advance of license expiration.

Staff Requirements—qualifications for staff were amended to require drug testing policies for staff with contact with children; teachers to be annually evaluated; updated first aid and CPR requirements; updated training requirements with substantial modifications in response to public comments received; use of a developmental checklist to conduct parent meetings; a state law background check amendment requiring substitutes providing services for more than 36 hours to have a background check and physical exam; and requiring staff personal belongings to be inaccessible to children. Educators sixteen years of age may be used to meet ratios if they are always under direct supervision.

Sleep Procedures—Safe sleep procedures were updated with an expanded description of prohibited soft bedding. Infants are to be touched every 15 minutes while sleeping. Crib requirements were updated to comply with safety standards.

Food Service Rules-- food served should be inaccessible to children until prepared appropriately for the age group; USDA guidelines should be followed if serving food; crock pots are prohibited for warming bottles, but bottle warming devices are permitted.

Playground requirement—require a fall zone of at least six (6) feet around all climbing equipment; protective surfaces should be have a protective surface recognized by CPSC as a shock absorbing resilient material maintained with a minimum average of 6 inches.

Program, Language and Literacy requirements—tummy time requirements for infants; reading to infants and toddlers; and using developmentally appropriate techniques to engage children. Restraining devices should not be used for more than 15 minutes except during meal times.

Transportation-- allow agencies that aren't licensed to transport to transport for up to four (4) field trips per calendar year; a provision was added allowing an agency to use a qualifying replacement vehicle for up to fourteen (14) business days without inspection by the Department of Safety.

Report Card Rules--add a new component entitled Child Health and Well-being; increase criteria for each of the levels; language was added to clarify that all agencies are eligible to receive at least the base rate of reimbursement paid through the Child Care Certificate Program if they enter into the contract with the Department to participate in the program; change to reflect that licensing enforcement actions will disqualify an agency from a star rating; no option to continue to retain bonus payments.

Legal Enforcement Actions-- definition of Suspension was modified; civil penalty schedule was increased for an injury to a child due to negligence or intentional disregard of licensing law or regulations $500-$700; and violations due to negligence or intentional disregard of regulations that results in children leaving the agency premises without supervision or children left unsupervised may carry a civil penalty of $750-$1,000. Additional items were added to the list of major violations.

(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;

42 U.S. Code § 9585(c); Tenn. Code Ann. § 71-4-501, et seq.

(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;

Child care centers, group child care homes, family child care homes, drop-in child care centers, their owners and employees, and parents of children enrolled in those facilities. Note that local government entities that provide, or contract to provide, child care are also affected by these rules. Those providers were not satisfied with the proposed rules as drafted, and numerous changes have been incorporated by the Department to satisfy their concerns, as noted in the public comments and response section. There may be a few rules that remain that they are not satisfied with but those rules are being enacted to protect children and promote quality childcare.

(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 A. Baker Deputy General Counsel Department of Human Services Citizens Plaza Bldg, 400 Deaderick Street Nashville, TN 37243 Rebekah.A.Baker@tn.gov (615) 350-4153

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

Rebekah A. Baker Deputy General Counsel Department of Human Services Citizens Plaza Bldg, 400 Deaderick Street Nashville, TN 37243 Rebekah.A.Baker@tn.gov (615) 350-4153

(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 A. Baker Deputy General Counsel Department of Human Services Citizens Plaza Bldg, 400 Deaderick Street Nashville, TN 37243

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

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Sequence Number: 05-02-18
Rule ID(s): 0753-0758
File Date: 5/1/18
Effective Date: 7/30/18

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 Human Services
Division:	Community and Social Services
Contact Person:	Tasha Owens-Green, Director, Childcare Services
Address:	One Citizen's Plaza Bldg., 8th Floor, 400 Deaderick St., Nashville, TN
Zip:	37243
Phone:	(615)-313-5485
Email:	Tasha.Owens-Green@tn.gov

Revision Type (check all that apply):

X 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**
1240-04-01	Standards for Group Child Care Homes
Rule Number	**Rule Title**
1240-04-01-.01	Scope and Purpose
1240-04-01-.02	Definitions
1240-04-01-.03	Requirements for Licensure as a Child Care Agency
1240-04-01-.04	Procedures for Obtaining a License
1240-04-01-.05	Ownership, Organization and Administration
1240-04-01-.06	Staff
1240-04-01-.07	Criminal Background Check and State Registry/Records Review Procedures
1240-04-01-.08	Record Keeping
1240-04-01-.09	Incident Reporting
1240-04-01-.10	Duty to Report Child Abuse and Neglect
1240-04-01-.11	Supervision
1240-04-01-.12	Health and Safety
1240-04-01-.13	Food and Food Service
1240-04-01-.14	Equipment for Children
1240-04-01-.15	Program, Language, and Literacy Development

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1240-04-01-.16	Physical Facilities
1240-04-01-.17	Transportation
1240-04-01-.18	Emergency Preparedness
1240-04-01-.19	Reserved for Future Use
1240-04-01-.20	Specific Requirements for Family Child Care Homes
1240-04-01-.21	Specific Requirements for Group Child Care Homes
1240-04-01-.22	Specific Requirements for Child Care Centers
1240-04-01-.23	Specific Requirements for Drop-In Child Care Centers

Chapter Number	**Chapter Title**
1240-04-02	Repealed
Rule Number	**Rule Title**

Chapter Number	**Chapter Title**
1240-04-03	Repealed
Rule Number	**Rule Title**

Chapter Number	**Chapter Title**
1240-04-04	Repealed
Rule Number	**Rule Title**

Chapter Number	**Chapter Title**
1240-04-05	Procedures Affecting Licenses of Child Care Agencies
Rule Number	**Rule Title**
1240-04-05-.02	Definitions
1240-04-05-.03	Licensing Process
1240-04-05-.04	Violations of Licensing Regulations

Chapter Number	**Chapter Title**
1240-04-07	Report Card and Rated Licensing for Child Care Agencies
Rule Number	**Rule Title**
1240-04-07-.02	Definitions
1240-04-07-.03	Report Card Evaluation
1240-04-07-.04	Program Assessment
1240-04-07-.05	Child Care Centers
1240-04-07-.06	Family Child Care Homes and Group Child Care Homes
1240-04-07-.07	Star Quality Program
1240-04-07-.08	Appeal Process

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION

CHAPTER 1240-04-01
STANDARDS FOR GROUP CHILD CARE HOMES

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1240-04-01-.01 INTRODUCTION.

(1) Purpose Of Licensing. The primary purpose of licensing is the protection of children. Minimum requirements seek to maintain adequate health, safety, and supervision of children while in a group care setting. Developmental (comprehensive) child care provides appropriate educational experiences, health services, and social services to children and their families.

(2) Types Of Agencies. Child care services may be offered by family day care homes, group day care homes, day care or child development centers, nursery schools, day nurseries, and kindergartens as well as schools or agencies providing before and after school care. Regardless of name, purpose, or auspices, all are subject to licensure unless exempt by law. (See specific definitions below.)

(3) General Standards And Requirements.

(a) Issuance of a license is based on achievement in meeting and maintaining compliance with minimum standards, or requirements, set forth in these rules. The license applies only to the agency, organization, or person(s) to which or to whom it is issued and only to the building and premises approved for the operation of the child welfare agency. In addition to state licensing requirements, it is the responsibility of the applicant/licensee to comply with all applicable local ordinances, including zoning ordinances and business tax licenses or other locally required permits.

(b) A day care home must comply with all requirements in these rules to receive an annual license. In addition to fire safety and environmental sanitation approval, the applicant must demonstrate good faith intent to comply with these rules before a conditional license may be issued. Failure to meet such requirements, or to demonstrate good intention in meeting them in the case of a conditional license, shall constitute grounds for denial of a license or for revocation of a license already issued.

(c) Appendices to these rules which contain fire safety, health, environmental sanitation regulations, summaries of applicable laws, and other information are incorporated herein by reference.

(4) Legal Basis For Licensing. *T.C.A. § 71-3-501 et seq.* provide for defining, inspection, licensing, and regulation of child welfare agencies including day care homes. (See Appendix A for summary of applicable laws.) The Tennessee Department of Human Services has responsibility for licensing all such agencies offering child care to groups of children.

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(Rule 1240-04-01-.01, continued)

~~(5) Definitions. For the purpose of this Chapter, the following definitions are applicable:~~

~~(a) Annual License. An annual permit issued by the Department to a child welfare agency or to a child care system central operator, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and requirements (rules) of the Department. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another.~~

~~(b) Approved Day Care Home. An approved day care home is a day care home which is related through contractual or employment arrangements to a central operator. The approved day care home must meet the same requirements and must have been evaluated by the central operator in the same manner as an individual licensed day care home.~~

~~(c) Caregiver(s). Any person who provides all or part of the care of a group of children, including the primary caregiver.~~

~~(d) Central Operator. The individual(s), or the corporation, partnership, cooperative, or other private or public entity of any kind, who or which, through their authorized representative(s), in addition to other activities, if any, owns, administers or operates a child care system. The central operator shall have ultimate responsibility for the administration/operation of any or all day care homes and child care centers in the system and shall, together with the primary caregiver, sign the application for a license. The central operator shall be the licensee.~~

~~(e) Child. A person under 17 years of age.~~

~~(f) Child Care. The wide variety of arrangements made by parents (or guardians) for the care outside of their home of children under 17 years of age, for less than 24-hour periods without transfer of custody.~~

~~(g) Child Care System. The existence of any day care homes approved or licensed and used by a licensed and incorporated day care agency or a licensed child-placing agency in its work; or the existence of two (2) or more facilities used for day care purposes which facilities are under the ownership, administration or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind.~~

~~(h) Commissioner. The executive head of the Department of Human Services, appointed by the Governor.~~

~~(i) Conditional License. A permit issued by the Department to a new child welfare agency or to a new child care system central operator, permitting and authorizing the licensee to begin child care operations. It is valid for 90 days and is issued upon application by the operator only if the staff and facility do not present any apparent hazards to the children that may be in care and only if the facility has received fire safety and environmental sanitation approval. If, at the end of the 90-day period, evidence is provided by the applicant/ licensee that such child welfare agency is suitable and properly managed and that the agency is in compliance with these rules, the Department will issue an annual license to the child welfare agency.~~

~~(j) Day Care. Synonymous with definition of child care, above.~~

~~(k) Department (DHS). The Tennessee Department of Human Services and its representatives.~~

(Rule 1240-04-01-.01, continued)

(l) Family Day Care Home. A home (an occupied residence) operated by a person for the purpose of receiving therein a minimum of five and a maximum of seven children under 17 years of age, who are not related to such person and whose parent(s) or guardian(s) are not residents in the same house, for less than 24 hours per day for care, without transfer of legal custody.

(m) Group Day Care Home. Any facility operated by a person, social agency, corporation or institution, or any other group which receives a minimum of eight and a maximum of 12 children (and up to three additional school-age children who will only be present before and after school, on school holidays, on school snow days, and during school summer vacation) for less than 24 hours per day for care outside their own homes, without transfer of legal custody. Before a group day care home opens, fire safety and environmental inspectors must approve the facility.

(n) High School Diploma. As used in the context of caregivers' qualifications, refers to a document recognizing graduation from an accredited institution, public or private, based on the issuing state's required number of academic credits, including passing a GED test. As used in this Chapter, a certificate or statement of attendance or similar document, or correspondence or video courses, do not qualify as or for a high school diploma.

(o) Infant. A child who is six weeks through 15 months of age.

(p) Law. The licensing law as contained in *T.C.A. §§ 71-3-501* through *71-3-531*, and related statutes or other referenced statutes or regulations.

(q) Licensee. The person(s), agency(ies), or central operator to whom a license is issued and who must assume ultimate responsibility for a day care home or homes. In a single-site home, the licensee is the primary caregiver. In a child care system of approved homes, the central operator is the licensee. (The term as used herein also refers to an agency.)

(r) Parent. A biological or adoptive parent, guardian, or custodian who has primary responsibility for a child.

(s) Preschool Child. A person who is 31 months through five years of age. The term includes infants and toddlers.

(t) Primary Caregiver. The adult who is responsible for direct care and supervision of children in a day care home and for the daily operation of a home. In a group day care home which is not operated by a central operator, the primary caregiver is the licensee. Duties may include hiring, training, and supervision of other caregivers.

(u) School-age Child. A person who is five years of age and in kindergarten or older (refers to kindergarten through grade six).

(v) Staff. Full and part-time caregivers, employees, and volunteers, if any.

(w) Substitute. Paid or unpaid persons who are replacement for regular staff. The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the home. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-04-01-.03(1)(a)6 and shall meet the same requirements for regular staff for physical examinations as required by 1240-04-01-.06(3); provided, however, for purposes of 1240-04-01-.03(1)(a)6, persons serving

(Rule 1240-04-01-.01, continued)

temporarily as caregivers 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 rule.

(x) Toddler. A child who is 16 months through 30 months of age.

(y) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. The names, addresses, telephone numbers and dates of service for all volunteers shall be recorded in the staff personnel records of the home.

(6) Procedures For Getting A License.

(a) The Department offers one prelicensure consultation session. When an individual or group is giving consideration to opening a child care service/business, the local county office of the Tennessee Department of Human Services should be contacted. The individual or group will be given the name of a licensing representative who will serve as their consultant.

(b) The Department will offer prelicensure training to prospective providers of day care. Interested persons or groups should contact a licensing representative to determine the date of the next meeting in their area.

(c) The licensing representative will inform the interested individuals or entity of the appropriate time to apply for a license. The group day care home application fee is $10.

(d) Upon satisfaction of the following minimum requirements, a conditional license may be issued:

1. Primary caregiver's qualifications meet the requirements (see Chapter 1240-04-01-.03);

2. Three satisfactory references for the primary caregiver are verified;

3. Physical facilities receive fire safety and environmental approval; and

4. If staff and facility do not present any apparent hazards to the children who may be in care.

(e) Receipt of an application begins the evaluation process which is completed with the issuance or denial of an annual license. This process includes:

1. At least two visits to the day care home, one of which is unannounced;

2. Observation of caregivers' interaction with children;

3. Review of agency records;

4. Request for written and oral information related to licensure requirements; and

5. Use of an evaluation checklist, itemizing requirements and noting compliance or noncompliance, a copy of which is left with the applicant.

(Rule 1240-04-01-.01, continued)

(f) Upon issuance of an annual license, the licensee is expected to maintain compliance with requirements throughout the year.

(g) Near the end of a licensing term, the licensee will be notified by mail of a scheduled reevaluation for a new license. Application for a renewed license must be made prior to the expiration of the existing license. The reevaluation process is similar to the initial evaluation, but agencies receiving two consecutive annual licenses are rewarded with a shorter, less involved reevaluation and/or fewer reevaluations. A home accredited by the National Association for Family Day Care (NAFDC) may be reevaluated every three years. (See Appendix A for further information regarding the licensing process.)

(7) Licensing Action And Appeal Rights. Procedures for applications, suspensions, denials, revocations of licenses and appeal rights are governed by Chapter 1240-05-11.

(8) Grace Period. Because the amount of in-service training required has been increased, new agencies and new primary caregivers will be granted a reasonable grace period if needed to obtain the required hours of training.

(9) Investigations Of Child Abuse And Neglect; Custodial Authority Of Children.

(a) A child care provider is required by law to cooperate with the Department and other investigators by reporting any suspected child abuse and neglect to the Department. The child care provider must further cooperate by providing access to the records of children and staff and by allowing investigators to interview children and staff.

(b) A child care provider should protect the child by requesting the investigator's identification and by knowing who is entitled to custody of the child. An investigator may take a child off of the premises of the agency if he/she has obtained custody of the child through voluntary placement agreement with the parent, through court order or through emergency assumption of custody under *T.C.A. § 37-1-113* without parental permission or if the child's parent or legal guardian is present and approves, or in conjunction with investigative procedures under the child abuse laws.

(c) Child care providers do not have a right to be present during interviews with staff or children or to receive information or results of the interviews or investigations concerning child abuse or neglect unless directly related to efforts to enforce the child abuse or licensing laws.

Authority: *T.C.A. §§ 4-5-201 et seq., 71-1-105, 71-3-501 et seq., and Acts 2000, ch. 981, §§ 8 and 14.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed March 17, 1980; effective June 29, 1980. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9,1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996. Amendment filed September 29, 2000; effective December 13, 2000.*

1240-04-01-.02 OWNERSHIP AND ADMINISTRATION.

(1) Ownership/Sponsorship.

(a) The licensee of a single-site group day care home shall be the primary caregiver.

(b) In a child care system, an adult person or persons shall be designated as having ultimate responsibility for the administration/operation of any or all day care home(s) in the system. Such person(s) shall be known as the central operator. The central operator and a primary caregiver shall sign an application for a license for each home sponsored (unless sponsoring agency is classified public).

(Rule 1240-04-01-.02, continued)

(c) The name, address, and phone number of an applicant, central operator, and all primary caregivers shall be made known to the Department of Human Services and to parents of children enrolled in the home(s) and become public record.

(d) The applicant/licensee shall notify DHS before changing location of a group day care home.

(e) The primary caregiver shall assume responsibility for daily operation of a day care home and shall meet specified qualifications prior to licensure. (See Rule 1240-04-01-.03.)

(f) Day care agencies sharing common land shall be located in separate facilities and shall not share equipment or facilities with the exception of outdoor equipment and play area, which shall be used by children from one agency at a given time.

(2) Policies.

(a) A new primary caregiver shall complete in the presence of the Licensing Counselor the "Checklist of Services" or write out a Statement of Purpose.

(b) A group child care home shall have written policies that include/address, at a minimum:

1. Services offered;

2. Written parental permission for observation of children by non-child care agency staff;

3. Provision for children's individual needs;

4. The home's admission policies and enrollment procedures;

5. Rates;

6. Fees charged, including late fees (if applicable) and plan for payment;

7. Behavior management techniques;

8. Hours of operation;

9. Inclement weather;

10. Emergency policy;

11. Whether the environment is smoke free;

12. Meal service policy;

13. Handling of children's personal belongings;

14. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-01-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility; and

15. Expulsion of a child, which policy shall be:

(Rule 1240-04-01-.02, continued)

(i) Clearly articulated to staff and parents;

(ii) Developmentally appropriate and consistent;

(iii) Non-discriminatory;

(iv) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA);

(v) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur; and

(vi) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

(c) A policy statement signed by both the primary caregiver and the parent shall be given to the parent, and a signed copy or other documentation that parent received a copy shall be kept on file.

(3) Enrollment of Children and Parent Involvement.

(a) Children shall be at least six weeks of age before entering day care.

(b) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days. [See 4(e) below and Chapter 1240-04-01-.06.]

(c) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: a pre-placement visit is not required for children of homeless families.

(d) A parent handbook that includes a copy of the agency's policies, operating procedures, information on parent engagement, and the Department's Summary of Licensing Requirements shall be supplied to the parent(s) upon admission of the child. The agency's policies shall include:

1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-01-.02 (b)(14)], and

2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk.

(e) During normal hours of operation, parents shall be permitted access to their children, and ready access to all licensed areas of the home and premises shall be granted to Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).

(f) Parents must be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.

(4) Records.

The following records shall be kept and shall be available to the Department:

(a) An annual operating budget (actual or projected), which includes a statement of income and expenditures. Adequate financing of the day care operation shall be maintained.

(b) Staff records including:

1. Recommendations from three nonrelated references on each applicant and caregiver. The central operator's/primary caregiver's reference information shall be given to the licensing counselor;

2. Training received during the year for each caregiver;

3. Reserved;

4. Adult health records.

(c) Children's health records.

(d) Daily attendance records on children; on staff if more than one caregiver.

(e) A record on each child which includes the following information:

1. Name, date of birth, name of parent(s), home address, business address and telephone, work hours, child's background information, transportation plan, and the names of persons allowed to pick the child up.

2. The following information shall be kept where it can be found quickly in an emergency: The name, address, and telephone number of the person parents wish to be called if they cannot be reached. The name, address, and telephone number of a doctor to call in an emergency; written permission of parent authorizing emergency medical care.

3. A written plan of how the primary caregiver intends to communicate daily with parents of every child below 31 months of age.

(f) A child's record shall be kept in a central location and shall be kept for one (1) year following the child's leaving the agency. Exception: The health record shall be returned to the parent/guardian upon request when the child leaves the agency.

(g) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

(5) Right to Privacy/Confidentiality. The licensee and caregivers shall not disclose or knowingly permit the use of by other persons any information concerning a child or family except as required by law or regulation.

(Rule 1240-04-01-.02, continued)

(6) Posting of License. During the hours of operation, an up-to-date license to operate a group day care home shall be posted near the main entrance where anyone entering may see it.

(7) Liability and Medical Payment Insurance Coverage.

(a) General liability, automobile liability and medical payment insurance coverage shall be maintained on the vehicles owned, operated or leased by the child care agency and on the operations of the child care agency's facilities.

(b) Automobile liability coverage shall be maintained in a minimum amount of Three Hundred Thousand Dollars ($300,000) combined single limit of liability. The requirement of this subparagraph only applies to child care programs that transport children.

(c) General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Three Hundred Thousand Dollars ($300,000) per occurrence and Three Hundred Thousand Dollars ($300,000) general aggregate coverage, or Three Hundred Thousand Dollars ($300,000) per occurrence.

(d) Medical payment coverage, as the primary 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 child care agency under subparagraph (b), and in the minimum amount of Five Thousand Dollars ($5,000), for injuries to children resulting from the operation of the child care agency under subparagraph (c).

(e) The requirements of this paragraph shall not apply to an agency 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 coverages and the liability limits required by these rules.

(f) 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 child care agency and shall be available for review by the Department's licensing staff.

(8) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-502(a)(4)(B), and Acts 2000, ch. 981, §§ 3(a)(4) and 14.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed August 30, 2001; effective November 13, 2001. Amendment filed November 21, 2002; effective February 4, 2003. Emergency rules filed July 1, 2016; effective through December 28, 2016. Amendments filed September 28, 2016; effective December 27, 2016.*

1240-04-01-.03 STAFF.

(1) Qualifications.

(Rule 1240-04-01-.03, continued)

~~(a) All Caregivers.~~

~~1. Every staff person, including volunteers, practicum students, and substitutes, shall be physically, mentally, and emotionally capable of performing his/her duties satisfactorily.~~

~~(i) Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.~~

~~(I) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug. For purposes of this part, the term "drug" shall include alcohol.~~

~~(II) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.~~

~~(ii) Safety Plans.~~

~~(I) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.~~

~~(II) The Department may otherwise require, in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.~~

~~(III) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).~~

~~(IV) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.~~

~~(V) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's~~

(Rule 1240-04-01-.03, continued)

Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.

(VI) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

2. A person who has a physical, mental, or emotional condition which is in any way harmful to children shall not be present with the children.

3. To be counted in the caregiver to child ratio, caregivers shall be at least 16 years of age and able to read and write, and must be supervised by an adult.

4. Caregivers shall be of suitable character to work with young children.

5. Training of Employees

(i) Training of New Employees – Prior to assuming duties, each new employee shall receive documented instruction in and have a working knowledge of:

(I) Program philosophy and policies;

(II) Job description;

(III) Emergency health and safety procedures;

(IV) Behavior management procedures;

(V) Detection, reporting, and prevention of child abuse;

(VI) Procedures for receiving and releasing children;

(VII) Safe sleep procedures;

(VIII) Shaken baby syndrome/abusive head trauma;

(IX) Meal service and safe food preparation policies;

(X) Supervision during high risk activities such as eating and outdoor play;

(XI) Food allergies;

(XII) Expectations for communications with parent/guardian;

(XIII) Disease control and health promotion;

(XIV) An overview of licensing requirements;

(XV) Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

(Rule 1240-04-01-.03, continued)

(XVI) A minimum of two (2) hours pre-service training as recognized by the Department; and

(XVII) Documentation of the requirements in this subparagraph (i) shall be maintained in the staff file.

(ii) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(IX) Precautions in transporting children (if applicable); and

(X) First aid and pediatric cardiopulmonary resuscitation.

6. Criminal history and abuse registry background checks; appeals; exemptions.

(i) The following persons are required to have a background check no more than (90) days before having access to any child care agency:

(I) Any person who owns or operates a child care agency and will have significant contact with children;

(II) Any person who applies to work in a child care agency as an employee, director or manager;

(III) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and

(Rule 1240-04-01-.03, continued)

(IV) Any person who is fifteen (15) years of age or older who will reside in a child care agency.

(ii) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

(iii) Background checks are required for all staff at least every five (5) years.

(iv) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

(I) The individuals identified in subparagraph (1)(a) above shall:

I. Complete a criminal/juvenile administrative findings history disclosure form;

II. Submit fingerprint samples for a criminal and juvenile records background check; and

III. Complete a criminal, juvenile background check/state review consisting of:

A. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;

B. An investigation of a person's juvenile records history that is available to the TBI;

C. A review of any available juvenile court records, if determined necessary by DHS;

D. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

E. A search of the TN sexual offender registry (SOR), maintained by the TBI; and

F. A search of the DCS registry of indicated perpetrators of abuse or neglect of children.

G. A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(v) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(I) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

(II) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

(III) Failure to Complete or Disclose Information on Criminal Disclosure Form.

I. Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

II. Failure to disclose all criminal and administrative history information may result in the person being:

A. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and

B. Referred to the appropriate district attorney for criminal prosecution.

(IV) The Department will pay for the costs of performing one background check per person per agency per year.

(V) The child care agency shall be responsible for costs associated with the background check if:

I. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

II. The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or

III. The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

(vi) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

(I) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

I. Been convicted of, pled guilty or no contest to (or to a lesser included offense);

(Rule 1240-04-01-.03, continued)

II. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

III. Been named in a pending warrant, indictment, presentment, or petition.

(II) An excludable criminal offense involves:

I. The physical, sexual or emotional abuse or neglect of a child;

II. A crime of violence against a child, or any person;

III. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

IV. Any offense that presents a threat to the health, safety or welfare of children.

V. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):

A. Aggravated arson (T.C.A. § 39-14-302);

B. Aggravated assault (T.C.A. § 39-13-102);

C. Aggravated child abuse (T.C.A. § 39-15-402);

D. Aggravated child neglect (T.C.A. § 39-14-302);

E. Aggravated cruelty to animals (T.C.A. § 39-14-212);

F. Aggravated kidnapping (T.C.A. § 39-13-304);

G. Aggravated rape (T.C.A. § 39-13-502);

H. Aggravated rape of a child (T.C.A. § 39-13-531);

I. Aggravated robbery (T.C.A. § 39-13-402);

J. Aggravated sexual battery (T.C.A. § 39-13-504);

K. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

L. Aggravated vehicular homicide (T.C.A. § 39-13-218);

M. Arson (T.C.A. § 39-14-301);

N. Assault (T.C.A. § 39-13-101);

O. Carjacking (T.C.A. § 39-13-404);

(Rule 1240-04-01-.03, continued)

~~P. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);~~

~~Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;~~

~~R. Criminal exposure to HIV (T.C.A. § 39-13-109);~~

~~S. Criminal homicide (T.C.A. § 39-13-201);~~

~~T. Criminally negligent homicide (T.C.A. § 39-13-212);~~

~~U. Cruelty to Animals (T.C.A § 39-14-202);~~

~~V. Custodial interference (T.C.A. § 39-13-306);~~

~~W. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);~~

~~X. Domestic assault (T.C.A. § 39-13-111);~~

~~Y. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);~~

~~Z. Especially aggravated burglary (T.C.A. § 39-14-404);~~

~~AA. Especially aggravated kidnapping (T.C.A. § 39-13-305);~~

~~BB. Especially aggravated robbery (T.C.A. § 39-13-403);~~

~~CC. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);~~

~~DD. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);~~

~~EE. False imprisonment (T.C.A. § 39-13-302);~~

~~FF. First degree murder (T.C.A. § 39-13-202);~~

~~GG. Incest (T.C.A. § 39-13-302);~~

~~HH. Indecent exposure (T.C.A. § 39-13-511);~~

~~II. Involuntary labor servitude (T.C.A. § 39-13-307);~~

~~JJ. Kidnapping (T.C.A. § 39-13-105);~~

~~KK. Rape (T.C.A. § 39-13-503);~~

~~LL. Rape of a child (T.C.A. § 39-13-522);~~

~~MM. Reckless endangerment (T.C.A. § 39-13-103);~~

~~NN. Reckless homicide (T.C.A. § 39-13-215);~~

~~OO. Robbery (T.C.A. § 39-13-401);~~

~~PP. Second degree murder (T.C.A. § 39-13-210);~~

~~QQ. Sexual battery (T.C.A. § 39-13-505);~~

~~RR. Sexual battery by an authority figure (T.C.A. § 39-13-527);~~

~~SS. Sexual exploitation of a minor (T.C.A. § 39-17-1003);~~

~~TT. Solicitation of a minor (T.C.A. § 39-13-528);~~

~~UU. Stalking (T.C.A. § 39-17-315);~~

~~VV. Statutory rape (T.C.A. § 39-13-506);~~

~~WW. Statutory rape by an authority figure (T.C.A. § 39-13-532);~~

~~XX. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);~~

~~YY. Vehicular assault (T.C.A. § 39-13-106);~~

~~ZZ. Vehicular assault while intoxicated (T.C.A. § 39-13-106);~~

~~AAA. Vehicular homicide (T.C.A. § 39-13-213);~~

~~BBB. Voluntary manslaughter (T.C.A. § 39-13-211); and~~

~~CCC. Weapons offenses (unlawful possession, carrying, use, etc.).~~

~~(III) No person may be employed as a driver or serve as a driver for a child care agency if the person:~~

~~I. Is currently charged with; or~~

~~II. Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:~~

~~A. Vehicular homicide;~~

~~B. Accidents involving death or personal injury;~~

~~C. Accidents involving damage to a vehicle;~~

~~D. Driving under the influence of an intoxicant, drug or drug producing stimulant; or~~

~~E. Any felony involving the use of a motor vehicle while under the use of any intoxicant.~~

~~(vii) Exclusion from access to child care based on a listing on a state registry.~~

(I) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

I. Listed on the Vulnerable Persons Registry;

II. Listed on the Sexual Offender Registry; or

III. Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

(viii) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

(I) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

I. For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

(ix) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

(x) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.

(xi) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

(xii) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.

(xiii) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.

7. Reserved.

8. Reserved.

9. All caregivers shall be able to explain emergency procedures to follow in case of fire, serious injury or illness of a child or a caregiver, or disaster.

(Rule 1240-04-01-.03, continued)

10. All caregivers shall have training in detection, reporting, and prevention of child abuse.

11. All caregivers shall have a minimum of two hours training annually, in addition to other required training in specific subject areas.

(b) Primary Caregiver.

1. Prior to issuance of a license, the primary caregiver in a single-site home and all primary caregivers in a system shall:

(i) be 18 years of age or older;

(ii) be able to read and write English; and

(iii) have earned a high school diploma (See definitions in Section 1240-04-01-.01).

2. A primary caregiver shall complete a DHS-sponsored child care orientation class within three months of licensure.

3. A substitute for the primary caregiver shall be at least 18 years of age.

4. A primary caregiver shall present evidence of receiving eight hours of training, consultation, or technical assistance annually in child care or a related field. After the first year of licensure (in any category), this training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety or first aid, etc.

5. A primary caregiver shall not be employed at any other occupation during child care operating hours.

(c) Central Operator.

1. In order to receive a license, the central operator or person in charge of the child care system (or multiple homes) shall have:

(i) Graduated a four-year college or university and completed one year of full-time work experience with a group of young children; or

(ii) Completed some formal college training in early childhood education or child development (or related field), or received a Child Development Associate (CDA) credential or National Association of Family Day Care (NAFDC) accreditation, and completed one year of full-time work experience with a group of young children; or

(iii) A high school diploma or its equivalent (see "Definitions" in Chapter 1240-04-01-.01) and two years full-time work experience with a group of young children.

2. The central operator or person in charge of the child care system shall complete a DHS-sponsored child-care orientation class within three months of licensure.

(2) Caregiver to Child Ratios and Supervision.

(Rule 1240-04-01-.03, continued)

(a) An adult caregiver (at least 18 years of age) shall be present and supervising children in care.

(b) The total number of children (including "related" children under nine years of age) shall not exceed 15.

(c) If enrollment drops to seven or fewer children, family day care home ratios shall be met.

(d) If four (4) or more infants/toddlers are enrolled, they shall have their own space and their own caregiver for their safety and security and for infection control. Children shall be cared for in small groups as much as possible, but may be mixed for short periods. Barriers shall be sufficient to provide separation without isolating children.

(e) Staff Ratios and Chart.

1. A group day care home shall have 1, 2, or 3 caregivers, based upon the ages and numbers of children served.

2. Before eight (8) or more children are enrolled, the facility shall be approved by a fire safety inspector and by an environmentalist.

3. If any child's physical or mental condition requires special care, or if children under nine (9) years of age living in the home increases the group size, or when a field trip is taken off the premises, the number of caregivers shall be increased by one (1).

4. One of the following adult:child ratios shall be met. (A chart is also provided at the end of part 4.):

(i) Group Day Care Homes with One Caregiver:

(I) If any number of children up to the maximum of fifteen (15) children are present, and no child is under three (3) years of age, at least one (1) caregiver shall be present.

(II) If over twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.

(ii) Group Day Care Homes with Two Caregivers:

(I) If any number of children up to the maximum of fifteen (15) children are present, and at least one (I) but not more than nine (9) children are present who are under the age of three (3), then at least two (2) caregivers shall be present. If more than four (4) of those children are under two (2) years of age, three (3) caregivers shall be present.

(II) If over twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.

(iii) Group Day Care Homes with Three Caregivers:

(I) If any number of children up to the maximum of fifteen (15) children are present, and ten (10) or more children present are under three (3) years of age, there shall be three (3) caregivers present.

(Rule 1240-04-01-.03, continued)

(II) If over twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.

Caregivers Required[4]	Maximum Number of Children and Ages[2]
1	Maximum of 15 present and no child present is under three (3) years of age.[3]
2	Maximum of 15 present and at least one (1) child up to a maximum of nine (9) children present are under three (3) years of age, but no more than four (4) present are under two (2) years of age.[3]
3	Maximum of 15 if ten (10) or more are under three (3) years of age.[3]

[1] If any child's physical or mental condition requires special care, if children under 9 living in the home increases the group size, or when a field trip is taken off premises, the number of caregivers required shall be increased by one.

[2] Before 8 or more children are enrolled, the facility shall be approved by a fire safety inspector and by an environmentalist.

[3] If over 12 children are enrolled, the additional children shall be of school age and a school age program shall be provided.

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105, 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts 2000, ch. 981, §§ 8 and 14, Acts 2003, ch. 412, § 2, and Acts 2016, ch. 839.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed April 30,1996; effective July 14, 1996. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed September 29, 2003; effective December 13, 2003. Emergency rules filed July 1, 2016; effective through December 28, 2016. Amendments filed September 28, 2016; effective December 27, 2016.*

1240-04-01-.04 EQUIPMENT.

(1) General.

(a) All equipment shall be well made and safe with no sharp edges, splinters, or other conditions which present a hazard for children.

(b) Unsafe equipment shall be repaired or removed from the day care home or play yard at once.

(c) Babies and toddlers shall have additional equipment for comfort and safety, such as cribs, high chairs, etc.

(d) School-aged children shall have educational materials such as puzzles, craft items, etc., and equipment suitable for their size, interests, and needs.

(Rule 1240-04-01-.04, continued)

(2) Indoor Play Equipment.

(a) The day care home shall have play equipment for active and quiet play, suitable for the children's ages and interests and for children with special needs, and for all activities required in the Program Section. (See Chapter 1240-04-01-.05.)

(b) Play materials and equipment shall be in sufficient quantity to provide twice as many activities as there are children at a given time.

(c) Play materials and equipment shall be placed in such a way that children can get it and return it when needed, so that they can grow in independence.

(3) Outdoor Play Equipment.

(a) Enough play equipment shall be provided so that each child can take part in many kinds of play each day.

(b) Equipment shall be placed to avoid accidents, for example, swings placed out of traffic paths.

(c) If there are climbers or swings, they shall be placed on a resilient surface and not over concrete, asphalt, or similar surface such as hard-packed dirt.

(d) Climbers, swings, and other large equipment shall be securely anchored.

(e) If used, retainer structures for loose material, such as sand or pea gravel, shall be placed at least six (6) feet from the perimeter of play structures.

Authority: *T.C.A. §§ 71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996.*

1240-04-01-.05 PROGRAM.

(1) Activities.

(a) A balanced daily program of developmentally appropriate activities shall be provided which includes some of the following: reading to and talking with children; art and music activities; building and manipulating toys; and dramatic play activities such as doll play, housekeeping, and role play. Children shall also be allowed to participate in age-appropriate home-type activities, such as cooking, cleaning, gardening, and washing clothes as a meaningful learning experience.

(b) There shall be a written and posted schedule of daily routine activities.

(c) Children shall be given opportunity to make their own choices in some activities. Other play activities shall be planned by the caregiver.

(d) Children shall not spend all day in one room, unless the room has at least 30 square feet of usable play space per child.

(e) Television, video tapes, and movies shall be limited to two hours per day and to programs designed for children's education and/or enjoyment. Programs/movies with

(Rule 1240-04-01-.05, continued)

violent or adult content (including "soap operas") shall not be permitted in children's presence. Other activities shall be available to children during television/movie viewing.

(f) Except when the weather is extremely bad, children of all ages, including infants and toddlers, shall have outdoor play each day.

(2) Discipline.

(a) Discipline techniques used shall be positive, appropriate to the age level and needs of children in care; designed to help children learn and maintain self-control and self-esteem; and shall not involve physical punishment, or deprivation of food, rest, or toileting. (Physical, or corporal punishment is the infliction of bodily pain as a penalty for the child's behavior of which the punisher disapproves.)

(b) Praise and encouragement of good behavior shall be used instead of noticing only unacceptable behavior.

(c) Punishment which is shaming, humiliating, frightening, or injurious to children shall not be used.

(3) Physical Care - Naps.

(a) Preschool children shall have a reclining rest period according to their individual needs. School-aged children shall be allowed to nap if needed but not forced to do so.

(b) Each toddler who is able to walk and each preschooler shall have individual napping space, something soft and at least two inches thick to sleep on, and clean bedding. (Examples: couch with cover, thick sleeping bag or foam pad, family bed with cover, or cot with cover.)

(c) Each child under 15 months of age and any child unable to walk shall have his/her own crib or playpen and bedding for napping.

(d) Because of the risk of Sudden Infant Death Syndrome (SIDS), sleeping infants (under 13 months) shall be checked every 30 minutes by touching them. If a child appears not to be breathing, emergency medical assistance shall be sought immediately.

(e) Each child shall have his or her own clean sheet and coverlet.

(f) After a child has rested for a reasonable period, she/he shall be allowed to get up.

(4) Physical Care - Toilet Training.

(a) Toilet training shall never be started until a child has been in the day care home long enough to feel comfortable.

(b) Toilet training shall not be started until a child is able to understand, to do what is asked of them, and to let their need to use the bathroom be known.

(c) Children shall not be made to sit on the potty or toilet for more than five minutes.

(d) Children shall be diapered or cleaned when needed in a safe, sanitary manner.

(5) Personal Safety Curriculum.

(Rule 1240-04-01-.05, continued)

~~(a) For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.~~

~~(b) Personal Safety Curriculum Components and Guidelines.~~

~~1. The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.~~

~~2. The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider 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 all forms of child abuse.~~

~~(c) Personal Safety Instruction Requirements for School-Age Children.~~

~~1. For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.~~

~~2. Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this paragraph (5) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.~~

~~3. Documentation of Personal Safety Instruction in Educational Settings.~~

~~(i) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as required by this paragraph (5) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.~~

~~(ii) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this paragraph (5).~~

~~(d) Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.~~

~~(e) 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.~~

~~(f) If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.~~

(Rule 1240-04-01-.05, continued)

~~***Authority:*** *T.C.A. §§ 4-5-202, 4-5-209, 71-1-105(12), 71-3-501, 71-3-502(l), 71-3-502 et seq., and 2008 Tenn. Pub. Acts 1032.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed June 7, 1982; effective September 30, 1982. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed June 27, 1985; effective September 13, 1985. Amendment filed October 9, 1987; effective January 27, 1988. Amendment filed April 30, 1996; effective July 14, 1996. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.~~

~~**1240-04-01-.06 HEALTH AND SAFETY.**~~

~~(1) Children's Health Records.~~

~~(a) Before a preschool child older than eight weeks is accepted for care, he/she shall have proof of being age-appropriately immunized against the following diseases: diphtheria, tetanus, pertussis, polio, measles, mumps, rubella, and hemophilus influenza type B by having a certification form signed or stamped by a certified health care provider. (Children of six through eight weeks of age may be enrolled before immunizations are begun.)~~

~~(b) Records of children older than 18 months shall state whether immunizations required for care are complete, and if not complete, when future immunizations will be given. If immunizations are not continued on time by the parent, the child shall not remain in care. If a child has any known allergies, they shall be indicated in the child's health record. Foreign-born children shall also present evidence of tuberculosis (TB) screening. (See Appendix B for information about TB screening.)~~

~~(c) A copy of each infant/toddler's or preschool child's immunization record shall be on file in the day care home and available to appropriate staff. (Children of six through eight weeks of age may be enrolled before immunizations are begun.)~~

~~(d) Before a school-aged child is accepted for care, the caregiver shall have on file a statement from the parent (or school) that the child's immunizations are current and that their health record is on file at the specified school which the child attends.~~

~~(e) If children with mental, physical, or sensory impairment or with a medical disorder are enrolled, their health records shall include a physician's statement which identifies the disabling condition and which gives the physician's special instructions for the child's care.~~

~~(f) Before infants or toddlers aged 30 months and under are enrolled, they shall have proof of a physical examination within three months prior to admission, signed or stamped by a physician or health care agency. Each infant shall have on file an official health record of the first medical check-up at eight weeks of age.~~

~~(g) Exceptions to the above requirements in this section shall be made when:~~

~~1. The child's physician or the Department of Health provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or~~

~~2. The child's parent provides a written statement that such immunizations conflict with his/her religious tenets and practices.~~

~~3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.~~

(h) Accidents and injuries to children shall be noted in their records, including date and time occurred, description of circumstances and action taken by caregivers.

(2) Children's Health Requirements.

(a) Children shall be checked upon arrival and observed for signs of communicable disease during the day. Every sign of illness or injury shall be reported to the parent as soon as possible but no later than the end of the day in which it occurred.

(b) Parents of every child enrolled shall be notified if one of the following communicable diseases has been introduced into the day care home: hepatitis A, food-borne outbreaks (food poisoning), salmonella, shigella, measles, mumps, rubella, pertussis, polio, hemophilus influenza type b, meningococcal meningitis. Providers shall report the occurrence of the above diseases to the local health department.

(c) Prescribed and nonprescribed, internal and external medication shall not be administered to a child except under the direction of a physician or with the parent's written authorization. Medications or drugs shall be labeled with the child's name and specific instructions for administering them. Administration of medications and noticeable side effects shall be charted and reported to parents. Medication shall not be handled by children and shall be stored so as to be inaccessible to children.

(d) Good hygiene shall be practiced, such as frequent handwashing; one-time use of tissues, napkins, and washcloths; proper storage and use of personal articles; and hygienic diapering techniques.

(3) Caregivers' Health Requirements.

(a) Before beginning to work, each caregiver shall have written evidence of a physical examination and statement that the caregiver's general physical and mental condition will permit the individual to direct and actively participate in the activities of a group of young children. The form or statement shall be signed or stamped by a physician.

(b) An updated statement of each caregiver's physical health shall be obtained every third year or more often if deemed necessary by the Department. A statement of a caregiver's mental or emotional health shall be obtained from a psychiatrist or clinical psychologist when deemed necessary by the Department.

(c) Each caregiver (whether employed full-time or part-time), volunteers, and others who are in contact with the children 30 or more calendar days per year shall have on file evidence of a tuberculin skin test or chest X-ray with negative results, in accordance with Department of Health recommendations. (See guidelines in Appendix B.)

(d) Caregivers shall not smoke while physically interacting with the children. Parents shall be informed if anyone in the home smokes.

(e) For the protection of children and adults, caregivers and helpers shall wash their hands immediately after changing a child's diaper, or aiding in toileting, before changing or aiding another child.

(f) For the protection of children and adults, when blood is to be handled (e.g., resulting from injury to a child or adult, from nosebleed or from spillage), vinyl or latex gloves shall be used and properly disposed of following use with/by one individual.

(Rule 1240-04-01-.06, continued)

(g) Following a diaper change or blood spillage, surfaces shall be cleaned and sanitized with a solution of 1/4 cup chlorine bleach to one gallon of water.

(4) Safety.

(a) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric first aid course (a minimum of three hours) taught by a qualified instructor.

(b) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric CPR course (a minimum of three hours) taught by a qualified instructor.

(c) First aid information shall be posted, and caregivers and helpers shall be familiar with it.

(d) A first aid kit shall be available to staff. The contents shall include a digital thermometer, bandages, and other items listed in Appendix C.

(e) The home shall have a working telephone accessible to caregivers for incoming and outgoing calls.

(f) These telephone numbers shall be posted near the telephone: fire department, law enforcement, hospital, child abuse hotline, civil defense/emergency management, and numbers where parents may be reached. Rescue squad, ambulance, and poison control center numbers shall also be posted if available in the community.

(g) All homes shall annually present a child sexual abuse prevention program to children enrolled in and cared for by the home.

(h) Suspected abuse or neglect of a child shall be reported immediately to the local DHS office. Failure to do so is, by itself, grounds to deny or revoke the agency's license.

(i) The primary caregiver shall be reasonably prepared to protect children in the event of a disaster by knowing who to contact and how to cooperate with the local Emergency Management Plan.

(j) Emergency transportation shall be planned for and shall be provided as needed.

(k) Firearms and other deadly weapons or tools on the premises shall be secured in such a way that they are inaccessible to children.

(l) Use of swimming pools shall comply with environmental sanitation regulations in Appendix E. Wading pools which have not been approved by the environmentalist shall not be used.

(m) Pets shall be vaccinated in accordance with a veterinarian's recommendation. Unconfined pets and children shall not be together on a regular basis. An adult shall be present while pets are with children. Animals and birds shall not be allowed in areas of food storage, preparation, or service.

Authority: *T.C.A. §§ 71-1-105(12), 71-3-501 et seq., and 37-1-603(b)(1)(A).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed June 7, 1982; effective September 30, 1982. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Emergency rules filed July 1, 2016; effective through December 28, 2016. Amendments filed September 28, 2016; effective December 27, 2016.*

~~1240-04-01-.07 TRANSPORTATION.~~

~~(1) Management Responsibility, Loading\Unloading and Verification Procedures; Staff Qualifications.~~

~~(a) Management Responsibility.~~

~~1. Existing child care agencies, or those applying or re-applying for licenses, that provide transportation services, must provide a written statement to the Department describing:~~

~~(i) The type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;~~

~~(ii) The types of vehicles that will be used for the transportation of children, e.g., a 1999 fifteen (15) passenger Ford van;~~

~~(iii) Any contracts, agreements or arrangements with any third parties for the provision of transportation services;~~

~~(iv) The provider's plan for maintaining compliance with the transportation time limits set forth in 1240-04-01-.07(6);~~

~~(v) The provider's policy and procedures for maintaining compliance with the transportation verification procedures set forth in 1240-04-01-.07(1)(b);~~

~~(vi) The provider's policy and procedures for attaining and maintaining compliance with child restraint procedures required by: these rules; Tennessee Code Annotated, Title 55, Chapter 9, Part 6; applicable Federal Motor Vehicle Safety Standards relative to child safety restraints, and; the child restraint and vehicle manufacturer's design requirements for the type of child restraints and vehicles used to transport children; and~~

~~(vii) The provider's policy and procedures for the emergency evacuation of the vehicle.~~

~~2. The child care home's management shall be fully responsible for the transportation of children between home and the child care home, to or from school, and/or on field trips on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.~~

~~3. Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction and control of the child care agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-04-01-.02(7).~~

~~(b) Loading\Unloading and Verification Procedures.~~

~~1. The driver of the vehicle or any other designated staff person riding on the vehicle shall use a passenger log to record the name of each individual child received for transport as the child enters the vehicle. No child shall be accounted for by use of a single entry in the log that would include all, or part, of a group of other siblings or relatives with the same last name and with whom the child is being transported. For example, three (3) siblings with the same last name, e.g.,~~

(Rule 1240-04-01-.07, continued)

~~"Doe", who are transported on the same vehicle shall not be recorded by the single entry "Doe" which only records the group's last name and is used by the child care home to signify that all three (3) "Doe" children are accounted for. Each child shall, instead, be separately listed by first and last name.~~

~~2. During transportation, the passenger log shall be used to take roll each time the vehicle makes a stop as each child is loaded or unloaded.~~

~~3. Whenever children being transported are released from the vehicle to their parent or other designated person, the passenger log shall immediately be updated to reflect which children have been released.~~

~~4. Immediately upon unloading the last child/children from the vehicle, and to ensure that all the children being transported have been unloaded, the driver and any other staff members riding on the vehicle shall immediately deliver the passenger log to the person designated by the child care home in part 5 and shall immediately:~~

~~(i) physically walk through the vehicle; and~~

~~(ii) inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior.~~

~~5. Additional caregiver/staff review and verification requirements.~~

~~(i) The child care home shall also designate a caregiver or management level staff person, other than the person responsible for the recording in the passenger log on the vehicle, who shall provide additional review and additional verification that the children have been unloaded from the vehicle and properly accounted for.~~

~~(ii) When unloading children at the child care home or field trip destinations, or when, prior to being parked at the child care home or other location, and to ensure that all children have been unloaded, the person designated pursuant to subpart (i) of this part 5 shall also immediately request the passenger log from the person on the vehicle responsible for maintaining the log and shall immediately:~~

~~(I) reconcile the passenger log with the children's attendance records; and~~

~~(II) conduct the same inspection as required in subparts (1)(b)4(i) and (ii) above.~~

~~(iii) Verification of the passenger logs and attendance records required by this subparagraph (b) shall be made by having the printed name of the persons who complete the logs and records written or printed on the passenger log and attendance record accompanied by the handwritten initials of such persons. Passenger logs and attendance records shall be maintained for a period of one (1) year or until the next re-evaluation of the group child care home for an annual license, whichever is first.~~

~~6. The driver or any accompanying staff member shall assure that every child is received by a parent or other designated person.~~

(Rule 1240-04-01-.07, continued)

7. When children are transported to school, they shall be released in accordance with the following procedures:

(i) the children shall be unloaded only at the location designated by the school;

(ii) the children are only allowed to unload from the group child care home's vehicle at the time the school is open to receive them;

(iii) the driver/caregiver shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and

(iv) any additional procedures established by the school.

8. The provisions of this subparagraph (b) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service that is under the direction or control of a child care agency, that provides such services for children enrolled in the child care agency.

(c) Transportation Staff Qualifications.

1. Driver License Requirements.

(i) All persons responsible, or who may in the course of their duties become responsible, at any time, for driving a vehicle that transports children enrolled in the child care agency, shall hold, at a minimum, a current Tennessee driver license with an "F" ("for hire") endorsement pursuant to T.C.A. § 55-50-102(20)(F) unless such persons already have an endorsement or hold a license which the Department of Safety recognizes as inclusive of the "F" endorsement requirements, or shall hold such other license or endorsement provided for by State law or regulation governing driver qualifications for the type or size of vehicle used, or which may otherwise govern driver qualifications, for transportation of children enrolled by licensed or approved child care agencies.

(ii) Effective January 1, 2004, all persons subject to this part 1 shall obtain a certification document from the Department of Safety to signify that they have passed additional written or skills tests required for persons who may, in the course of their duties drive a vehicle that transports children enrolled in a child care agency.

(iii) Effective January 1, 2004, all persons subject to this part 1 shall be required to obtain annual training that is utilized for school bus drivers offered by the Department of Safety or such other equivalent training as the Department of Safety may determine is appropriate.

(iv) Evidence of completion of the requirements in subparts (i)-(iii) for each person employed or otherwise utilized by the agency under any contract or any other arrangement shall be maintained in the records of the child care agency. Failure to obtain or timely exhibit completion of this additional certification when requested shall result in ineligibility of the person from any further driving duties for the child care agency until such requirements are fulfilled.

(Rule 1240-04-01-.07, continued)

2. Health Examinations and Drug Screenings.

(i) Health Examinations.

All persons driving vehicles at any time for the transportation of children enrolled in the child care agency shall annually provide to the Department a health statement or statements, based upon an examination of the individual, that are signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant, verifying that the individual is physically, mentally and emotionally capable in all respects of safely and appropriately providing transportation for children.

(ii) Drug Screenings.

(I) Any person, in accordance with procedures established by the Department, shall pass a drug screen:

I. Prior to such person being employed as a full or part-time employee with a licensed or approved child care agency for a position which has any duties involving driving any vehicle utilized by the child care agency to transport children enrolled in that child care agency; or

II. Prior to such person being employed, in any position which has any duties involving driving any vehicle utilized to transport children enrolled in any child care agency, as a full-time or part-time employee by a contractor of a licensed or approved child care agency, or by any other persons or entities, any of which transports, for any compensation, children enrolled in the care of the child care agency as part of the agency's transportation program or service for such children offered by such child care agency; or

III. Prior to the assumption, at anytime, of any driving duties by an existing full-time or part-time employee of the licensed or approved child care agency, or, of an existing full-time or part-time employee of a contractor or other person or entity providing transportation, for compensation, to the child care agency as part of such child care agency's transportation program or service.

(II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.

(iii) The child care agency shall immediately review the results of the drug screen upon receipt, and upon receipt by the child care agency of a positive drug screen result for an employee of the child care agency, or upon receipt of notification of such result for a tested individual from a contractor or other person or entity providing transportation, for

(Rule 1240-04-01-.07, continued)

compensation, to the child care agency as part of such child care agency's transportation program or service, the child care agency shall immediately:

(I) Notify the Department and prohibit, or require its contractor or other entity providing transportation for compensation to the child care agency as part of the child care agency's transportation program to prohibit, the individual from any driving duties involving any transportation of children enrolled in the child care agency; and

(II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.

3. Prior to assuming their duties, all persons responsible, or who may in the course of their duties become responsible, at any time, for transporting children (including drivers and monitors) shall complete Department of Human Services-recognized pre-service transportation training in:

(i) The proper daily safety inspection of the vehicle set forth in subparagraph (2)(b) below;

(ii) The proper use of child safety restraints set forth in paragraph (4) and Tennessee Code Annotated, Title 55, Chapter 9, Part 6 and applicable Federal Motor Vehicle Safety Standards relative to child safety restraint systems and vehicle design requirements for the type of vehicle used to transport children;

(iii) The proper use of the verification procedures set forth in subparagraph (1)(b) above;

(iv) The proper use of a blood borne pathogen kit;

(v) The proper procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and

(vi) The developmentally appropriate practices applicable to the behavior management of children during transportation.

4. Following the completion of pre-service transportation training, all persons responsible at any time for the transportation of children (including drivers and monitors), shall complete Department of Human Services-recognized transportation training that includes the subject matter set forth in 1240-04-01-.07(1)(c)3, above, a minimum of every six (6) months.

5. Emergency Aid Training.

(i) All persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children 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.

(ii) Effective July 1, 2004, all persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of

(Rule 1240-04-01-.07, continued)

children shall complete a first aid course sponsored or approved by the American Red Cross, or other first aid course, as recognized by the Department.

6. The provisions of this subparagraph (c) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service under the direction or control of a child care agency.

7. The requirements of 1240-04-01-.07(1)(c) do not apply to individuals who provide transportation services exclusively for occasional field trips.

(2) Vehicle Inspections; Passenger Limitations; Vehicle Design Requirements; Child Seating Space Requirements; Emergency Equipment; Prohibition of Firearms or other Weapons on Vehicles.

(a) The requirements of this paragraph (2) include vehicles used at anytime for the regular child care vehicle(s) and those used as back-up vehicles. Exception: The requirements of this paragraph (2) do not apply to vehicles operated solely for the purpose of providing transportation for occasional field trips.

(b) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that designated child care, contractor, or other entity staff perform daily the following inspections, followed by any necessary repairs or other appropriate actions, before beginning transportation of children for the child care agency:

1. A visual inspection of the vehicle's tires for wear and adequate pressure;

2. A visual inspection for working headlights and taillights, signals, mirrors, wiper blades and dash gauges;

3. An inspection for properly functioning child and driver 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 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.

(c) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and, in addition shall have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by, and/or serviced in accordance with the manufacturer's maintenance schedule:

1. Brakes;

(Rule 1240-04-01-.07, continued)

2. Steering;

3. Oil levels, coolant, brake, windshield-washer and transmission fluids;

4. Hoses and belts.

(d) Beginning January 1, 2004, the Department of Safety will conduct annual vehicle safety inspections on all vehicles used by the child care agency directly, under contract, or under the control or direction of the agency designed by the vehicle manufacturer to carry ten (10) or more passengers. Any necessary maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the child care agency.

(e) All documentation of the child care agency or providers of transportation services for children under contract to the agency or under the agency's direction or control shall be made available upon request to Department staff.

(f) No vehicle which does not pass the inspections required in subparagraphs (b), (c) or (d) shall be used by the child care agency or by its contractors, or others subject to the agency's direction and control, to provide transportation services until necessary repairs, as determined by the Department, have been made.

(g) Passenger Restraints, Capacity Limitations and Cargo Requirements.

1. All children and adults riding in a vehicle used to transport a child to and from a child care agency, to and from school, or to and from field trips must be restrained by separate passenger restraint devices in the vehicle's seating area, at a minimum, as required by state or federal law or regulation, or, as otherwise required by these rules.

2. The total number of adults and children in vehicles used for the transportation of children enrolled in a licensed or approved child care agency shall never exceed the manufacturer's rated passenger capacity.

3. In a vehicle being used for the transportation of children enrolled in a licensed or approved child care agency, all cargo, luggage or equipment of any type shall be adequately secured at all times in such manner as to protect the passengers in case of accident or emergency maneuvers.

4. The provisions of this subparagraph (g) also apply to vehicles operated by any contracted transportation service for a licensed or approved child care agency, or for any other transportation service under the direction or control of a child care agency.

(h) Requirements for Child Care Transportation Vehicles Effective January 1, 2007.

1. Effective January 1, 2007 all vehicles that the child care agency operates, for which it contracts, or which are otherwise under its direction or control, that are designed to carry ten (10) or more passengers must conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses, as applicable, in accordance with the provisions of the FMVSS described in 49 Code of Federal Regulations Part 571, or as such Part may be amended.

2. Effective January 1, 2007, if buses in either the "large" or "small" classes of school buses under the FMVSS are used, they must have factory-installed

(Rule 1240-04-01-.07, continued)

passenger restraint anchorages and passenger restraints that are suitable for use in transporting children of any age who are to be transported on either a "large" or "small" school bus.

3. The requirements of this subparagraph (h) do not apply to vehicles used exclusively for the provision of occasional field trips.

(i) A minimum of ten (10) inches seat space per child is required in a vehicle transporting children.

(j) A vehicle used to transport children shall 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 on a regular basis by all staff responsible for transporting children.

(k) The carrying, possession or storage of firearms or other weapons is prohibited in vehicles used to transport children.

(3) Vehicle Signage Requirements; Exceptions.

(a) The requirements of this paragraph (3) are effective March 1, 2003, and are applicable to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles operated by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency, unless specifically exempted by the provisions of subparagraph (e) below.

(b) All vehicles used for the transportation of children enrolled in the child care agency must, as determined by the Department, clearly and readily identify to the driving public that the vehicle is used for the transportation of children who are in child care.

1. On each side of the vehicle the following information shall be displayed:

(i) The full name of the child care agency and emergency contact number for the agency in any font or color, including the agency's current logo and lettering scheme; provided that the lettering is not less than one and one-half inches (1½") in height and is clearly readable at a distance of fifty feet (50')on a stationary vehicle in daylight conditions; and

(ii) The words "Child Care Transportation Complaints" followed by the Department of Human Services' toll-free Child Care Transportation Complaint phone number in black lettering in a block font, not less than one and one-half inches (1½") in height. This text shall appear on a clearly contrasting background that is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions.

2. On the rear of the vehicle the following information shall be displayed:

(i) The full name of the child care agency and the words "Child Care Transportation Complaints" followed by the Department of Human Services toll-free Child Care Transportation Complaint phone number in black letters in a block font not less than one inch (1") in height on a clearly contrasting background that is clearly readable at a distance of forty feet (40') on a stationary vehicle in daylight conditions.

(Rule 1240-04-01-.07, continued)

(ii) The provisions of this part (2) shall not apply to passenger automobiles (excluding minivans) used for transportation by the child care agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.

(c) The information required in subparagraph (b) must be applied to the vehicle in one of the following formats:

1. Painted directly on the vehicle in accordance with the paint manufacturer's instructions using paint recommended by the paint manufacturer as appropriate for use on a vehicle; or

2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless recommended by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.

(d) Special Requirements for Centralized Transportation.

1. Central operators or any other entity that may own or operate more than one child care agency and which may provide centralized transportation services for its child care agencies; and/or

2. Contractors, or other transportation service providers under the direction or control of the child care agency, which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency required by parts 1240-04-01-.07(3)(b)1 and 2 above the full name and emergency contact number of the central operator, contractor or other transportation service providers under the direction or control of the child care agency. If the name on the vehicle does not clearly designate the agency or entity as one providing child care transportation, words such as "Child Care Transportation Vehicle" or "Child Care Transportation Services", or similar language approved by the Department, must be displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

(e) Exceptions to Vehicle Identification Requirements.

1. Vehicles used exclusively for the provision of occasional field trips; and

2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle.

3. The Department may, in its discretion, determine if exceptions to the requirements of this paragraph (3) may be made for child care agencies owned, operated, or under the direction or control of a public agency. For purposes of this subparagraph (e), a "public agency" is any entity controlled, owned or operated by a state, county or local entity, or a political subdivision of the State of Tennessee.

4. The Department may, in its discretion, determine if certain child care agencies may be exempted from any or all of the requirements of this paragraph (3) due to facts which may clearly warrant such exemptions.

(4) Child Safety Restraints.

(Rule 1240-04-01-.07, continued)

~~(a) The provisions of this paragraph (4) shall apply to any vehicle used to transport children as of the effective date of these rules, unless stated otherwise by the rule. Any vehicle whether:~~

~~1. A passenger car;~~

~~2. A stock or custom van or sport utility vehicle;~~

~~3. A school bus classified as a "small" or "large" bus as required in FMVSS contained in 49 Code of Federal Regulations Part 571; or~~

~~4. Any other vehicle must be properly equipped with the child passenger restraints required by subparagraphs (c) - (f) below and must comply with all other provisions of this paragraph (4).~~

~~(b) Children under four (4) years of age shall never be placed in the front seat of the vehicle.~~

~~(c) Children who weigh less than twenty pounds (20 lbs.) shall be placed to face the rear of the vehicle. Children who weigh twenty pounds (20 lbs.) or more shall be placed to face the front of the vehicle unless the special needs of a disabled child otherwise require the child to face the rear of the vehicle.~~

~~(d) Children who weigh less than forty pounds (40 lbs.) shall be restrained in a Federally-approved child restraint device in accordance with the child restraint device manufacturer's instructions. The child restraint device shall be secured to the vehicle in accordance with the child restraint device manufacturer's instructions.~~

~~(e) Children Between Forty Pounds (40 lbs.) and Eighty Pounds (80lbs.).~~

~~1. Children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) may be restrained in a belt-positioning booster seat (BPBS) that has been secured in accordance with the vehicle and restraint manufacturers' instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions. If, however, a BPBS restraint device is not used, the child shall be restrained in both a lap belt and a shoulder belt if available in the vehicle. If a lap and shoulder belt restraint system is not available in the vehicle, the child shall be restrained by a lap belt.~~

~~2. Effective January 1, 2007, children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer's instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions.~~

~~(f) Children Weighing More Than Eighty (80 lbs.) or Who are Taller Than Four Feet Nine Inches (4'9").~~

~~1. Children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") may be restrained in an adult lap belt and shoulder belt that has been secured in accordance with the vehicle manufacturer's instructions. If, however, an adult lap belt and shoulder belt is not used, the child shall be restrained by a lap belt.~~

~~2. Effective January 1, 2007, children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") shall be restrained in an adult~~

(Rule 1240-04-01-.07, continued)

lap belt and shoulder belt in accordance with the vehicle manufacturer's instructions.

(g) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.

(h) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.

(i) Notwithstanding the provisions of this paragraph (4), until January 1, 2007, children of school-age (in kindergarten or any grade level above) shall not be required to use child restraints when being transported in school buses classified in the "large" category under FMVSS.

(5) Supervision of Children During Transportation.

(a) An adult must be in the vehicle whenever a child is in the vehicle.

(b) Adult Monitor Requirements for Child Care Transportation.

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 through five (5) years of age, who are not in kindergarten; provided, however 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 through five (5) years of age, who are not in kindergarten, regardless of the numbers of children being transported.

2. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.

3. On field trips off premises, the number of adults at the destination shall be double the requirements on the adult:child ratio charts in paragraph (2) of subchapter 1240-04-01-.03, Caregiver to Child Ratios and Supervision; provided, however, the adult monitor referenced in parts 1 and 2 of this subparagraph (b) may be used for purposes of this requirement.

(6) Limits on Time Children Are Transported/Transportation Waivers.

(a) Children shall not spend more than forty-five (45) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.

(b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and the child care agency and approved by the Department prior to providing such transportation.

(7) Except as otherwise exempted, the provisions of paragraphs (4)—(6) shall apply to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles provided by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency.

Authority: *T.C.A. §§ 4-5-202, 55-50-102(11) and (20), 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts of 2003, Public Chapter 412, §§ 1(c), 2, and 3, and 49 Code of Federal Regulations Part 571.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978;*

(Rule 1240-04-01-.07, continued)

effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§ 1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 21, 2004; effective January 4, 2005.

~~1240-04-01-.08 FOOD.~~

~~(1) Nutritional Needs.~~

~~(a) For children in the home at least four hours, one snack (defined as two of these four choices: fluid milk; meat or meat alternate; fruit, vegetable or full-strength juice; or whole grain or enriched bread) shall be provided, unless the four-hour period covers a normal meal hour, in which case a meal shall be provided.~~

~~(b) Snacks provided shall be nourishing and planned as a part of the day's food allowances. Carbonated drinks, fruit-flavored drinks, imitation milk drinks, and candy shall not be served as snack foods. Powdered milks shall be used only in a cooked food product. (Real juice will be labeled "100% juice" or "full-strength juice". Powdered milk does not meet the requirement.) (See Appendix D for suggested food pattern for snacks.)~~

~~(c) For children in the home five to 10 hours, one meal (defined as meat or meat alternates, vegetable and/or fruit, bread or bread product, and milk) and one or two snacks shall be provided, two snacks if the period is as much as seven hours. (See Appendix D for suggested meal patterns.)~~

~~(d) For those in the home longer than 10 hours, two meals and two snacks shall be furnished.~~

~~(e) Breakfast (defined as fruit, vegetable or full-strength juice; cereal or bread product; and milk) shall be offered to children who arrive before 7:00 a.m. and who have not had breakfast at home.~~

~~(f) Diets of infants and other special diets shall be prepared as prescribed by a physician.~~

~~(g) The week's menus shall be planned and posted by the first day of each week and remain posted until the following week so that parents can be aware of the food their children are receiving. These menus shall be followed, although reasonable substitutions are permissible if the substituted food contains the same nutrients. The change shall be documented in advance of the meal. (Information on menu-planning is available upon request.)~~

~~(2) Meal Service.~~

~~(a) Caregivers and children shall wash their hands before eating or prior to any preparation of food.~~

~~(b) High chairs and tables on which food is served shall be washed with soap and water prior to and after snacks and meals.~~

~~(c) Napkins and forks and/or spoons shall be provided for children who feed themselves.~~

~~(d) All formulas and food brought from home shall be labeled with the child's name. Milk shall be placed immediately in the refrigerator. Previously opened baby food jars shall~~

(Rule 1240-04-01-.08, continued)

not be accepted by caregivers. All formulas remaining in bottles after feeding shall be discarded.

(e) 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.

(f) Bottles shall not be propped or given to children who are lying flat.

(g) Solid foods shall not be given in a bottle, or with infant feeders, to children of normal eating abilities.

(h) All infant's feeding schedule shall be made and adapted to a child's need rather than on the hour.

(i) Weaning shall not be started immediately after enrollment but after parents and caregivers have communicated to establish consistency in the weaning process and after a child has become familiar with a cup or glass.

(j) Introduction of new foods to infants and toddlers shall be gradual, one at a time, over a five to seven-day period with parents' approval.

(k) The size of servings shall be adequate to meet children's needs. (Portion size depends on child's age. See Appendix D for chart of age/portion size.)

(l) Food, including dessert, shall not be forced on or withheld from a child.

(m) Floors under tables and high chairs on which food has been served shall be swept and/or vacuumed after each meal and mopped as needed.

Authority: *T.C.A. §§ 71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.07).*

1240-04-01-.09 PHYSICAL FACILITIES.

(1) Any new group day care home/facility, or one that is remodeled, enlarged, or changed in any way, shall be approved by a state or authorized local fire safety inspector and by an environmentalist before day care operation can begin.

(2) Group day care homes shall be inspected and approved annually by a state or local fire safety inspector and by an environmentalist. Requirements in Appendices E and F shall be met before a license can be issued. (Requests for inspections are made by the Licensing Counselor.)

(3) Physical facilities shall continue to meet all standards in Appendices E and F and any updated fire prevention or environmental standards which are applicable.

(4) The inside of the home shall provide 30 square feet of usable play space per child, including children who are related to caregivers. (Usable play space does not include office space, bathrooms, or space occupied by large pieces of furniture.)

(5) The home shall have at least two exits directly to the outside, other than from the kitchen.

(6) When infants are in care, the diapering area shall be located as close to a handwashing lavatory as possible but not in the kitchen.

(Rule 1240-04-01-.09, continued)

(7) The home shall not be located in a building used for other purposes which would be hazardous or would limit outdoor play.

(8) The outdoor play area shall contain at least 50 square feet of space per child, including children who are related to caregivers.

(9) The areas where children play or are cared for shall be properly maintained. These areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures. These areas shall present no conditions which are hazardous to children. All such areas shall be free of all animal wastes.

Authority: *T.C.A. §§ 71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.08).*

1240-04-01-.10 CARE OF CHILDREN WITH DISABILITIES.

(1) When children with disabilities are enrolled, the home shall provide those children equal opportunity to participate in the same program activities as their peers.

(2) 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.

(3) Any efforts to provide specialized services (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 parent and documented in the child's record. Any informational exchange regarding these services shall also be documented.

(4) The home shall have a written individualized evacuation plan, which has been approved by the Licensing Counselor and is practiced in every monthly fire drill, for every child enrolled who requires more assistance to evacuate the facility than other children of the same age or in the same group.

Authority: *T.C.A. §§ 71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.09).*

1240-04-01-.11 APPENDICES.

(1) The following Appendices referenced in the foregoing rules are incorporated in these rules by reference:

(a) Appendix A - I. Summary of Applicable Laws

II. Questions and Answers About Day Care Licensing

(b) Appendix B - Guidelines for TB Screening

(c) Appendix C - Contents of First Aid Kit

(d) Appendix D - Meal/Snack Patterns and Portion Sizes

(e) Appendix E - Environmental Standards for Group Child Care Homes

(Rule 1240-04-01-.11, continued)

(f) Appendix F - Fire Safety Inspection Report

(2) Any conflict between summaries of the language of statutes or regulations in the Appendices and official statutes and regulations will be resolved by reference to the language of the official statutes or regulations.

Authority: *T.C.A. §§ 71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.10).*

APPENDIX A

I. Summary Of Applicable Laws.

(A) Child Welfare Agencies (*T.C.A. § 71-3-501 et seq.*) (A complete copy of the licensing law is available upon request.)

1. Specifies the types of agencies that DHS has a mandate to license. Licensing of day care (less than 24-hour care) begins with five children. (Care for one to four children is exempt.)

2. Provides for development of standards, based on certain criteria by a 16 member "standards committee" appointed by the Commissioner. Standards are to be reviewed (and revised, if needed) every five years.

3. Requires DHS to provide applicants or licensees with assistance in meeting standards.

4. Requires annual application for a license and an application processing fee.

5. Upon receiving fire safety and environmental sanitation approval, provides that DHS will issue a 90-day conditional license if no apparent hazards to the children in care are present.

6. Provides for denial, suspension, or revocation of license and a waiting period ranging from 60 days to one year prior to reapplication.

7. Provides for appeals and hearings before the Board of Review, which includes representatives from the Departments of Health, Education, of the "advisory board" of DHS, from the appropriate Standards Committee, and three at-large members selected by the others. Appeals from the Board's decision may be made to Chancery Court.

8. Imposes a misdemeanor penalty of imprisonment for six months and a fine of $500 or both for each offense (day) of operating without a license.

9. Requires public agencies to meet the same standards as other child welfare agencies and a method of reporting to the public any uncorrected deficiencies.

10. Requires DHS to regularly inspect agencies without prior notice and grants the Department access to facilities and records in order to make an evaluation of the "kind and quality of work done" and to make recommendations regarding licensure.

11. Requires DHS to investigate reports of noncompliance.

12. Allows DHS to impose civil penalty ($25 - $150) for substantial noncompliance and probation for continued noncompliance.

13. Contains specified and defined exemptions for Parents' Day Out programs, kindergartens, and "drop-in" programs. Also provides a waiver of adult to child ratios and group size requirements for certain Montessori schools.

14. Requires screening for criminal violations of persons applying to work with children through the registry maintained by the Tennessee Bureau of Investigation (TBI).

15. Allows DHS to investigate all reports of abuse, neglect, or sexual abuse, even in exempt agencies, and enables DHS to revoke the license of a licensed agency and to enjoin an unlicensed person or agency from continuing to provide child care where abuse of children occurs.

(B) Access to Public Records *(T.C.A. §§ 10-7-503 and 10-7-504).* Requires public bodies to provide any citizen of Tennessee access to public records except for specified confidential records (e.g., medical records, TBI investigative records, students' records). DHS' records on child welfare agencies are public records except as they may contain information obtained in the course of child abuse or neglect investigations.

(C) Child Protective Services *(T.C.A. §§ 37-1-401 et seq. and 37-1-601 et seq.).*

1. Requires any individual or organization (such as day care agency, hospital, or school) having knowledge of suspected child abuse or neglect to report it to a juvenile judge, the Department of Human Services, or a law enforcement official. (Look in your telephone book under "Child Abuse", or call the county DHS office or local law enforcement.)

2. Requires the identity of a reporting person to be kept confidential, subject to disclosure only by consent of the person or by judicial process. Provides immunity from civil or criminal liability if reports are made in good faith.

3. Gives DHS authority and responsibility to investigate reports of abuse or neglect.

4. Requires that all written records and information regarding investigations be confidential. Release of information is permissible to certain specified persons and to those having responsibility for administration of the law. Persons found not guilty of severe child abuse or child sexual abuse shall have their names expunged from the TBI's abuse registry.

5. Charges DHS with the responsibility of conducting a continuing publicity and education program to encourage reporting and to strengthen and improve child sexual abuse detection, prevention, and treatment efforts.

(D) Federal Funding.

Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964 require agencies receiving federal funding to employ nondiscriminatory policies and practices. Persons receiving federal funding such as reimbursement from the USDA Child/Adult Care Food Program, DHS vendor or Transitional Child Care payments, Social Services Block Grants (SSBG), Dependent Care Grant funds for school-age child care, etc.; and persons receiving federal support in the form of space, staff, services, equipment, etc., are required to comply with the following.

1. Title VI of the Civil Rights Act of 1964 by ensuring that no person (child, parent, or employee) in your agency "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity receiving federal financial assistance"; and by employing nondiscriminatory policies and practices and advertising such.

2. Section 504 of the Rehabilitation Act of 1973 by ensuring that no otherwise qualified handicapped person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program activity solely on the basis of a handicap (applies to children, parents, and employees); and by making reasonable accommodations to serve or hire an otherwise qualified individual with a handicapping condition.

(E) Child Passenger Protection and Safety Belt Use (Transportation) *(T.C.A. § 55-9-601 et seq.).*

1. Requires any person transporting a child under the age of four years in a motor vehicle to provide for children's protection by providing and properly using a federally approved child restraint system (manufactured after January 1, 1981). Violation is subject to a $50 fine or 30 days in jail or both.

2. Specifies that no one is to operate a motor vehicle unless all persons four and older in the front seat are properly restrained by a safety belt.

3. Imposes a fine of $50 or 30 days in jail or both for each violation after the first; however, the violator can be cited or arrested only after being cited or arrested for another violation of law.

4. *T.C.A. §§ 55-50-102(11) and 55-50-102(12)(B)* requires the driver of a vehicle designed to carry 15 or more passengers (including the driver) to have a commercial driver's license.

(F) Administrative Rules and Procedures *(T.C.A. § 4-5-301 et seq. and Chapter 1240-5-11 et seq.).*

1. Provides for an administrative hearing of any contested cases (i.e., on denial or revocation of licenses or on notice of intent to put an agency on probation) after proper notice which includes references to particular statutes and rules involved.

2. Requires that hearings before the members of the Board of Review to be conducted by the administrative judge or a hearing officer, who rules on admissibility of evidence and other matters and otherwise ensures that proceedings are properly carried out.

3. Allows the contesting licensee to be represented (at licensee's own expense) by counsel.

4. Allows the judge or hearing officer at his/her discretion or upon request of licensee or the Department of Human Services to schedule a prehearing conference in order to simplify or expedite the disposition of the appeal action.

5. Requires that the hearing be open to the public.

6. Requires the final order be entered by the Board of Review. The final order shall include conclusions of law, factual findings, prescribed remedy, and procedures and time limits for seeking judicial review.

7. Provides that while an application for a license is pending, an existing license does not expire until disposition of the application has been finally determined, unless the license must be summarily suspended pending completion of the proceedings because

(Rule 1240-04-01-Appendix A, continued)

the Department determines that "public health, safety, or welfare imperatively requires" emergency action, and notifies licensee of that finding "pending proceedings for revocation or other action".

II. Questions And Answers About Day Care Licensing.

(A) *How does a person get information about opening a child care agency?*

The local county office of the Tennessee Department of Human Services will furnish information; a licensing representative will provide assistance free of charge to an individual or a group that is planning to provide child care.

(B) *How many children am I allowed to care for?*

In Tennessee, a person without a license may care for no more than four children. To care for five to seven children, in addition to "related" children, you must be licensed as a "family day care home" operator. To have eight(8) - twelve (12) children, you must be licensed as a "group" day care home operator. (Under certain conditions, a group day care home may have up to 15 children.)

(C) *How is a license obtained?*

1. After a completed application and the required fee are received, arrangements will be made for a representative to visit your facility and evaluate the day care operation and/or facility in accordance with the required standards in this booklet.

2. Before a day care home can be licensed, it must pass fire safety and environmental sanitation inspections. The licensing representative will explain the procedure for getting inspected.

(D) *What types of licenses are issued?*

1. An "annual license" is granted when compliance with licensure requirements is confirmed by the Department.

2. A "conditional license" is granted to a new agency for 90 days when it does not meet all the required standards, but there is evidence than an effort is being made to comply with the requirements and it has first met fire safety and environmental sanitation approval.

(E) *Who determines whether a license is issued?*

The Commissioner has ultimate responsibility for issuance or denial, based upon an evaluation and recommendation by a licensing representative of the Department.

(F) *Is the license permanent?*

No, it is issued for up to one year. Prior to its expiration, an evaluation is made to determine whether compliance with requirements is being maintained and reissuance should be recommended.

(G) *Is there a fee?*

Yes, the fee is payable upon application and is nonrefundable. The fee for day care homes is $5 for a family day care home and $10 for a group day care home.

(Rule 1240-04-01-Appendix A, continued)

(H) *Where is the license kept?*

It must be posted in a conspicuous place in the day care home during business hours.

(I) *Are licenses transferable?*

No. The license applies only to the agency, organization, and person(s) to whom it is issued. It also applies only to the building approved.

(J) *Does the same license for "day care" cover (1) nighttime care, (2) "drop-in" children, and (3) sick children?*

1. Yes. An agency that provides less than 24-hour care to children during nighttime hours receives the same license as a child care agency operating during daytime hours, and one license covers both programs in the same agency. An agency cannot provide continuous 24-hour care for two or more children without a residential license. If not licensed for day care, a residential license is needed for more than one child. Ask a licensing counselor about the procedure for obtaining a residential license.

2. "Drop-in" children are counted in the ratio and group and can be cared for only if required records are on file before they are cared for.

3. The day care home license also includes care of mildly ill children. Only mildly ill children (i.e., not "contagious") should be cared for in a day care home and only then if staffing is adequate. Mild illnesses are generally those in a recuperative stage (e.g., getting over mumps or influenza).

(K) *Who enforces licensure requirements for a child care system?*

If homes are approved as an extension of a child welfare agency's license, the central operator (the licensee) is responsible for monitoring compliance. The Department of Human Services monitors the agency's compliance as well as licensed homes within a system.

(L) *What is the procedure when a license is revoked, denied, or suspended?*

The Department may deny, suspend, or revoke a license at any time by giving the owner, operator, or board a written notice by listing the specific reason or reasons for the action. Specified time periods are provided in the law. Any conduct or condition which might immediately jeopardize the safety of children, shall be cause for immediate suspension of the license, pending the outcome of revocation procedures.

(M) *How can an operator or applicant appeal such action?*

The licensing law provides for a Board of Review. If a license is denied or revoked by the Department, a request may be made for a hearing before the review board. An appeal of the decision from the review board may be judicially reviewed. The periods of time allowed for the appeals are set out in the law.

(N) *Where do I call to file a complaint or get a license?*

1. If you have a question about these standards, or if you want to report an unlicensed facility or a facility that is violating licensing requirements, call the DHS county office. It is listed in the telephone directory under Tennessee State Government, Human Services Department. Someone there will refer you to the licensing unit in your area.

(Rule 1240-04-01-Appendix A, continued)

~~If you want to open a child care facility, call that office before you do anything. You cannot care for a group of five or more children without a license.~~

~~2. If you have a question or concern about these standards or the licensing procedure, call or write:~~

~~Day Care Licensing Coordinator~~
~~Tennessee Department of Human Services~~
~~Citizens Plaza Building~~
~~400 Deaderick Street~~
~~Nashville, TN 37248-9800~~
~~Phone: (615) 313-4778~~

APPENDIX B

RECOMMENDATIONS FOR TUBERCULOSIS SCREENING OF PROGRAMS UNDER THE SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES[1]

Programs that provide care for periods less than 24 hours per day.

A. Employees.

Employees should be screened for tuberculosis within 90 days prior to but no later than two weeks after employment. The screening examination should include a tuberculin test[2] and if it is positive, a chest X-ray and, if necessary, other specific tests. Prospective or current employees who are known to have a positive tuberculin reaction or who refuse to have a tuberculin skin test shall receive a chest X-ray to rule out infectious tuberculosis. If infectious tuberculosis is ruled out, no further screening is necessary during their employment unless persistent pulmonary symptoms develop or there is contact with tuberculosis.

[1]Tuberculosis screening is not recommended for programs providing care for less than two weeks.
[2]The preferred method is the Mantoux technique using 5 TU PPD.

B. Children.

1. Foreign-Born.

All foreign-born children should present evidence of a tuberculin skin test[3] performed in the United States. This test performed in the United States may have been done at any time after 12 months of age. Any child with a positive tuberculin skin test should 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.

2. Native-Born.

Special screening of children born in the United States is not required unless there is history of contact to tuberculosis or there are symptoms and/or physical findings suggestive of tuberculosis.

If the tuberculin test is negative, no future screening is required unless persistent pulmonary symptoms develop or there is contact with tuberculosis. If the tuberculin skin test is positive, the child should be referred to a physician for evaluation.

[3]The preferred method is the Mantoux technique using 5 TU PPD.

APPENDIX C

INVENTORY FOR THE FIRST AID KIT

Every child care setting should have a first aid kit stocked with items on the list below. You can buy the supplies for the first aid kit at drug stores or at hospitals or medical supply stores.

Each first aid kit should be large enough to hold all the necessary supplies for first aid in the child care setting. Use a container that will close tightly. It should be stored where adults can reach it easily, but it must be stored out of reach of children. You should arrange the contents so you can reach items easily without emptying the kit. You should be sure that the contents are wrapped tightly and are sanitary. You should restock the kit after each use.

A first aid kit should contain the following items:

- ☐ First aid cards*
- ☐ Adhesive strip bandages (1/2", 3/4", 1" strips)
- ☐ Gauze bandages (4"x4", nonstick, sterile)
- ☐ Rolled flexible or stretch gauze
- ☐ Bandage tape
- ☐ Nonstick, sterile pads (different sizes)
- ☐ Triangular bandages
- ☐ Small splints
- ☐ Eye dressing or pad
- ☐ Scissors
- ☐ Tweezers
- ☐ Safety pins
- ☐ Thermometer
- ☐ Flashlight with fresh batteries
- ☐ Disposable latex gloves
- ☐ Three-ounce rubber bulb syringe (to rinse out eyes, wounds, etc.)
- ☐ Commercial cold pack or plastic bag for ice cubes
- ☐ Clean cloth
- ☐ Soap
- ☐ Small plastic cup
- ☐ Sealed packages of cleansing wipes
- ☐ Syrup of ipecac (1-ounce bottle)
- ☐ Special items for children with specific health problems (such as bee sting kit or an inhaler for a child with asthma)
- ☐ Emergency Telephone Guide
- ☐ Emergency contact information (phone numbers of the children's parents)
- ☐ Change for pay phone
- ☐ Pen or pencil and note pad

*Can be purchased from American Red Cross; give first aid instructions.

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Appendix C
American Red Cross Child Care Course
Infant and Child First Aid

APPENDIX D

MEAL PATTERN/PORTION SIZE REQUIREMENTS

If needed, the caregiver should ask for help in planning meals from a nutritionist or dietitian. For homes on the Child and Adult Care Food Program (CACFP), the DHS staff nutritionist is available. The Department of Health, local colleges, and hospitals are also possible resources.

The minimum amounts of food components to be served are as follows:

BREAKFAST

Food Components	Age 1 and 2	Age 3-5	Age 6-12[1]
Milk milk, fluid	½ cup[2]	3/4 cup	1 cup
Vegetables and Fruits Vegetable(s) and/or fruit(s) or full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice	¼ cup ¼ cup	1/2 cup 1/2 cup	1/2 cup 1/2 cup
Bread and Bread Alternates[3] bread or cornbread, biscuits, rolls, muffins, etc or cold dry cereal[4] or cooked cereal or cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	½ slice ½ serving ¼ cup or 1/3 oz. ¼ cup ¼ cup	1/2 slice 1/2 serving 1/3 cup or 1/2 oz. 1/4 cup 1/4 cup	1 slice 1 serving 3/4 cup or 1 oz. 1/2 cup 1/2 cup

[1] Children age 12 and up may be served adult-sized portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities for children age 6 to 12.

[2] A cup means a standard 8 ounce measuring cup.

[3] Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

[4] Either volume (cup) or weight (oz.), whichever is less.

(Rule 1240-04-01-Appendix D, continued)

LUNCH OR SUPPER

Food Components	Age 1 and 2	Age 3-5	Age 6-12
Milk milk, fluid	½ cup	½ cup	1 cup
Vegetables and Fruits Vegetable(s) and/or fruit(s)[4]	¼ cup total	½ cup total	¾ cup total
Bread and Bread Alternates bread or cornbread, biscuits, rolls, muffins, etc. or cooked pasta or noodle products or cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	½ slice ½ serving ¼ cup ¼ cup	½ slice ½ serving ¼ cup ¼ cup	1 slice 1 serving ½ cup ½ cup
Meat and Meat Alternates lean meat or poultry or fish[2] or cheese or eggs or cooked dry beans or peas or peanut butter, or other nut or seed butters or peanuts or soy nuts[3] or an equivalent quantity of any combination of meat/meat alternate	1 oz. 1 oz. 1 egg ¼ cup 2 Tbsp. ½ oz. = 50%	1 ½ oz. 1 ½ oz. 1 egg 3/8 cup 3 Tbsp. ¾ oz. = 50%	2 oz. 2 oz. 1 egg ½ cup 4 Tbsp. 1 oz. = 50%

(See footnotes from breakfast pattern.)

[1] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than ½ of this requirement.

[2] Edible portion as served.

[3] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry, or fish.

(Rule 1240-04-01-Appendix D, continued)

SUPPLEMENTAL FOOD (SNACKS)

Select two of the following four components. Juice may not be served when milk is served as the only other component. Milk and yogurt are too similar in nutritional value to be used together in the same supplement.

Food Components	Age 1 and 2	Age 3-5	Age 6-12[1]
Milk milk, fluid	½ cup	½ cup	1 cup
Vegetables and Fruits Vegetable(s) and/or fruit(s) or full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice	½ cup ½ cup	½ cup ½ cup	¾ cup ¾ cup
Bread and Bread Alternates bread or cornbread, biscuits, rolls, muffins, etc. or cold dry cereal or cooked cereal or cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	½ slice ½ serving ¼ cup or 1/3 oz. ¼ cup ¼ cup	½ slice ½ serving 1/3 cup or ½ oz. ¼ cup ¼ cup	1 slice 1 serving ¾ cup or 1 oz. ½ cup ½ cup
Meat and Meat Alternates lean meat or poultry or fish or cheese or eggs or cooked dry beans or peas or peanut butter, or other nut or seed butters or peanuts or soy nuts or yogurt, plain, or sweetened and flavored[1] or an equivalent quantity of any combination of meat/meat alternate	½ oz. ½ oz ½ egg 1/8 cup 1 Tbsp. ½ oz. 2 oz. or ¼ cup	½ oz. ½ oz. ½ egg 1/8 cup 1 Tbsp. ½ oz. 2 oz. or ¼ cup	1 oz. 1 oz. ½ egg ¼ cup 1 Tbsp. 1 oz. 4 oz. or ½ cup

(See footnotes from Breakfast and Lunch patterns.)

[1] Yogurt means commercially coagulated milk products obtained by fermentation that meet milk fat or milk solid requirements to which flavoring foods or ingredients may be added. These products are covered by the FDA's standard of identity for yogurt, lowfat yogurt, and nonfat yogurt.

APPENDIX E

ENVIRONMENTAL STANDARDS FOR GROUP CHILD CARE HOMES

(A) Food Sanitation.

The following standards shall be met for food sanitation:

1. Food shall be in sound condition, free from spoilage, filth, or other contamination; food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of hermetically sealed containers (home canned food) is prohibited.

2. All milk including dry milk powder shall be from a Grade A pasteurized source.

3. Raw fruits and vegetables shall be washed before use.

4. Stuffings, poultry, and pork products shall be cooked to heat all parts of the food to at least 150°F.

5. If a family style feeding process is used, all leftover food from the eating table shall be discarded. Milk and food used in family style feeding shall not be placed on eating table longer than 15 minutes prior to beginning of meal.

6. Potentially hazardous foods requiring cold storage shall be maintained at 45°F or below, and accurate thermometers shall be kept in the refrigerators. Potentially hazardous food requiring hot storage shall be at an internal temperature of 140°F or above. Frozen foods shall be maintained at a temperature of 0°F or below. Thermometers shall be placed in all freezers.

7. Milk and other potentially hazardous foods shall be kept in the proper temperature ranges and be protected properly, except during necessary periods of preparation.

8. All dry food supplies shall be stored in closed containers and labeled unless its identity is unmistakable. These foods shall be stored in a manner to prevent possible contamination and to allow for proper cleaning of the storage area.

9. All food shall be protected from contamination during storage, preparation, transportation, and serving.

10. No poisonous or toxic materials except those required to maintain sanitary conditions and for sanitation purposes may be used or stored in a food-service area of a facility.

11. Poisonous and toxic materials shall be identified, stored, and used only in such a manner and under such conditions as will not contaminate food or constitute a hazard to the population of a facility.

12. All equipment and utensils including plasticware shall be so designed and fabricated of such material and workmanship as to be smooth, easily cleanable, and durable, under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.

13. The food-contact surfaces of equipment and utensils shall be easily cleanable, nontoxic, corrosion resistant, and nonabsorbent. Hard maple or equivalently nonabsorbent material may be used for cutting boards, blocks, salad bowls, and baker's tables.

14. Multi-use equipment shall be constructed and repaired with safe materials, including finishing materials; and they shall be corrosion-resistant and nonabsorbent; and they shall be smooth and easily cleanable.

15. Equipment in use at the time of adoption of this standard that does not fully meet all of the design and fabrication requirements shall be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are nontoxic.

16. All eating and drinking utensils shall be thoroughly washed, rinsed, and sanitized after each use with the exception of single-service utensils which shall be discarded following use.

17. Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.

18. All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of potentially hazardous food shall be thoroughly washed, rinsed, and sanitized prior to such use.

19. Cooking surfaces of equipment shall be cleaned at least once a day.

20. All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food-storage utensils, shall be washed, rinsed, and sanitized after each use.

21. Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep equipment free of accumulation of dust, dirt, food particles, and other debris.

22. Cleaned and sanitized utensils and equipment shall be stored at least six inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means.

23. In facilities defined by the Department of Human Services as *existing*, a two-compartment sink can be used for washing and rinsing utensils, provided an additional container or sink is used for sanitation of the utensils. For facilities defined by the Department of Human Services as *new*, a three-compartment sink with two drain boards or easily movable dish tables of adequate size shall be required when manual dishwashing procedures are utilized for washing, rinsing, and sanitation of utensils.

    Domestic type dishwashing machines are acceptable provided the temperature at the utensil surface is 160°F after the end of one complete cycle. If 160° is not obtained at the end of one complete cycle, an additional sanitizing rinse for utensils shall be provided in a separate container or sink.

(B) Water Supply.

1. The water supply serving child care facilities shall be provided from a source constructed and operated according to law.

2. There shall be sufficient hot and cold water under pressure to supply the daily needs of a group day care home.

3. Water from a public supply shall be utilized where available.

4. An approved drinking fountain or individual single service paper cups shall be provided in rooms or adjacent to rooms regularly occupied by the residents.

5. All facilities shall be clean and in good repair.

(C) Sewage Disposal And Plumbing.

1. The facility shall be connected to a public sewage disposal system when such a system is available.

2. The use of a private sewage disposal system shall have the approval of the local health department and it shall be operating satisfactorily.

3. When the private sewage disposal system at an existing facility fails and where a public sewage system is available, the facility shall be connected.

4. Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection between the potable water supply and any other water supply.

(D) Solid Waste.

1. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

2. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction, and maintained in good repair.

3. Storage containers, other than bulk, shall be secured properly to prevent spillage.

4. Garbage deposited in outside bulk storage shall be in fly-tight containers (i.e., plastic bags).

5. All garbage shall be removed from the building daily.

6. Garbage and rubbish shall be collected from the premises at least twice weekly.

7. At facilities where twice weekly collection is not provided, all garbage and rubbish shall be disposed of in a manner acceptable to the health authority having jurisdiction (supplement collection by individual hauling, acceptable burying, etc.).

8. Combustible rubbish may be burned, provided such burning meets all local and state laws and regulations relative to incinerators, incineration, and air pollution.

(E) Toilets, Handwashing, And Bathing.

1. One flush toilet and one handwashing facility for every 12 children shall be provided.

2. All facilities shall be approved and in good repair, and clean.

3. A tightly covered container with plastic liner shall be used for diaper disposal and stored inaccessible to children. This container shall be emptied by closing the liner and disposing of it into an outside garbage receptacle.

4. There shall be soap, hot and cold water under pressure, and individual towels provided wherever a handwashing lavatory is located.

5. Personnel shall exercise good handwashing practices following diaper changes, the assistance of children in toilet use, and personal toileting.

6. Proper adult supervision shall be exercised for use of toilet and handwashing facilities.

7. Toilet tissue shall be provided on tissue holder at each commode.

8. Tempered water (90°F - 120°F) shall be provided at all handwashing or bathing facilities used by children.

(F) Buildings.

1. Structure.

(a) The building foundation, roof, walls, and window frames shall be free of visible cracks and unsealed openings to prevent entrance of insects and rodents.

(b) Buildings shall be kept clean, in good repair, and painted when necessary.

(c) Gutters and downspouts shall be kept in good repair.

2. Floors shall be easily cleanable, clean, and in good repair.

3. Walls and ceilings shall be kept clean and in good repair.

4. Doors and Windows.

(a) All doors and windows shall be kept clean and in good repair (this includes screens when used).

(b) Window space shall be equal to at least 10 percent of the floor area except in rooms which are air-conditioned and which have artificial light amounting to at least 25 foot candles.

(c) Windows shall be openable unless the room is air-conditioned.

(d) All outside doors and windows used for ventilation shall be screened unless building is air-conditioned.

5. Bedding.

(a) Where provisions are made for staying at a facility overnight, each occupant shall be provided an individual bed with acceptable mattress and waterproof cover, springs, clean linen, and clean cover.

(b) Where children are kept at least six hours but not overnight, individual cots or other approved bedding shall be provided and kept clean and in good repair.

(c) Spacing between mats or cots shall be adequate to promote freedom of movement (approximately two feet between cots and mats).

6. Lighting.

(a) Natural and/or artificial lighting shall equal at least 25 foot candles in all areas used by children and staff.

(b) Fixtures, shades, blinds, etc., shall be clean and in good repair.

7. Heating and Ventilation.

(a) All rooms used by children shall be heated by a system capable of maintaining a temperature of 68°F.

(b) When the outside temperature is 65°F or below, the temperature at child height within the facility shall be no lower than 65°F nor higher than 75°F.

(c) Stoves, hot radiators, steam and hot water pipes, or other objects and electrical outlets in rooms used by the children shall be adequately protected by screens, guards, insulation, or any suitable measures that will protect children from coming in contact with them.

(d) Heat and ventilation units shall be clean and in good repair.

8. Housekeeping.

(a) All parts of the building shall be maintained in clean condition.

(b) All rooms shall be maintained in an orderly manner.

(G) Insect And Rodent Control.

1. The facility shall be reasonably free from flies, other insects, and breeding sites.

2. Approved screens in good repair shall be provided for all doors and windows used for ventilation purposes.

3. When air-conditioning is used, doors and windows shall be kept closed.

4. The facility shall be free of rodents.

5. There shall be no rodent harborage areas.

6. Proper supervision and caution shall be exercised according to label instructions when applying approved insecticides and rodenticides.

(H) Safety.

1. Pesticides, medicines, polishes, disinfectants, and cleaning compounds shall be stored in a manner approved by the local health authority.

2. Sturdy safety rails shall be provided for ramps and steps where there are three or more risers.

3. Bathtubs, if used, shall be provided with safety strips or mats.

4. Glass in hazardous locations in the facility shall be shielded when safety glass is not used. Broken glass objects shall not be permitted in any part of the building or on grounds.

5. All furniture shall be of durable construction, free of sharp projecting corners or surfaces and kept in good repair.

6. Grounds shall be kept clean and free of hazards that are likely to cause falls. Grounds shall be kept free of excess growth of grass or weeds.

7. Buildings and grounds shall be free of any unprotected, abandoned well, cistern, refrigerator, or similar hazards.

8. Fencing or other acceptable barriers shall be provided for hazardous drainage ditches, cliffs, bluffs, or other similar hazards.

9. Adequate barriers, such as fencing, shall be provided and supervision exercised to prevent children from running on driveways, streets, or highways where a traffic hazard exists.

10. Grounds shall have adequate drainage.

(l) Swimming Pool.

1. Facilities shall comply with state law and regulations for public swimming pools.

2. Facilities utilizing a swimming pool on-site shall have an approved lifeguard on duty or twice the number of adults required in the home. Facilities using an off-site pool shall be assured of the number of lifeguards required on duty.

3. A fence four feet high shall surround the pool.

APPENDIX F

FIRE SAFETY INSPECTION REPORT
NEW AND EXISTING CHILD DAY CARE CENTERS
AND/OR GROUP CHILD CARE HOMES
LICENSED BY THE TENNESSEE DEPARTMENT OF HUMAN SERVICES

Name of Facility _____ Director _____

Street Address _____ Telephone(_____) _____

City/Route _____ State _____ Zip _____

The new life safety code refers to the 1988 Edition while the existing life safety code refers to the 1985 Edition.

	YES	NO	N/A
1. If the building is wood frame construction, is it restricted to two stories in height? NEW LSC 10-7.1.6; EXISTING 11-7.1.6			
2. Does each building used for day care center purposes have access to two out-side exits? NEW LSC 10-7.2.4.1; EXISTING 11-7.2.4.1			

(Rule 1240-04-01-Appendix F, continued)

3. Is the building free of any dead end corridors or spaces (maximum of 20 ft distance or less)? NEW LSC 10-7.2.5.1; EXISTING 11-7.2.6.1 AND 5-5.3.5			
4. If part of the building is used for purposes not under control of the day care operator, are all rooms and spaces used for day care purposes separated from the rest of the building by one-hour fire rated walls and one-hour "B" label door assemblies to include rated steel frames with self-closing units and positive latching devices? NEW LSC 10-7.1.2; EXISTING 11-7.1.2			
5. Is the second floor and/or basement separated from the main floor with one-hour rated construction including at least one-hour "B" label door assemblies (rated frames, closers, and positive latching)? NEW LSC 10-7.3.1; EXISTING 11-7.3.1			
6. Does the facility have an electrically supervised, manually operated fire alarm device which is audible throughout the building? NEW LSC 10-7.3.4, EXISTING 11-7.3.4			
7. If exit doors are located within a required rated enclosure, do the doors swing in the direction of egress? NEW LSC 5-2.1.4.1; EXISTING 5-2.1.4.1			
8. Are smoke detectors installed in accordance with Section 7-6 of the Life Safety Code? NEW LSC 10-7.3.4.5; EXISTING 11-7.3.4.5			
9. Are all fuel burning space heaters, floor furnaces or wall type electrical heaters provided with a protective screen and anchored securely (portable space heaters are not acceptable)? NEW LSC 10-7.5.2; EXISTING 11-7.5.2			
10. Is the building free of any unvented fuel burning heaters? NEW LSC 10-7.5.2.2; EXISTING 11-7.5.2			
11. Are all hallways and other means of exits kept adequately lighted at all times when the building is occupied? NEW LSC 10-7.2.8; EXISTING 11-7.2.8			
12. Are all corridor doors at least 20 minute rated with 20 minute rated frames? (If all classrooms have a door directly to the outside, this requirement may be omitted.) NEW LSC 10-3.6.1; EXISTING 11-3.6.1			
13. Are approved exit lights installed where applicable? (Over stairwell doors, in corridors, exit doors, gym, auditorium, etc.) NEW LSC10-7.2.10; EXISTING 11-7.2.10			
14. Unless classroom doors open directly to the outside, are corridors one hour rated? NEW LSC 10-3.6.1; EXISTING 11-3.6.1			
15. Does each classroom or any other room used for sleeping purposes have a window which can be opened to provide for emergency evacuation? (Not applicable if room has a door directly to the outside) NEW LSC 10-7.2.11.4; EXISTING 11-7.2.11.4, except in the 1985 LSC 101			

(Rule 1240-04-01-Appendix F, continued)

~~16. Are all doors to hazardous areas separated with 45 minute "C" label fire door assemblies? (Storage rooms, furnace rooms, etc.) NEW LSC 10-7.3.2; EXISTING 11-7.3.2~~			
~~17. Does the hot water heater have a safety relief valve installed? SMC of SBCCI 304.3.3~~			
~~18. Is the garage, storage room or basement area free of flammable or combustible liquids? NEW AND EXISTING LSC 31-1.5~~			
~~19. Does this facility have an unannounced fire drill monthly? NEW AND EXISTING LSC 31-3.4~~			
~~20. Are all employees informed of their duties for fire drills NEW AND EXISTING LSC 31-3.4.1~~			
~~21. Does interior finish have the required flamespread rating? NEW LSC 10-7.3.3.1; EXISTING 11-7.3.3.1~~			
~~22. Is the building safe from any electrical hazards such as overloaded electrical panel, excessive cords, or frayed wiring? NEW LSC 11-7.5.1.1; EXISTING 11-7.5.1.1~~			
~~23. Are all ceilings, regardless of type, constructed with noncombustible material?~~			
~~24. Are hazardous areas properly protected? NEW LSC 10-7.3.2; EXISTING 11-7.3.2~~			
~~25. Do commercial type cooking appliances have approved fire extinguishing systems installed as required by NFPA 96? NEW LSC 10-7.3.2.1; EXISTING 11-7.3.2~~			
~~26. Is emergency lighting provided throughout egress passageways? NEW LSC 10-7.2.9; EXISTING 11-7.2.9~~			
~~27. Are closet door latches designed so that children can open the door from inside the closet? NEW LSC 10-7.2.11.1; EXISTING 11-7.2.11.1~~			
~~28. Are bathroom door locks designed to permit opening of the locked door from the outside in an emergency? Are the opening devices readily accessible to the staff? NEW LSC 10-7.2.11.2; EXISTING 11-7.2.11.2~~			
~~29. Are special protective receptacle covers installed in wall receptacles in areas occupied by children under 5 years of age? NEW LSC 10-7.5.1.2; EXISTING 11-7.5.1.2~~			

~~Inspector shall check either item (a) or (b) below:~~

~~(a) Facility acceptable. . . . . _____~~

(Rule 1240-04-01-Appendix F, continued)

(b) Facility not acceptable. . . . . _____

(c) If facility is not acceptable, list all deficiencies on a Part 11 Inspection Report form to accompany this report. State at the bottom of the Part II Report that the facility will not be approved or occupied until all deficiencies have been corrected.

_____ _____

SIGNATURE OF INSPECTOR TITLE OF INSPECTOR

_____ _____

DATE OF INSPECTION AGENCY OR FIRE DEPARTMENT

(Rule 1240-04-01-Appendix F, continued)

Chapter 1240-04-01
Licensure Rules for Child Care Agencies

1240-04-01-.01 Scope and Purpose.

(1) Scope of Rules. These rules are applicable to child care agencies subject to licensing by the Department of Human Services as defined by T.C.A. §§ 71-3-501 et seq. Any conflict between this chapter and any other rules of the Department concerning the licensing procedures and regulations governing these agencies or the rules and licensing and appeal procedures for these agencies shall be resolved by reference to these rules.

(2) Applicable Requirements. These rules are organized as follows: The requirements set forth in 1240-04-01-.01 through 1240-04-01-.19 apply to all licensed categories of child care agencies unless otherwise noted within the rules. The requirements set forth in 1240-04-01-.20 through 1240-04-01-.23 apply to the specific class of care identified in each section.

(3) The Department maintains a link on its website to current statutes, rules, policies, and guidelines that are prerequisites for licensure. To access the website search for "Child Care Services" on https://tn.gov/humanservices/. Licensees are notified of changes that impact the licensure requirements at issuance and renewal of the annual license.

(4) Purpose of Licensing.

(a) The purpose of licensing is the protection of children while under the care of child care agencies licensed by the Department of Human Services and to promote developmentally appropriate practices that enhance early learning and foster parental engagement.

(b) The basic requirements in these rules seek to maintain the adequate health, safety, and supervision of children while in a licensed care setting.

Authority: T.C.A. §§ 4-5-202; 71-1-105(5) and (12); 71-3-501 et seq. 71-3-502(a)(2).

1240-04-01-.02 Definitions.

(1) Administrative Closure. Closure of an incomplete application after notification of deficiencies.

(2) Administrative Hearing. A hearing that is held under the Uniform Administrative Procedures Act, Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated, rather than a court of law, that is conducted by an administrative law judge from the Secretary of State's Office or by an administrative hearing officer of the Department of Human Services. The purpose of the hearing is to allow a child care agency the opportunity to challenge legal enforcement actions taken by the Department.

(3) Annual License. An annual permit issued by the Department to a child care agency, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and the rules of the Department.

(4) Applicant. The owner or owner's authorized representative who is required, pursuant to the provisions of these rules, to sign the application for a license.

(5) Auxiliary staff. Full and part-time employees of the child care agency who do not provide caregiving services, including but not limited to custodial, food service and maintenance staff.

(Rule 1240-04-01-Appendix F, continued)

(6) Breakfast. A meal consisting of:

(a) Fluid milk (or approved substitute);

(b) Fruit or vegetable or 100% fruit juice or vegetable juice; and

(c) Bread or bread alternate.

(7) Child or Children. A person or persons under eighteen (18) years of age.

(8) Child Care. As defined by T.C.A. § 71-3-501, the provision of supervision and protection, and meeting, at a minimum, the basic needs of a child for less than twenty-four (24) hours a day.

(9) Child Care Agency or Agency. A place or facility, regardless of whether it is currently licensed, that is operated as a "family child care home", a "group child care home", a "child care center", or a "drop-in child care center", that provides child care for three (3) or more hours per day to five (5) or more children who are not related to the primary educator.

(10) Child Care Center. Any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least thirteen (13) children who are not related to the primary educator.

(11) Child Development Associate (CDA). A person who has earned an early childhood educational credential granted by the National Council for Professional Recognition. This credential is only recognized, for purposes of these rules, if issued by the above named organization.

(12) Commissioner. The Commissioner of the Department of Human Services.

(13) Curriculum. A planned program of activities and experiences that promotes learning and social and emotional development and includes the content that children are to learn, the processes through which children achieve the identified curricular goals, what educators do to help children achieve these goals, and the context in which teaching and learning occur.

(14) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.

(15) Developmentally Appropriate Practice (DAP). Principles and guidelines that are appropriate to each child's age and developmental status and responsive to the social and cultural context in which they live.

(16) Director. The on-site child care center staff member who has responsibility for the overall operation of the center.

(17) Drop-In Child Care Center.

(a) A place or facility operated by any person or entity providing child care, at the same time, for fifteen (15) or more children, who are not related to the primary educator, for short periods of time, not to exceed fourteen (14) hours per week and for not more than seven (7) hours per day for any individual child during regular working hours (Monday-Friday, 6:00 a.m. to 6:00 p.m.).

(b) A drop-in center may provide child care during evenings (after 6:00 p.m.) and weekends (Friday, 6:00 p.m - Sunday, 10:00 p.m.) so long as the drop-in center provides no more than a total of twenty (20) hours per week, exclusive of snow days when the school of the affected child is closed.

(c) Training requirements for the staff of this class of child care agency shall be limited to basic health and safety precautions and the detection and reporting of child abuse and neglect for children in care.

(d) Drop-in centers that provide child care for no more than two (2) hours per day with a maximum of ten (10) hours per week without compensation, while the parent/guardian or other custodian is engaged in short-term activities on the premises of the organization, shall register as providing casual care and shall not be deemed to be a drop-in center or regulated as a drop-in center.

(18) Educator. An individual, whether paid or unpaid, including the Primary Educator, who is responsible for meeting the supervision, protection, and basic needs of the child, and who is used to meet the adult:child ratios required by these rules. For the purposes of these rules the term educator is equivalent to caregiver as defined by T.C.A. § 71-3-501.

(19) Extended Care. Child care services offered between the hours of 6:00 p.m. and 6:00 a.m. Monday through Friday, and weekend child care.

(20) Family Child Care Home. Any place or facility which is operated by any person or entity that provides child care for three (3) or more hours per day for at least five (5) children, but not more than seven (7) children who are not related to the primary educator.

(21) Field Trip. Any off-site activity which occurs away from the general premises of the child care agency's licensed facility.

(22) Five (5) Panel Test. A drug test for marijuana, cocaine, methamphetamine, amphetamine, and opiates that uses a specimen of the individual's urine.

(23) Foster Home. A home approved by the Department of Children's Services or a licensed child-placing agency for the residential care of children, also referred to as a resource home.

(24) Group Child Care Home. Any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least eight (8) children who are not related to the primary educator, but not more than twelve (12) children or fifteen (15) children if approved for three (3) additional school-agers.

(25) High School Diploma. A document recognizing graduation from an accredited institution, public or private, based on the issuing state's or country's required number of academic credits and includes passing a GED test or equivalent as defined by Tennessee law.

(26) Infant. A child who is six (6) weeks through twelve (12) months of age.

(27) Insurance Terms.

(a) General Liability Insurance. Provides coverage for legal liability of businesses arising out of business operations for bodily or personal injury and property damage.

(b) Auto Liability Insurance. Provides coverage if an insured is legally liable for bodily injury or property damage caused by an accident arising out of ownership or operation of an automobile.

(c) Medical Payment Insurance. Provides coverage for necessary medical expenses regardless of who has been assigned fault.

(28) Licensee. The owner, to whom a license to operate a child care agency is issued.

(29) Licensed Capacity. The designated maximum number of children permitted in the care and supervision of a licensed child care agency as determined by the Department based upon available indoor space, age of children, adult:child ratios, and group size.

(30) Meal. Includes the following four components:

(a) Meat or meat substitute;

(b) Two vegetables or one vegetable and one fruit;

(c) Bread or bread product; and

(d) Fluid milk.

(e) Or as otherwise defined by USDA standards.

(31) Operator/Owner. The licensee for the child care agency which assumes, or is legally required to assume, ultimate legal and administrative responsibility for the management and control of a child care agency.

(32) Pre-school Child. A child who is thirty-one (31) months of age and who has not entered kindergarten to school-age.

(33) Primary Educator. The adult on site at a family or group child care home who is directly responsible for care, education, and supervision of children in a child care home and for the daily operation of a child care home. For the purpose of these rules the term primary educator is equivalent to primary caregiver as referenced in T.C.A. § 71-3-501.

(34) Related. Children, step-children, grandchildren, step–grandchildren, siblings, of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary educator.

(35) Safety Plan. A mandatory plan applicable to a child care agency as a result of an investigation. A 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 child care agency, the modification or elimination of services at the child care agency, the re-inspection of the child care agency, the training of child care agency management, staff or volunteers.

(36) Serious Injury. An injury that requires treatment from an outside medical professional or facility such as an emergency medical technician, physician, health clinic, or hospital.

(37) School-Age Child. A child who has entered kindergarten through seventeen (17) years of age.

(38) Snack. A fluid drink and two (2) of the components listed in (a) through (e) below. If the fluid drink is 100% vegetable or fruit juice or milk, only one additional component from (a) through (c) is required.

(a) Vegetables or fruits in solid form.

(b) Bread or bread alternates.

(c) Meat, or meat alternates, which can consist of cooked dry peas or beans, peanut butter or nuts or seeds, cheese, eggs, and yogurt or other items approved by the United States Department of Agriculture.

(Rule 1240-04-01-Appendix F, continued)

(d) Fluid milk.

(e) One Hundred Percent (100%) vegetable or fruit juice.

(f) Or as otherwise defined by USDA standards.

(39) Special Needs. Refers to specialized services, supports, or monitoring which are necessary beyond those provided to typically developing children.

(40) Specialized Services. Services provided to children with special needs by individuals having detailed training or expertise in a particular field such as speech/language therapy, physical therapy, play therapy, mental health counseling, or health care treatments, etc.

(41) Staff. Full and part-time paid educators and employees of the child care agency.

(42) Substitute. Paid or unpaid persons who are replacements for regular staff.

(43) Supervision. For the purposes of this Chapter, when children are not within the direct sight and sound of an adult, the term "supervision" means the following requirements:

(a) Children six (6) weeks of age through nine (9) years of age. The adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.

(b) Children six (6) weeks of age through five (5) years of age during mealtime. An adult must be in the direct sight and sound of children ages six (6) weeks through five (5) years, not in kindergarten, while the child is eating.

(b) Children ten (10) years of age and older:

1. The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.

2. Each child shall be greeted and received by the specific educator assigned who will have ultimate responsibility and accountability for their supervision, oversight and care.

(c) Mixed-age Groups. When children ages ten (10) years or above are grouped with children under ten (10) years of age, the minimum supervision requirements for children ages six (6) weeks through nine (9) years, as set forth in subparagraph (a) above, shall be followed.

(d) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

(44) Supervision During Mealtime. Direct supervision of children by the educator is required anytime the child(ren) are eating. Educator shall not be engaged in other activities while children are eating.

(45) Temporary License. A license issued to a child care agency for up to 120 days for the purpose of allowing the child care agency to demonstrate their ability to attain and maintain compliance with all licensing laws and regulations.

(46) Time Out. A means of correcting undesirable behavior by removing the child from the environment, placing the child in a quiet place away from the group for a few minutes, and then talking about the problem.

(Rule 1240-04-01-Appendix F, continued)

(47) Toddler. A child who is thirteen (13) months through thirty (30) months of age.

(48) Unsupervised Access to a Child. When a person in question has access to a child and no other approved staff person is present with the child and supervising.

(49) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement the regular staff.

Authority: T.C.A. §§ 4-5-202; 71-1-105(5) and (12); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.03 Requirements for Licensure as a Child Care Agency.

(1) Upon receipt of an application for a license, and throughout the temporary licensing period and during the annual licensing period, immediate access during operating hours to all areas of the child care facility shall be granted to all Department representatives and other inspection authorities (i.e., fire safety, sanitation, health, the Department of Children's Services, etc.).

(2) Scope of Licensed Operation.

(a) All programs shall operate within:

1. Their licensed capacity;

2. The approved hours of operation;

3. The specific age ranges of children served;

4. The services offered;

5. At the address designated on the license; and

6. Any restrictions stated on the license.

(3) Multiple Child Care Agencies Operated by a Licensee at the Same Location.

(a) If two (2) or more child care agencies are located on the same property, each child care agency shall independently meet the requirements for a license.

(b) A child care agency shall not operate on the same property as an unlicensed, unregulated, or exempt child care agency unless approved in advance by the Department.

(c) If more than one licensed child care agency occupies the same building, the programs shall not share space and children from each child care agency shall not intermingle.

Exception to shared space: The programs may share the same playground space as long as children from each program are not using the space at the same time.

Authority: T.C.A. §§ 4-5-202; 71-1-105(5) and (12); 71-3-501 et seq.; 71-3-502(a)(2) and (3); 71-3-503(a)(6), (8), and (9).

1240-04-01-.04 Procedures for Obtaining a License.

(Rule 1240-04-01-Appendix F, continued)

(1) **Renewal Evaluation Process.**

(a) The application, fee, and any supporting documentation shall be submitted sixty (60) calendar days prior to the expiration of the license. Failure to submit a completed application and the required fee before the license expires shall result in the automatic termination of the annual license upon the expiration date.

(b) In addition to the evaluation requirements listed above, applicants for the renewal of a license shall be evaluated and shall be issued a report card, as set forth in Chapter 1240-04-07.

(c) The Department shall issue a renewal of an existing license demonstration of:

1. Compliance with all laws and licensing regulations governing the specific classification of child care agency;

2. Compliance history throughout the licensing period; and

3. Payment in full of all assessed civil penalties and other monies owed the state.

(d) A license is not transferable to a new address or a new owner.

(e) Failure to meet the requirements for the issuance of an annual license may result in the denial of the renewal of the license.

(f) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license that permits operation of a child care agency, but limits the child care agency's authority in one (1) or more areas of operation.

(g) Business Organization.

1. The organization of every child care agency shall be such that legal and administrative responsibility is clearly defined in writing in the form and manner directed by the Department and shall accompany the application for a license.

2. Documentation of the child care agency's business organization shall be made in the form and manner directed by the Department. The application shall include copies of the business organization filings with the Tennessee Secretary of State Division of Business Services.

Authority: T.C.A. §§ 4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2) and (d)(5), and 71-3-508(c).

1240-04-01-.05 Ownership, Organization, and Administration.

(1) **Child Care Agency Program Description.**

(a) An applicant shall submit a written program description to the Department that minimally includes the following information:

1. All services and types of care to be offered;

2. Ages of children accepted;

(Rule 1240-04-01-Appendix F, continued)

3. Hours of operation;

4. Description of food service; and

5. If applicable, plans for sharing outdoor equipment and space with children not enrolled in the child care agency.

(b) Notification of changes to the program description shall be submitted to the Department at least ten (10) calendar days prior to making the change.

(2) Finances.

(a) The applicant shall provide a proposed budget that demonstrates adequate funding for both preliminary and ongoing costs associated with staffing, equipment and safe operation.

(b) Relevant financial records of the child care agency shall be immediately available to the Department upon request.

(3) Records of Subsidized Child Care and Food Supplement Payments.

(a) A child care agency that receives any funding from the Department or its contractors to subsidize the cost of child care or the cost of providing meals or snacks shall maintain and make available immediately upon request of any auditing or licensing authority the following:

1. Complete and accurate record of payments received;

2. Children's attendance;

3. A record of food served for each program in which the child care agency participates; and

4. Any other records required by the Department or any other child care agency for reimbursement for the child's care and/or feeding.

(4) Liability and Medical Payment Insurance Coverage.

(a) General liability, automobile liability and medical payment insurance coverage shall be maintained on the vehicles owned, operated or leased by the child care agency and on the operations of the child care agency's facilities as follows:

1. Family and Group Child Care Homes: General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of:

(i) Three Hundred Thousand Dollars ($300,000) per occurrence; and

(ii) Three Hundred Thousand Dollars ($300,000) general aggregate coverage.

2. Child Care Centers and Drop-In Child Care Centers: General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of:

(i) Five Hundred Thousand Dollars ($500,000) per occurrence; and

(Rule 1240-04-01-Appendix F, continued)

(ii) Five Hundred Thousand Dollars ($500,000) general aggregate coverage.

3. Medical payment coverage for injuries to children resulting from the operation of the child care agency shall be maintained in the minimum amount of Five Thousand Dollars ($5,000).

4. Automobile Coverage for Child Care Agencies that Transport Children:

(i) Automobile liability coverage.

(I) Family and Group Homes: Automobile liability coverage shall be maintained in a minimum amount of three hundred thousand dollars ($300,000), combined single limit of liability.

(II) Child Care Centers: Automobile liability coverage shall be maintained in a minimum amount of five hundred thousand dollars ($500,000), combined single limit of liability.

(ii) Medical payment coverage for injuries to children being transported in vehicles owned, operated or leased by the child care agency shall be maintained in the minimum amount of five thousand doallrs ($5,000).

(b) A standard homeowner's policy is not sufficient to provide the coverage requirements for a child care facility outlined in this section.

(c) The requirements of this paragraph shall not apply to a child care agency 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 coverages and the liability limits required by these rules.

(d) Unless subparagraph (c) is applicable, non-profit corporations that administer Head Start child care programs and are defined as government entities for the purposes of the governmental tort liability act (T.C.A. § 29-20-101 et seq.) shall have the insurance required by subparagraph (a) above.

(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 child care agency and shall be available for review by the Department. Documentation shall include the declarations page of the insurance policy and this documentation shall reflect, at a minimum, the requirements described above.

(5) Enrollment Restrictions.

(a) Enrollment of children under six (6) weeks of age is prohibited.

(b) Children shall not be in care for more than twelve (12) hours in a twenty-four (24) hour period except in special circumstances. See Rule 1240-04-01-.23 for drop-in center enrollment restrictions.

(c) Individualized plans for the care of a child in excess of twelve (12) hours due to special circumstances shall be signed by the parent/guardian and primary educator/director and approved in advance by the Department. Plans shall be updated annually. See Rule 1240-04-01-.23 for drop-in center enrollment restrictions.

(d) The child care agency shall not admit a child into care until the parent/guardian has

(Rule 1240-04-01-Appendix F, continued)

supplied the child care agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history.

Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed sixty (60) days.

(e) The child care agency shall maintain written documentation that the parent/guardian performed an on-site visit to the child care agency prior to the child being enrolled into care and that the child care agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit.

Exception: a pre-placement visit is not required for children of homeless families.

(6) Home Schooling.

(a) Home schooling shall not take place during child care hours unless a qualified primary educator, in addition to the home schooling parent/guardian, is available to supervise the child care agency and to care for the enrolled children.

(b) Home schooling conducted during child care operating hours shall be conducted in a space separate from the designated child care space.

(7) Extended Care

(a) Extended care services may be offered by a child care agency as an additional component to conventional care services, or the child care agency may exclusively provide extended care services.

(b) In order for a child care agency to offer extended care services, the Department shall issue a license bearing a notation that the child care agency is authorized to provide extended care services.

(c) A child care agency may not offer extended care services without the Department's approval.

(8) Child Care Agency Drug Testing Policy.

(a) Child care agencies shall establish a drug testing policy for all staff that have direct contact with children, as defined by the Department, with a child in the care of the child care agency.

(b) The policy shall:

1. Specify when and how testing should be completed;

2. Provide for immediate and effective enforcement action in the event of a positive drug test; and

3. Require drug testing based upon reasonable suspicion that employees, directors, licensees, or operators of a child care agency, or other persons providing services under contract or for remuneration for the agency are engaged in the use of illegal drugs.

(c) The child care agency shall provide the policy to all staff that have direct contact with children upon the individual's employment with the child care agency.

(d) The child care agency shall maintain drug test results for all currently employed staff members who are subject to drug testing and for five (5) years after employment is terminated. All drug test result shall be immediately provided to the Department upon request.

(e) Drug testing results are confidential and may be disclosed only for purposes of enforcing this part.

(f) The Department may require the licensee or operator of a family child care home who has direct contact with children to submit to a drug test at the expense of the licensee or operator, when reasonable suspicion exists.

(g) A child care agency that does not comply with this section is subject to the Department:

1. Denying the application for a license;

2. Denying the application for a license renewal; or

3. Suspending or revoking a license issued.

(9) Parent Communication and Engagement.

(a) The child care agency shall ensure that a copy of the child care agency's policies, procedures, and the Department's Summary of Licensing Requirements is supplied to the parents/guardians upon admission of the child.

(b) The child care agency's policies shall include, at a minimum:

1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-01-.05(13)];

2. Specific criteria concerning the release of children;

3. Written parental permission for observation of children by non-child care agency staff;

4. Behavior management techniques;

5. Hours of operation;

6. Late fees;

7. Rates;

8. Inclement weather;

9. Emergency policy;

10. Whether the environment is smoke free;

11. Meal Service policy; and

(Rule 1240-04-01-Appendix F, continued)

12. Child care agency after-hours contact telephone phone number in case of an emergency.

(c) The child care agency shall require the parent/guardian to sign for receipt of the policies and the Summary of Licensing Requirements, and the signed receipt shall be maintained by the child care agency in the child's file.

(d) Parents/guardians shall be permitted to see the professional credential(s) of staff upon request.

(e) The child care agency shall have ongoing communication with parents/guardians to include curriculum, changes in personnel and any changes affecting children's routine care.

(f) Child care agencies shall provide information about the benefits of immunizing children against influenza each August or September to parents/guardians of all children enrolled in the child care agency.

1. Parents shall sign the notification form to verify that they received the information.

2. Documentation of notification shall be available for review by the Department and maintained for one (1) year.

(g) The child care agency shall use a developmental checklist approved by the Department as a guide for conducting annual individual parent meetings to discuss the child's progress and development. Documentation of the meetings must be maintained in the child's record.

Exception: Not required for school-age children participating in after-school programs.

(h) All child care agencies shall disseminate materials and information to parents/guardians, as required by the Department.

(i) Child care agencies shall obtain training relevant to the special needs of the child in care and shall consult with parents/guardians and appropriate service providers regarding techniques used in the home to ensure the child's safety. If children with special needs are enrolled, Section 504 of the federal Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) guidelines shall be consulted regarding the number of caregivers that a reasonable accommodation of a child's disability may require.

(j) Specialized services.

1. The provision of specialized services shall be conducted only by individuals who hold the appropriate license or certification and with written permission by the parent/guardian and shall be documented in the child's record.

2. Any information exchanged regarding specialized services that is shared with or received from third parties shall also be documented in each child's record.

(k) During operating hours, parents/guardians shall be permitted immediate access to their children, unless an Order of Protection or other legal document otherwise restricts or prohibits such access.

(l) Notification of Parents/Guardians of Field Trips.

Written permission, including prior notification and consent for each field trip, shall be obtained from the parents/guardians prior to the child's removal from the premises.

(m) Authorized Removal of Children.

1. An authorized investigator with the Department of Children's Services or law enforcement may take a child off the premises of the child care agency if he/she has obtained custody of the child as follows:

(i) Voluntary placement agreement with the parent/guardian;

(ii) Court order;

(iii) Emergency assumption of custody under T.C.A. § 37-1-113 without parent/guardian permission;

(iv) If the child's parent or legal guardian is present and approves; or

(v) In conjunction with investigative procedures under the child abuse laws.

2. The child care agency shall request visual confirmation of an investigator's identification.

(10) Notifying Parents/Guardians.

(a) The child care agency shall post the following in a clearly visible location and obtain parents'/guardians' signatures indicating they have read the document:

1. A formal notice of a critical licensing violation that put a child at imminent risk of harm or resulted in actual harm;

(i) Critical violations include but are not limited to the following:

(I) Transportation;

(II) Ratios;

(III) Supervision;

(IV) Failure to properly dispense or store medications;

(V) Background checks/Failure to complete or failure to exclude;

(VI) Failure to store hazardous items;

(VII) Failure to properly remove or secure firearms;

(VIII) Corporal punishment;

(IX) Failure to report suspected abuse or neglect;

(X) Falsification of documents required by the Department;

(XI) Failure to have CPR/first aid certification as required by the Department;

(XII) Six (6) or more minor violations of any type within a three (3) month period; or

(XIII) Three (3) or more minor violations of the same type within a three (3) month period.

2. Any issuance of a legal enforcement order;

3. Any decision rendered by the Child Care Agency Board of Review pursuant to Chapter 1240-04-05;

4. An Order affecting the child care agency's operations issued by any court of law; or

5. Notice of probation.

(11) Right to Privacy/Confidentiality.

The licensee and child care agency staff shall not disclose or knowingly permit the use by other persons, any information concerning a child or family enrolled at the child care agency except as required by law.

(12) Posting Required Documentation.

(a) The following shall be posted near the main entrance where staff, parents, and others may view them:

1. The child care agency license;

2. Current child care agency Report Card;

3. The child care agency's operating hours;

4. The Department's toll-free Child Care Complaint Hotline phone number; and

5. The Department of Children's Services' Central Intake Child Abuse Hotline number. This information shall also be posted at each telephone.

(b) No smoking signs shall be posted in a conspicuous manner at each entrance to the facility.

(c) Required adult:child ratios and group size shall be posted in every classroom.

(d) Items that must be accessible in a place where staff, parents, and others may view:

1. Applicable Department licensing rules shall be maintained in a central space and available to all staff and parents/guardians;

2. Weekly menu;

3. Daily schedule;

4. Notice of requirements to report child abuse;

5. Emergency procedures; and

6. Record of fire and other emergency drills.

(e) Any other materials shall be posted as directed by the Department.

(13) The child care agency shall have a written expulsion policy.

(a) The policy shall be:

1. Clearly articulated to staff and parents;

2. Developmentally appropriate and consistent; and

3. Non-discriminatory in practice and impact.

(b) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, or Individuals with Disabilities Act (IDEA).

(c) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.

(d) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

(14) Data Reporting.

Child care agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

(15) Falsification of any information or documentation is prohibited.

Authority: 7 C.F.R. § 226.15(e); T.C.A. §§ 4-5-202, 39-17-1803, 49-6-501, 49-6-502, 71-1-105(5) and (12), 71-3-501 et seq., 71-3-512.

1240-04-01-.06 Staff.

(1) Responsibility for Staff.

(a) Owners, directors, and primary educators shall be responsible for:

1. Selecting qualified and capable staff;

2. The supervision, training, and evaluation and performance management of the staff;

3. The efficient operation of the child care agency's program; and

4. Providing written policy to staff that includes job functions, qualifications, lines of authority, staff performance evaluations, and disciplinary process.

(b) Annual Evaluations.

1. Teaching staff, assistant directors, and directors shall be evaluated on the performance of their duties at least annually.

2. Records of performance evaluations shall be maintained in the educator's files and made available to the Department upon request.

(2) Organizational Management.

(a) Family and group home child care agencies must notify parents in advance of person(s) in charge during the primary educator's absence.

(b) The primary educator/director shall identify and notify staff of the person in authority in the event of his/her absence.

(c) The child care agency shall be responsible for all volunteers and service providers/contractors providing services to the child care agency.

1. Service providers or contractors shall never be alone with children unless:

(i) Written authorization is obtained from a parent/guardian for the child prior to receiving the service;

(ii) Written authorization is obtained from a parent/guardian naming the service provider or contractor as their authorized representative for the purposes of releasing the child to them; and

(iii) The service provider or contractor shall provide identification prior to signing the child out or delivering the service and shall sign the child back in upon completion of service.

(3) General Child Care Agency Staff Qualifications.

(a) Staff involved in transporting children are subject to general qualifications in addition to the requirements and qualifications detailed in Transportation Rule 1240-04-01-.17.

(b) Every staff person shall be capable of performing his/her duties satisfactorily.

(c) A staff member shall be designated to be in charge of the child care agency in the absence of the primary educator/director and the name of the person in authority shall be posted. Such person shall be familiar with child care agency policies and procedures.

(d) The primary educator/director or designee shall ensure that no person shall have any access to children who:

1. Has a physical, mental, or emotional condition that poses a risk to children.

2. Exhibits any evidence suggestive of illegal or inappropriate drug/alcohol use or possession.

(e) Examinations to Determine Physical, Mental, and Emotional Status.

1. A childcare agency may, upon reasonable cause/suspicion require any persons having significant contact with children to obtain physical/mental health evaluations to determine their ability to satisfactorily perform their job duties.

(f) At all times during child care operating hours, one (1) adult educator with at least a high school diploma shall be on the premises.

Exception: Not applicable for primary educators who received their initial license before the effective date of these rules.

(g) Prior to having contact with children, each new employee shall receive orientation in, and have a working knowledge of the following items:

1. Program philosophy and policies;

2. Job description;

3. Emergency health and safety procedures;

4. Behavior management procedures;

5. Detection, reporting, and prevention of child abuse;

6. Procedures for receiving and releasing children;

7. Safe sleep procedures;

8. Meal service and safe food preparation policies;

9. Supervision during high risk activities such as eating and outdoor play;

10. Food allergies;

11. Expectations for communications with parent/guardian;

12. Disease control and health promotion, including childhood obesity and the beneficial health impacts of physical activity;

13. An overview of licensing requirements; and

14. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age.

(h) Prior to having contact with children, each new employee shall complete training in the following areas:

1. Shaken baby syndrome/abusive head trauma; and

2. A minimum of two (2) hours pre-service training as recognized by the Department.

(i) Documentation of the requirements in subparagraphs (g) and (h) shall be maintained in the staff file.

(4) Substitutes and Practicum Students.

(a) Substitutes providing services for more than thirty-six (36) hours in a calendar year shall:

(Rule 1240-04-01-Appendix F, continued)

1. Meet the background check requirements prior to beginning their duties;

2. Meet the same requirements as regular staff for the physical examination required by these rules; and

3. Have a minimum of four (4) hours of annual training if they acted as substitutes/educators for more than thirty-six (36) hours in the previous calendar year.

(b) Substitutes that do not meet the above shall never be left alone with children, and practicum students shall never be left alone with children.

(5) Volunteers.

(a) Volunteers may not be counted to meet the adult:child ratios and shall never be left alone with children.

Exception: Parents/guardians may be counted in the adult:child ratio at a field trip location.

Authority: T.C.A. §§ 4-5-202; 71-1-105(5) and (12); 71-3-501 et seq.; 71-3-502(a)(2); 71-3-507.

1240-04-01-.07 Criminal Background Check and State Registry/Records Review Procedures.

(1) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

(a) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:

1. Any person who owns or operates a child care agency;

2. Any person who applies to work in a child care agency as an employee, director or manager;

3. Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult:child ratio; and

4. Any person who is fifteen (15) years of age or older who will reside in a child care agency.

(b) New background checks are required for all staff and residents when a child care agency moves from one class of care to another, such as when a family home becomes a group home or when a child care agency is sold and staff remain employed by the new owner or any time a child care agency is issued a license that is not the renewal of an existing license. This requirement does not apply to background checks completed within the last ninety (90) days.

(c) Background checks are required for all staff at least every five (5) years.

(d) Requirements for disclosure of criminal/juvenile and state register history and fingerprinting, are provided by T.C.A. § 71-3-507 and as required by the Child Care and Development Block Grant Act.

(Rule 1240-04-01-Appendix F, continued)

(2) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(a) The general requirements regarding responsibility for providing background checks and prohibition of contact with children prior to completion of criminal history review are provided at T.C.A. § 71-3-507.

(b) The Department will pay for the costs of performing one background check per person per child care agency per year.

(c) The child care agency shall be responsible for costs associated with the background check if:

1. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

2. The child care agency submits a second fingerprint sample for an individual more than one (1) time within a thirty (30) day period; or

3. The child care agency submits a fingerprint sample for a person who is not a resident or a person who has been selected by the child care agency, substitute pool, or staffing agency to fill a position as an employee, or substitute who will work directly with children.

(3) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

(a) No person shall be employed, be a licensee or operator, or provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

1. Been convicted of, or pled guilty or no contest to (or to a lesser included offense);

2. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

3. Been named in a pending warrant, indictment, presentment, or petition.

(b) An excludable criminal offense involves:

1. The physical, sexual or emotional abuse or neglect of a child;

2. A crime of violence against a child or any person;

3. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

4. Any offense that presents a threat to the health, safety or welfare of children.

5. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (and including convictions for equivalent offenses in other states or jurisdictions):

(i) Aggravated arson (T.C.A. § 39-14-302);

(Rule 1240-04-01-Appendix F, continued)

(ii) Aggravated assault (T.C.A. § 39-13-102);

(iii) Aggravated child abuse (T.C.A. § 39-15-402);

(iv) Aggravated child neglect (T.C.A. § 39-15-402);

(v) Aggravated cruelty to animals (T.C.A. § 39-14-212);

(vi) Aggravated kidnapping (T.C.A. § 39-13-304);

(vii) Aggravated rape (T.C.A. § 39-13-502);

(viii) Aggravated rape of a child (T.C.A. § 39-13-531);

(ix) Aggravated robbery (T.C.A. § 39-13-402);

(x) Aggravated sexual battery (T.C.A. § 39-13-504);

(xi) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

(xii) Aggravated vehicular homicide (T.C.A. § 39-13-218);

(xiii) Arson (T.C.A. § 39-14-301);

(xiv) Assault (T.C.A. § 39-13-101);

(xv) Carjacking (T.C.A. § 39-13-404);

(xvi) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

(xvii) Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

(xviii) Criminal exposure to HIV (T.C.A. § 39-13-109);

(xix) Criminal homicide (T.C.A. § 39-13-201);

(xx) Criminally negligent homicide (T.C.A. § 39-13-212);

(xxi) Cruelty to animals (T.C.A. § 39-14-202);

(xxii) Custodial interference (T.C.A. § 39-13-306);

(xxiii) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

(xxiv) Domestic assault (T.C.A. § 39-13-111);

(xxv) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

(xxvi) Especially aggravated burglary (T.C.A. § 39-14-404);

(xxvii) Especially aggravated kidnapping (T.C.A. § 39-13-305);

(Rule 1240-04-01-Appendix F, continued)

(xxviii) Especially aggravated robbery (T.C.A. § 39-13-403);

(xxix) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

(xxx) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

(xxxi) False imprisonment (T.C.A. § 39-13-302);

(xxxii) First degree murder (T.C.A. § 39-13-202);

(xxxiii) Incest (T.C.A. § 39-13-302);

(xxxiv) Indecent exposure (T.C.A. § 39-13-511);

(xxxv) Involuntary labor servitude (T.C.A. § 39-13-307);

(xxxvi) Kidnapping (T.C.A. § 39-13-105);

(xxxvii) Rape (T.C.A. § 39-13-503);

(xxxviii) Rape of a child (T.C.A. § 39-13-522);

(xxxix) Reckless endangerment (T.C.A. § 39-13-103);

(xl) Reckless homicide (T.C.A. § 39-13-215);

(xli) Robbery (T.C.A. § 39-13-401);

(xlii) Second degree murder (T.C.A. § 39-13-210);

(xliii) Sexual battery (T.C.A. § 39-13-505);

(xliv) Sexual battery by an authority figure (T.C.A. § 39-13-527);

(xlv) Sexual exploitation of a minor (T.C.A. § 39-17-1003);

(xlvi) Solicitation of a minor (T.C.A. § 39-13-528);

(xlvii) Stalking (T.C.A. § 39-17-315);

(xlviii) Statutory rape (T.C.A. § 39-13-506);

(xlix) Statutory rape by an authority figure (T.C.A. § 39-13-532);

(l) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

(li) Vehicular assault (T.C.A. § 39-13-106);

(lii) Vehicular assault while intoxicated (T.C.A. § 39-13-106);

(liii) Vehicular homicide (T.C.A. § 39-13-213);

(liv) Voluntary manslaughter (T.C.A. § 39-13-211); and

(lv) Weapons offenses (unlawful possession, carrying, use, etc.).

(Rule 1240-04-01-Appendix F, continued)

(c) No person may be employed as a driver or serve as a driver for a child care agency if the person:

1. Is currently charged with; or

2. Has been convicted of, or pled guilty to, within the last five (5) years any of the following criminal offenses:

(i) Vehicular homicide;

(ii) Accidents involving death or personal injury;

(iii) Accidents involving damage to a vehicle;

(iv) Driving under the influence of an intoxicant, drug or drug producing stimulant; or

(v) Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(4) Exclusion from access to child care based on a listing on a state registry.

(a) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

1. Listed on the Vulnerable Persons Registry;

2. Listed on the Sexual Offender Registry; or

3. Substantiated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

(5) Requirements for Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency, are provided by T.C.A. § 71-3-507.

Authority: T.C.A. §§ 4-5-202; 71-1-105(5) and (12); 71-3-501 et seq.; 71-3-507.

1240-04-01-.08 Record Keeping.

(1) General Record Requirements.

(a) All records required by this chapter shall be maintained in an organized manner on-site at the child care agency's licensed location and shall be immediately available to the Department upon request.

1. The term "on-site" in subparagraph (a) above may refer to a centralized location approved, in advance, in writing by the Department as long as emergency contact information is maintained at the actual physical location of the child care agency.

(2) General Children's Records.

(a) The child care agency shall maintain a file for each child in a central location within the child care agency.

(b) A child's records shall be kept for one (1) year following the child's leaving the child care agency; however, the health record shall be returned to the parent/guardian upon request when the child leaves the child care agency.

(c) All children, including related children younger than age nine (9), shall have required records on file before care is provided.

Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

(d) General Requirements - Children's Records shall include:

1. A current information form, containing the following:

(i) The child's name and date of birth;

(ii) Name of parents/guardians;

(iii) Child's and parents'/guardians' home addresses and phone numbers;

(iv) Parents'/guardians' business addresses, phone numbers, and work hours (if applicable);

(v) Any special needs, medical conditions (including allergies) or relevant history of the child;

(vi) For a child with life-threatening allergies, a written plan of action endorsed by the child's pediatrician or licensed medical provider;

(vii) Name, address, and telephone number of a physician to call in case of an emergency;

(viii) Written consent of parents/guardians regarding emergency medical care; and

(ix) The name and address (home and business or school) and current phone number of an emergency contact.

2. A written statement stating to whom the child shall be released.

3. Written transportation agreement, if applicable, between parent/guardian and the child care agency regarding daily transportation between the home and the child care agency and the child care agency and the school.

4. Daily attendance records that include the full name and time in and time out for each child shall be maintained on-site but not necessarily in the individual child's file.

5. Daily attendance records shall be kept for one (1) year after the child has left the child care agency.

6. An individual attendance list shall be maintained in each classroom.

7. The child care agency shall obtain individual permission slips signed and dated

by the parent/guardian for each field trip prior to the activity.

8. A signed Personal Safety Curriculum Notification Form indicating the parents/guardians have been provided an opportunity to review the personal safety curriculum offered by the child care agency, and have been notified of the child sexual abuse/personal safety curriculum. See Rule 1240-04-01-.23 for requirements specific to drop-in centers.

(e) Immunization Record Requirements.

1. The child care agency shall have a Tennessee Department of Health Official Immunization Certificate before accepting any child age two (2) months or older into care.

2. Exceptions to immunization record requirements may be made only if:

(i) The child's physician or a state or local health department provides a signed and dated statement giving a medical reason why the child should not be given a specified immunization;

(ii) The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices; or

(iii) If care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed sixty (60) days.

3. Before a school-age child is accepted for care, the center shall have on file a statement from the parent or school that the child's immunizations are current and that his or her health record is on file at the specified school which the child attends.

(f) Children's Record Requirements.

1. The following information shall be documented and shared with all educators of an infant, toddler or non-verbal child during the day:

(i) Time and amount of feeding;

(ii) Any incidence of excessive spitting up;

(iii) Toileting;

(iv) Times of diaper changes;

(v) Sleep patterns; and

(vi) Developmental progress.

2. Before a child under the age of sixty (60) months of age is accepted for care, the parent/guardian shall provide documentation, signed or stamped by a physician or licensed medical provider, that the child has completed a well-child examination. This record shall be kept on file at the child care agency for one (1) year.

Exception: If care for children of homeless families and/or children in state

custody is needed before documentation a well-child examination can be confirmed. Care without well-child examination documentation shall not exceed sixty (60) days.

3. Each infant, toddler and pre-school child shall have a transition plan for moving from one age group to another.

(g) School Age Children's Record Requirements.

1. The information form shall list the name, address, and phone number of the school the child attends.

2. The records of any child who is five (5) years old in a child care agency which lacks approved kindergarten status for purposes of T.C.A. § 49-6-201 shall include a signed acknowledgment by the child's parent or guardian 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 signed by the parent or guardian and maintained in the child's file.

(h) Record Requirements for Children with Special Needs. The child care agency will maintain a written activity record that consists of a daily activities and behavior and information pertinent to the needs of the individual child.

(3) Staff Record Requirements.

(a) The child care agency shall maintain a file for all staff in a central location within the child care agency.

(b) Staff records shall be maintained for at least one (1) year following the separation of the staff from the child care agency.

(c) Staff records shall include the following information for each staff member:

1. The name, birth date, the social security number, address, and telephone number;

2. An emergency contact name/phone number/address;

3. Documentation of education and certificates of conferences and workshops attended in the preceding year;

4. Documentation signed by the examining licensed physician, nurse practitioner or physician's assistant, verifying that the staff person is physically, mentally and emotionally capable of safely and appropriately providing care for children in a group setting, if the staff person is an educator, owner, operator, director, manager, or will otherwise have unsupervised access to children. The documentation shall be on file within ten (10) calendar days of employment or work start date;

5. Documentation that staff have been screened and, if necessary, tested and medically cleared for tuberculosis prior to having contact with children;

6. At least three (3) written, non-relative, references;

7. Documentation that the child care agency has checked and verifed each

(Rule 1240-04-01-Appendix F, continued)

reference prior to employment;

8. Written employment history verified in a written statement that employment history has been checked prior to employment;

9. Documentation of annual performance reviews including personnel and corrective actions;

10. Date of employment and date of separation, as applicable, from the child care agency;

11. Daily attendance (including time in/out);

12. Signed and completed criminal history disclosure form; and

13. Verification of criminal and juvenile background check results, the vulnerable person's and sex offender registries results, and the results of a review of the protective services records of the Departments of Children's and Human Services.

(d) In addition, driver records shall contain the information required by 1240-04-01-.17:

1. Copy of driver license showing proper endorsements;

2. Verification of a valid driver license and driver history check;

3. Annual physical exam;

4. Verification of a clear drug screen prior to assuming driving duties; and

5. Verification of Cardio Pulmonary Resuscitation and First Aid Certification.

(e) Substitute and Volunteer Records. Records of substitutes and volunteers shall include their names, addresses, telephone numbers and hours and dates of service.

(f) Substitute Pool Records. All staff records shall be available onsite where the substitute is working either as print copies or web-accessible documents.

Authority: T.C.A. §§ 4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).

1240-04-01-.09 Incident Reporting.

(1) Reports of Incidents, Illnesses, Accidents, Injuries, and Fatalities.

(a) Incidents, accidents, injuries, and signs of illness shall be reported to the parent/guardian no later than the child's release to the parent/guardian or authorized representative on the date of occurrence.

(b) Serious injuries or signs of serious illness shall be reported to the parent/guardian immediately.

(c) The child care agency shall not delay seeking emergency treatment due to a delay in contacting the parent/guardian.

(d) Incidents, accidents, injuries, and signs of serious illness to children shall be

(Rule 1240-04-01-Appendix F, continued)

documented immediately with the following information:

1. Child's name and date of birth;

2. Name of the person writing the report;

3. Date and time;

4. Date and time of completion of incident report;

5. Description of incident and circumstances; and

6. Action(s) taken by the child care agency.

(e) The documentation shall be provided to the parent/guardian the same day of the incident, and filed in the child's record.

(f) The child care agency shall notify the Department of all serious incidents the same day of the incident, by contacting the Complaint Hotline at 1-800-462-8261. Serious incidents include but are not limited to the following:

1. Any injury that requires medical treatment beyond on-site first aid;

2. Reports made to the Department of Children's Services, law enforcement, or anytime it is necessary to call 911;

3. Any incident that may result in staff exclusion from child care per 1240-04-01-.07;

4. Transportation accidents and traffic citations (such as a driver cited for speeding) that occur when children are on the vehicle; and

5. Any child or adult fatality at the child care agency.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).

1240-04-01-.10 Duty to Report Child Abuse and Neglect.

(1) Duty to Report Child Abuse and Neglect.

(a) Duty to Report.

1. Every operator, owner, licensee, director, primary educator or staff member of, or substitute staff member or volunteer in, a child care agency licensed by the Department of Human Services is individually responsible and required to immediately report any reasonable suspicion of child abuse or neglect to either the Department of Children's Services and/or local law enforcement or the judge of the juvenile court in the county of the child's residence, pursuant to T.C.A. §§ 37-1-403 and 37-1-605.

2. Any statement from a child reasonably indicating abuse/neglect of that child or another child or any evidence of abuse/neglect observed on a child shall be immediately reported by staff to the Department of Children's Services and/or to local law enforcement or to the judge of the juvenile court in the county of the child's residence.

(Rule 1240-04-01-Appendix F, continued)

3. Determining Suspicion of Abuse/Neglect.

(i) The child care agency and/or individual staff shall not delay reporting possible abuse or neglect in an attempt to investigate or verify the abuse/neglect allegations.

(ii) The child care agency shall limit questioning of the child to basic inquiries necessary to determine if any reasonable possibility of abuse or neglect exists. No suggestions as to the validity of the child's statements shall be made to the child during this time.

(iii) The child care agency shall not attempt to validate (or "prove") the allegation prior to making a report as required by the law.

4. Each child care agency shall develop written procedures, approved by the Department, for staff to follow when reporting suspected abuse or neglect that is alleged to have occurred in the child care agency.

(b) Prohibited Procedures for Reporting Suspected Child Abuse or Neglect/Penalties.

1. A child care agency shall not develop or implement any 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.

2. A child care agency shall not require staff to report to the child care agency or seek the approval of child care agency management or ownership prior to any individual staff member reporting the suspected abuse or neglect.

3. A report required by subparagraph (a) above 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 complying with, subparagraph (a) above.

4. A person required to report by subparagraph (a) above shall not suggest, advise or direct a parent/guardian or caretaker of a child enrolled in the child care agency to make a report of suspected child abuse or neglect regarding that parent's/guardian's or caretaker's own child who is enrolled in the child care agency as an alternative to, or substitute for complying with subparagraph (a) above.

(c) Child Care Agency Duties during Investigations of Child Abuse and Neglect; Custodial Authority of Children.

1. Every operator, owner, licensee, primary educator, staff member, substitute staff member or volunteer in a child care agency licensed by the Department of Human Services shall fully cooperate with all agencies involved in the investigation of child abuse or neglect and with the Department of Human Services.

2. The child care agency shall provide access to records of children and staff to the Departments of Children's and Human Services and to law enforcement agencies.

3. The child care agency shall allow appropriate investigators to interview children and staff.

(Rule 1240-04-01-Appendix F, continued)

4. The child care agency shall not interfere with an abuse or neglect investigation.

5. The child care agency shall protect the child by reviewing the investigator's identification.

6. The child care agency shall maintain confidentiality of the investigation and shall not disclose the investigation or details of the investigation directed by the Department of Children's Services, law enforcement or the Department of Human Services.

(d) Upon notification of a pending abuse/neglect investigation of any individual who is a child care agency staff member or resident of a family or group child care home, the licensee shall enter into a safety plan with the Department regarding the individual's access to the child care agency and to children in the care of the child care agency.

(e) All child care agency staff, including auxiliary staff, shall receive documented, Department-approved training annually regarding proper procedures to report child abuse and neglect.

Authority: T.C.A. §§ 4-5-201 et seq., 37-1-113, 37-1-401 et seq., 37-1-601 et seq., 37-1-605, § 37-5-512, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-508.

1240-04-01-.11 Supervision.

(1) Supervision Procedures.

(a) To ensure the health and safety of all children enrolled, the management of the child care agency shall maintain a system that enables all children to receive a level of supervision that is appropriate to their age and their developmental, physical and mental status. The child care agency staff shall know where children in their care are at all times, be aware of their activities, and be able to intervene appropriately.

(b) Staff shall conduct a visual inspection of all areas of the building and grounds immediately after closing the child care agency for the day in order to ensure that no children have been unintentionally left in any part of the child care agency's facilities.

(c) If any child is left unattended at any time, the child care agency is subject to summary suspension, denial or revocation of the license. This includes, but is not limited to a child:

1. Walking out of a child care agency without the knowledge of staff;

2. Being left in a classroom or any other area of the facility;

3 Being left on the playground;

4. Being left at a field trip location; or

5. Being left on a vehicle.

(d) Procedures for Release of Children from the Care of the Child Care Agency.

1. Children shall be released to only the child's parent/guardian, or other person authorized by the parent/guardian in accordance with the child care agency's policies, unless otherwise directed by the Department of Children's Services or

law enforcement authorities.

2. The child care agency shall verify the identity of the parent/guardian or other authorized person and shall require presentation of a photo identification for comparison with the child's file if the educator does not recognize the individual.

3. In the event an unauthorized person requests release of a child, authorization may be obtained by calling the parent/guardian.

(i) The child care agency shall document the date and time of the contact, to whom he/she spoke, and to whom the child was released.

(ii) The child care agency shall verify the identity of the unauthorized person by requiring presentation of a photo identification.

4. The person to whom the child is released shall sign the child out of the child care agency as required in subparagraph (e) below.

5. The child care agency shall immediately call 911 or other local emergency services number if anyone whose behavior may place a child at imminent risk attempts to pick up a child.

(e) Sign-In/Sign-Out Procedures.

1. Child care agencies shall maintain a daily sign-in and sign-out sheet that includes:

(i) Each child's printed full name;

(ii) Date;

(iii) Time of entry;

(iv) Time of departure; and

(v) Space for printed name and signature of parent/guardian or authorized representative.

2. Child care agency staff shall sign children in and out of the child care agency only when transported to the child care agency by the child care agency's transportation service or local school transportation system and no parent/guardian or authorized representative is present.

3. The sign-in and sign-out sheets shall be maintained for one (1) year and shall be kept on-site and immediately available.

(2) Meal and Snack Time Supervision.

(a) During meal and snack time, staff shall maintain direct supervision of children between six (6) weeks and five (5) years of age and maintain supervision of children between six (6) and nine (9) years of age.

(b) During meal and snack times, educators that are providing supervision are prohibited from performing other activities and classroom duties unrelated to food service.

(c) Child care agencies shall develop and follow a written mealtime supervision plan that

addresses:

1. Room arrangement that will allow staff to directly supervise each child at all times;

2. Individual staff duties to ensure age-appropriate supervision can be given to each child at all times;

3. Individual children's needs, including high risk behaviors; and

4. Interruptions and emergencies.

(d) Mealtime supervision plans shall be updated as needed.

(e) The meal time supervision plan shall be prominently posted in each area where food is served.

(3) Playground Supervision.

(a) The same supervision requirements are applicable on the playground as in the classroom.

(b) Child care agencies shall develop and follow a written playground supervision plan that includes:

1. Arrival and departure procedures;

2. Playground design and placement of equipment;

3. Individual staff duties to ensure age-appropriate supervision can be given to each child at all times;

4. Individual children's needs, including high risk behaviors;

5. Emergency procedures, including communication with other staff; and

6. Roll call before leaving classroom and upon arrival at playground and prior to leaving playground and upon arrival in classroom.

(c) Playground supervision plans shall be updated as needed.

(4) Supervision during Field Trips.

(a) Child care agencies shall provide age-appropriate supervision to each child at all times during field trips.

(b) The adult:child ratio shall be doubled during field trips. Exception: for family and group homes, the adult: child ratio during field trips shall be increased by one (1).

(c) The child care agency shall monitor attendance by checking attendance as follows:

1. Prior to leaving the child care agency;

2. Upon arrival at each destination;

3. At the beginning and end of each activity (such as lunch, breaks, etc.);

4. Upon departing each destination; and

5. Upon arrival at the child care agency.

(5) Supervision in and Near Water.

(a) When children are engaged in activities in or near a body of water, the following requirements shall be met:

1. Swimming Ratio Chart

Age Group	Adult:Child Ratio
Six (6) weeks – Twelve (12) months	1:1
Thirteen (13) months – Thirty-five (35) months	1:2
Three (3) years	1:4
Four (4) years	1:6
Five (5) years	1:8
School-age (Kindergarten and above)	1:10

2. One (1) adult present shall have a current certificate in advanced aquatic lifesaving skills. This person shall supervise from above the level of the swimmers. This person may be the lifeguard provided by the facility.

3. The lifeguard, including those provided by a swimming facility, shall not be included in the required adult:child ratio while performing lifeguard duties.

(6) Safe Sleep Supervision Procedures.

(a) Because of the possibility of Sudden Infant Death Syndrome (SIDS) and to prevent suffocation deaths in infants:

1. Infants shall sleep in cribs or play yards;

2. No infant shall be allowed to sleep on a sofa, soft mattress, adult bed, in a car seat, in a swing, or in other restraining devices;

3. Infants shall be positioned on their backs for sleeping;

4. Bibs shall be removed prior to placing infants in a crib for sleeping;

5. Soft bedding that is prohibited includes, but is not limited to, pillows, bumper pads, blankets, quilts, comforters, stuffed toys, and other soft items;

6. Mobiles and other toys that attach to any part of the crib are prohibited;

7. It is not necessary to reposition infants once they have demonstrated the ability to turn front to back and back to front independently;

8. Any cribs or other sleeping equipment prohibited by federal product safety regulations shall not be permitted;

9. Infants shall be touched by an educator every fifteen (15) minutes in order to check breathing, body temperature and position;

10. If a child appears not to be breathing, the child care agency shall immediately begin CPR and immediately call for emergency medical assistance;

11. The child care agency shall provide orientation on safe sleep practices before allowing any educator to assume infant-caregiving duties;

12. All infant educators shall practice safe sleep procedures;

13. Infants that arrive asleep in car seats or fall asleep in any piece of equipment other than a crib must be immediately removed and placed on their back in a crib; and

14. Any practice that is an exception to the above procedures shall not be used without written authorization from a physician.

Authority: T.C.A. §§ 4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).

1240-04-01-.12 Health and Safety.

(1) The onsite staff shall be responsible for the daily health and safety of children in care.

(2) The child care agency shall ensure that the child care environment and practices support child health and safety.

(3) The receiving educator shall observe each child upon arrival each day for signs of illness and injury.

(4) Designated staff shall immediately contact a parent/guardian when a child shows sign of illness or infection.

(5) The receiving educator shall document any obvious marks or injuries and shall note any comments from the parents pertaining to the marks or injuries.

(6) A child showing signs of illness shall be cared for apart from other children to the extent that supervision can be maintained for all children, and the parent shall be contacted and arrangements made for pick up.

(7) The child care agency shall not provide care and/or isolation for a child with a contagious condition unless written instructions are obtained from a licensed medical professional.

(8) A child's temperature shall be taken using a non-invasive method unless otherwise prescribed by a physician.

(9) Universal and standard precautions, as defined by the Centers for Disease Control, shall be followed when handling or cleaning bodily fluids.

(10) First Aid.

(a) A standard first aid kit, as defined by the current National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care shall be accessible to all staff, and all staff shall be familiar with its contents and use.

(b) All staff shall obtain first aid training within ninety (90) days of employment. At least one staff member who has current certification in first aid from a certifying organization

recognized by the Department shall be on-site at all times.

1. The certification shall be applicable to the ages present in the classroom:

(i) Infant/Child first aid; and/or

(ii) Adult first aid if children over age twelve (12) are present.

(c) Current and comprehensive first aid information shall be prominently posted in each area that children use.

(d) Extended Care First Aid Requirements. One (1) staff person on duty at all times shall have current certification or the equivalent in first aid from a certifying organization recognized by the Department.

(11) Cardiopulmonary Resuscitation (CPR) Requirements.

(a) All staff on duty shall receive training in Cardiopulmonary Resuscitation (CPR) as recognized by the Department within ninety (90) days of employment. At least one staff member who has certification in CPR from a certifying organization recognized by the Department shall be present onsite at all times.

1. The certification shall be applicable to the ages present in the classroom:

(i) Infant/Child CPR; and/or

(ii) Adult CPR if children over age twelve (12) are present.

(12) Contagious Conditions.

(a) Impetigo and diagnosed strep shall be treated according to a licensed medical professional's instructions prior to readmission to the child care agency.

(b) A child diagnosed with scabies or lice shall have proof of treatment prior to readmission.

(c) Parents/guardians of every child enrolled shall be notified immediately if one of the following communicable diseases has been introduced into the child care agency:

1. Hepatitis A;

2. Food-borne illness (food poisoning);

3. Salmonella;

4. Shigella;

5. Measles, mumps, and/or rubella;

6. Pertussis;

7. Polio;

8. Haemophilus influenza type B;

9. Meningococcal meningitis;

10. Chickenpox; and

11. Any other illness so identified by the state or local Department of Health.

(d) The child care agency shall report the occurrence of any of the above diseases to the local health department no later than the end of the day on which it is discovered.

(13) Medications.

(a) Receiving Medications.

1. All medications and all preventative products, such as non-presecription diaper cream, sunscreen and insect repellent, shall be received from the parent/guardian by a designated staff person or persons.

2. The designated staff person(s) shall:

(i) Obtain the parent's/guardian's written authorization to administer each medication;

(ii) Document that the medicines or drugs are in the original not just prescription drugs but also other container, are not expired, and are labeled with the child's name;

(iii) Document the specific dosage and times the medication is to be administered to the child; and

(iv) Document that the parent/guardian has provided the child care agency with instructions on the means and method of administration.

(b) Administering Medications.

1. All medications and all preventative products, such as non-presecription diaper cream, sunscreen and insect repellent, shall be administered by a designated staff person or persons.

2. The following documentation shall be maintained in the child's file and a copy provided to the parent/guardian:

(i) Medication was administered according to parent/guardian or health care provider instruction, including times and amounts of medications administered;

(ii) Any side-effects observed;

(iii) Name of staff person administering medication to child; and

(iv) Unused medication was returned to the parent/guardian.

3. Medication shall never be administered in bottles or infant feeders unless authorized by a physician. Educators shall ensure that medication administered in this way is not accessible to other children.

(c) Accessibility of Medications.

(Rule 1240-04-01-Appendix F, continued)

1. Medication shall not be accessible to children unless a physician's authorization for the current school year is on file that allows a school-age child to have self-administered medication.

2. All medication shall be stored in a child-proof compartment or container.

3. Over-the-counter diaper creams, ointments, sunscreens and lotions must be inaccessible to children.

4. If medications requiring refrigeration are kept in a refrigerator used for food storage, the medicine shall be put in a leak-proof, child-proof container.

5. Medication requiring emergency administration, as prescribed by a licensed medical professional, e.g. an "Epi-Pen" or asthma inhaler, may be kept in an unlocked container that is inaccessible to children.

(14) Prohibited Practices and Products.

(a) Smoking.

1. Smoking is not permitted in any indoor area or vehicle of the child care agency at any time.

2. Smoking is not permitted on the playground or in any outdoor area accessible to children during the time children are present.

3. Smoking is not permitted within fifty (50) feet of the child care agency entrance.

4. "No Smoking" signs shall be posted conspicuously at each child care entrance, as required by state law.

(b) Alcoholic Beverages.

1. The use of alcoholic beverages is not permitted in a child care agency during the hours of operation.

2. Alcoholic beverages stored in areas of the child care agency where care is provided shall not be accessible to children.

(c) Illegal activities, inappropriate activities, or any activities that otherwise place children at risk that occur on the premises, property, or in a vehicle on the property of the child care agency.

(d) Firearms shall not be permitted on the premises of a child care agency, in any vehicle used to transport children or in the presence of a child.

1. In a private residence, firearms, other deadly weapons, and potentially hazardous items, such as power tools, are permitted on the premises, but shall be kept locked, out of sight, and inaccessible to children at all times.

2. The provisions of this subparagraph (d) are not applicable to law enforcement officers.

(e) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are inaccessible to children.

(Rule 1240-04-01-Appendix F, continued)

(f) All items labeled "keep out of reach of children" shall be stored so that they are inaccessible to children.

(g) Personal belongings of residents and staff (such as, but not limited to, contents of purses, backpacks, coat pockets, diaper bags, etc.) shall be inaccessible to children at all times.

(15) Diapering.

(a) Children shall be checked regularly throughout the day to determine if they are wet or soiled.

(b) Children shall be diapered/changed and cleaned promptly when wet or soiled.

(c) The diapering area and/or toileting area shall be located near a hand-washing station and shall be located in a separate area from the food preparation area.

(d) Diapering surfaces shall be off the floor and nonporous.

(e) Children shall never be left unattended on an off the floor diapering surface.

(f) Educators shall provide rich social interchanges such as smiling, talking, touching, singing, calling child by name, and engaging in eye contact.

(g) Educators shall utilize sanitary diapering procedures:

1. Adults shall wash their hands, using soap and running water, following each diaper change;

2. The child's hands shall be cleaned when soiled;

3. Diapering surface shall be washed with soap and water and sanitized after diapering each child;

4. Soiled diapers and wipes shall be disposed of in such a manner as to prevent access by children and to prevent cross-contamination;

5. The required diapering procedure shall be used with children of all ages and abilities who require diapering;

6. Pre-school and school-age children requiring assistance with toileting needs shall receive assistance in a location designated for that purpose which provides privacy from other children and adults;

7. School-age children who require diapering may be diapered on the floor on a nonporous, washable diapering surface that adequately protects the floor from contamination; and

8. The floor beneath and surrounding the diapering surface shall be immediately cleaned and sanitized if the area has become contaminated after each diapering.

(h) Sanitizing Solutions:

1. A bleach solution mixed according to the manufacturers' instructions to achieve bleach concentration levels approved by the Department of Health shall be used for:

(i) General cleaning and sanitation purposes;

(ii) Sanitizing items that children frequently put in their mouths; and

(iii) Sanitizing food-contact surfaces and food equipment.

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. All bleach solutions or substitutions shall be used in a manner that does not present a hazard to children.

(16) Tuberculosis Screening.

(a) The child care agency shall ensure that any staff member or volunteer who meets one or more of the following criteria is screened and medically cleared for tuberculosis (TB) prior to ongoing contact with children in the child care agency:

1. Born in a country with a high rates of TB (e.g., a country other than the United States, Western Europe, Australia, New Zealand, or Japan); or

2. History of travel for at least two weeks to a country with high rates of TB (see above); or

3. History of working or residing in a congregate setting (e.g., jail or prison, homeless shelter, or long-term care facility); or

4. History of providing medical or social services to persons at high risk for TB; or

5. History of close contact to a person diagnosed with active TB disease; or

6. History of a previous diagnosis of active TB disease or TB infection (aka "latent TB infection"); or

7. Currently have symptoms that may be associated with active TB disease (e.g., cough for at least two (2) to three (3) weeks with one or more of the following: coughing up blood, unexplained weight loss, drenching night sweats, fever).

(b) The child care agency shall require that any staff member, volunteer, or child who has had an unexplained cough for three (3) weeks or longer shall be excluded until they can be evaluated by a licensed health care provider and medically cleared prior to returning to the child care agency.

(17) Staff Health.

(a) Staff members with signs of a communicable disease, as provided in 1240-04-01-.12(12)(c), shall not be present, and the child care agency shall take prompt steps to prevent further spread of the illness.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 39-17-1803; 71-3-501 et seq.; 71-3-502(a)(2)-(3); 71-3-508.

1240-04-01-.13 Food and Food Service.

(Rule 1240-04-01-Appendix F, continued)

(1) Meal and Snack Time Procedures.

(a) Staff shall wash their hands with soap and water before preparing and serving meals and after meals and snacks. Children shall wash their hands with soap and water before and after meals and snacks.

(b) An educator shall be present, near any table or high chair where a child is eating, as required in supervision procedures outlined in 1240-04-01-.11.

(c) Children shall be seated at appropriately sized tables and chairs while eating.

(d) Educators shall engage children in developmentally appropriate conversation to include nutrition and healthy eating choices.

(e) An infant shall be held while drinking from a bottle if the infant is too young to use a high chair.

(f) Educators shall ensure that infants have completed feeding and swallowed all milk/formula before being laid down for a nap.

(g) Children shall be restrained using the manufacturer's safety restraint while sitting in a high chair or similar seating device.

(h) Bottles may be served from the refrigerator without warming.

(i) If desired, bottles may be warmed:

1. Under running warm tap water; or

2. In a container of warm water no warmer than one hundred twenty degrees Fahrenheit (120°F) for no more than five minutes.

(j) Bottles shall not be propped, and a child shall not be given a bottle while lying flat.

(k) Children shall not be permitted to carry a bottle with them throughout the day.

(l) Children shall not have food or drink while in beds, cots, cribs or on mats.

(m) Prevention of Injuries by Bottle Warmers and Microwaves:

1. Crock pots are prohibited for use as bottle warmers;

2. Crock pots shall be kept in the kitchen area and shall be inaccessible to children;

3 Microwave ovens and their immediate surrounding area, including cords, shall not be accessible to infants or pre-school children;

4. To prevent scalding, liquid and solid foods heated in a microwave shall be stirred and carefully checked for "hot spots" prior to serving;

5. School-age children shall use microwaves only under direct adult supervision;

6. Breast milk and formula shall not be heated in a microwave oven;

7. The use of bottle warmers is not prohibited but is not recommended by the Department; and;

8. All heated bottles shall be checked for safe temperatures before serving.

(2) Choking Prevention.

(a) Solid foods (including cereal) shall not be given to children with normal eating abilities in bottles or infant feeders unless written authorization from a physician is on file.

(b) It is the responsibility of the supervising educator to ensure that food is not accessible or served until it has been chopped, diced, cut or mashed and is appropriate for each child's age, and individual eating, chewing and swallowing ability.

(c) Food shall not be given to a child until the supervising educator is able to provide focused attention to the child.

(d) Educators shall check that no food is left in the mouth of an infant/toddler before putting the infant/toddler down to sleep.

(e) The supervising educator is prohibited from performing other classroom duties unrelated to food service during mealtime.

(f) Children shall not be permitted to wear teething necklaces, pacifiers, or any item around their neck or attached to their clothing that are potentially hazardous and associated with choking.

(3) Food Preparation.

(a) Powdered milk shall not be substituted for fluid milk, formula, or breast milk.

(b) Formulas shall be used as directed on the container or as directed in writing by a physician.

(c) Once milk, formula, or breast milk has been warmed, it shall not be re-warmed or returned to the refrigerator.

(d) All contents remaining in bottles after feeding shall be discarded immediately after feeding.

(e) Frozen breast milk shall be labeled with the date it was expressed and the name of the child.

(f) Food, formula, milk, or breast milk brought from home shall be:

1. Labeled with the child's name;

2. Labeled with the date the item(s) were received; and

3. Shall be refrigerated immediately, if applicable.

(g) Previously opened baby food jars shall not be accepted in the child care agency.

(h) If food is fed directly from the jar by the educator, the jar shall be used for only one feeding and discarded.

(4) Nutritional Needs.

(Rule 1240-04-01-Appendix F, continued)

(a) If the child care agency provides food, it shall be in accordance with the USDA's Child and Adult Care Food Program (CACFP) nutritional guidelines.

(b) Whether provided by the parent or the child care agency, the following meals/snacks shall at a minimum be offered to children based on their hours of attendance:

1. Breakfast or morning snack;

2. Lunch;

3. Afternoon snack;

4. A child in care for ten (10) hours or more shall be offered an additional snack or meal;

5. Breakfast shall be provided to children who arrive before 7:00 a.m. and have not had breakfast at home.

Exception: Not required for children who receive breakfast at school; and

6. Extended Care: For a child who is in care for extended or nighttime hours, meals and snacks will be offered in accordance with the child's hunger and the hours of attendance.

(5) Food Service.

(a) A child shall not be forced to eat.

(b) Food shall not be withheld from a child.

(c) Children shall be given adequate time to eat.

(d) Food shall not be used as a reward.

(e) Food Allergies.

1. Information about individual children's food allergies shall be posted prominently, both where food is prepared and where food is served.

2. For a child with life-threatening allergies, a written plan of action endorsed by the child's pediatrician or licensed medical provider shall be posted where the educator has immediate access.

3. Any child's food allergies and the accommodations and precautions in place to address food allergies shall be prominently noted.

4. Outline child care agency procedures that reduce cross-contamination of allergenic foods and other inadvertent exposure to allergens for any child with food allergies.

(f) A weekly menu that includes all snacks and foods served shall be posted and followed.

(g) Meal and snack substitutions shall be noted on the menu in advance.

(h) The feeding schedule for an infant shall be in accordance with the child's need.

(Rule 1240-04-01-Appendix F, continued)

(i) When caring for nursing children, the child care agency shall make accommodations that support and facilitate a family's decision to continue breast feeding.

(6) High Chairs and Tables.

(a) 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 shall be allowed to eat with fingers or a spoon.

(b) High chairs and tables on which food is prepared and served shall be washed with soap and water and sanitized directly 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.

(7) Dishes and Utensils.

(a) Napkins and individual break-resistant utensils, glasses/cups and appropriate dishware shall be provided for children who eat independently.

(8) Food Storage.

(a) Foods requiring refrigeration or cold storage shall be maintained at forty degrees Fahrenheit (40°F) or below.

(b) Foods requiring hot storage shall be maintained at an internal temperature of one hundred forty degrees Fahrenheit (140°F) or above.

(c) Frozen foods shall be maintained at a temperature of zero degrees Fahrenheit (0°F) or below.

(d) Thermometers shall be placed in all refrigerators, freezers and all other cold storage equipment.

(e) No poisonous or toxic materials, except those required for sanitization purposes, may be used or stored in a food-service area of a facility.

(9) Food Sanitation.

(a) All food shall be protected from contamination during storage, preparation, transportation, and serving.

(b) The child care agency shall not serve home-preserved food or raw milk to children in care.

(c) Raw fruits and vegetables prepared on-site shall be washed before use.

(d) 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.

(e) All re-useable utensils, cups, and dishware shall be made from nontoxic materials.

(f) All re-useable utensils, cups, and dishware shall be thoroughly cleaned and sanitized after each use.

(g) Single-service articles shall be made from nontoxic materials and shall be stored,

(Rule 1240-04-01-Appendix F, continued)

handled, and dispensed in a sanitary manner.

(h) All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of food shall be thoroughly cleaned and sanitized prior to and after each use.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(12); 71-3-501 et seq.

1240-04-01-.14 Equipment for Children.

(1) General.

(a) All indoor and outdoor equipment, appliances, and furnishings shall be safe.

(b) There shall be developmentally-appropriate equipment and furnishings for each age group enrolled.

(c) The manufacturer's safety instructions shall be followed for assembling, installing, securing, and using all indoor and outdoor equipment, appliances, and furnishings. Such instructions shall be retained on-site and communicated to all appropriate staff.

(d) Items within the reach of children shall have no:

1. Dangerous angles;

2. Sharp edges;

3. Splinters;

4. Protruding nails;

5. Protruding nuts or bolts;

6. Heavy or hard swing seats;

7. Head entrapment spaces; or

8. Open S-hooks or pinch points, or similar hazards.

(e) All indoor and outdoor large and heavy equipment, appliances and furnishings shall be secured or supported so that they cannot fall or tip over. This includes, but is not limited to, the following:

1. Television sets;

2. Computers;

3. Monitors;

4. Book cases;

5. Cubbies;

6. Dressers; and

(Rule 1240-04-01-Appendix F, continued)

7. Shelves.

(f) Electrical cords shall be inaccessible to children younger than school-age.

(g) Cords on window blinds or curtains shall be inaccessible to children.

(h) Damaged, unsteady, or non-useable equipment shall be immediately repaired or immediately removed from the room or playground.

(i) Equipment shall be kept clean by washing it frequently with soap and water.

(2) Indoor Equipment.

(a) Sufficient indoor equipment, materials, and toys shall be available to:

1. Meet the active and quiet play needs of all children enrolled.

2. Provide a variety of developmentally appropriate equipment so that each child may choose from at least two play options.

(b) Toys, educational materials, and play materials shall be organized and displayed within children's reach so that each child can select and return items independently.

(c) Toys and teaching materials and supplies which are small or which have small parts that can be inhaled or swallowed shall be inaccessible to infants and toddlers.

(d) Equipment and a safe space on the floor shall be provided for infants and toddlers for climbing, crawling, pulling up and exploring without the use of confining equipment. The equipment and safe space shall:

1. Be exclusively used for infants and toddlers; and

2. Be clean and safe at all times.

(3) Outdoor Play Equipment.

(a) Trampolines are prohibited.

(b) A variety of developmentally appropriate outdoor play equipment shall be available.

(c) Climbing equipment shall be placed at least six (6) feet from retainer structures, fencing, other equipment and traffic paths.

1. A fall zone of at least six (6) feet shall surround all climbing equipment on all sides.

2. The requirements in part 1 above shall apply to:

(i) All updates to currently licensed playgrounds; and

(ii) All child care agencies effective one (1) year from the effective date of these rules.

(d) The fall zone around swings shall extend twice the distance of the length of the swing chain.

(Rule 1240-04-01-Appendix F, continued)

(e) Climbers, swings, and other heavy equipment that could cause injury if toppled shall be securely anchored to the ground.

(f) Climbers and swings shall have a protective fall zone surface recognized by the Consumer Product Safety Commission (CPSC) as a shock absorbing, resilient material maintained with a minimum average depth of six (6) inches.

1. This requirement is effective for family and group homes one (1) year after the effective date of these rules.

(g) Portable equipment shall be securely anchored or rendered immobile if required according to the manufacturer's instructions.

(h) Manufactured unitary surfaces shall be installed according to the safety specifications of the manufacturer and shall conform to American Society for Testing and Materials (ASTM) F1292 standards.

(4) Naptime and Sleeping Equipment.

(a) Napping or sleeping equipment shall be available for each child six (6) weeks to five (5) years of age, who is in care for six (6) hours or more.

(b) A quiet rest area and cots or mats shall be available for all children who want to rest or nap.

(c) All nap/sleep equipment shall be clean and in good repair, and shall comply with the following requirements:

1. Individual cots or two-inch (2") mats shall be provided for children ages twelve (12) months through five (5) years.

2. Individual beds, playpens, cribs, 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.

3. Each child under twelve (12) months shall have an individual, free-standing crib/or play yard at least twenty-two inches (22") by thirty-six inches (36") with an open top.

4. Each crib, cot, bed or mat shall be labeled with the child's name or a corresponding code to ensure that each child sleeps on his or her own bedding.

(i) If a cot or mat is used by more than one child throughout the day, it shall be properly labeled and sanitized between uses, with a solution appropriate for general cleaning.

5. Cribs and play yards must comply with CPSC requirements.

6. Stackable cribs are prohibited.

7. Nesting beds are prohibited.

8. Adjacent, uniformly spaced crib parts such as slats, spindles, corner posts and rods shall not be more than two and three-eighths inches (2 3/8") apart at any point.

(Rule 1240-04-01-Appendix F, continued)

9. Original manufacturers' mattresses and sleep surfaces upholstered with a safe, waterproof material shall be used in each crib and play yard.

10. Mattresses and foam pads shall fit the crib without any gaps or spaces in order to prevent suffocation.

11. A clean sheet shall be used to cover each child's sleeping surface.

12. A blanket or covering shall be available to each child age thirteen (13) months or older.

13. Soiled sheets and blankets shall be promptly replaced.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(12); 71-3-501 et seq.

1240-04-01-.15 Program, Language, and Literacy Development

(1) Schedule and Routines.

(a) Each child shall be provided an opportunity to participate in the program activities.

(b) The environment shall support the development of each child's independence and self-help skills.

(c) Routines such as snacks, meals, and rest shall occur at approximately the same time each day.

(d) There shall be a balance between child's choice and educator-directed activities.

(e) There shall be a balance between vigorous activity and quiet play or rest throughout the day.

(f) The child care agency shall plan for and provide distinctive arrival and departure routines that will support children in their transitions.

(g) The educator(s) shall give individual attention to each child throughout the day to include the following activities:

1. For infants/toddlers:

(i) The educator shall hold and comfort children that are upset;

(ii) The educator shall provide rich social interchanges such as smiling, talking, touching, rocking, singing, and reading;

(iii) The educator shall respond to the child's sound;

(iv) The educator shall engage in interactive play that includes activities such as movement, dance, musical games, pretend play and finger play;

(v) The educator shall be attuned to child's needs and respond;

(vi) Children that lack mobility shall have an opportunity to experience their environment by engaging in the following activities daily:

(I) Being read to individually or in small groups;

(II) Carrying them around in order to explore the classroom;

(III) Allowing them to touch a variety of objects; and

(IV) Naming and identifying objects.

(vii) A variety of culturally diverse books shall be available for children to explore including board, cloth, and soft vinyl books; and

(viii) Each infant shall have direct supervised tummy time for infants less than six (6) months of age, every day when they are awake. Engage with infants on the ground each day to optimize adult-infant interactions.

2. For pre-school children:

(i) The educator shall engage in pretend play;

(ii) The educator shall provide age-appropriate puzzles and blocks;

(iii) The educator shall encourage children to talk with each other;

(iv) The educator shall provide opportunities for problem-solving activities;

(v) The educator shall provide opportunities for writing;

(vi) The educator shall provide opportunities for creative activities;

(vii) A variety of culturally diverse books shall be available for children to handle including board, cloth, and soft vinyl books;

(viii) The educator shall read to individually or in a group daily;

(ix) The educator shall provide sorting and identifying activities; and

(x) The educator shall provide opportunities for helping with daily classroom and self-care routines.

3. For school-age children:

(i) The educator shall provide opportunities for group activities and cooperative play;

(ii) The educator shall provide activities that foster gaining a sense of competence and developing pride in their accomplishments;

(iii) The educator shall provide activities that promote learning to make decisions with others;

(iv) The educator shall provide opportunities for learning to share and take turns;

(v) The educator shall provide activities that foster coordination of large and small muscles; and

(Rule 1240-04-01-Appendix F, continued)

(vi) The educator shall provide opportunities for increasing problem-solving skills and for conflict resolution.

(h) Upon arrival, infants and toddlers shall be removed from car seats immediately.

(i) Children shall never be left unattended in any restraining device, including swings and high chairs.

(j) Children shall not be kept in restraining devices such as swings and high chairs, or similar seating devices for longer than fifteen (15) minutes.

Exception: Children may remain in high chairs while eating.

(k) The educator shall plan and provide developmentally appropriate opportunities for children to interact with one another.

(l) The educator shall provide opportunities for children to play alone or do homework, if they choose, in a small, quiet area away from other activities while maintaining supervision requirements in 1240-04-01-.11.

(m) School-age children shall be encouraged to participate in planning their own schedules and activities.

(n) Extended Care. Children shall be given the same opportunities for developmentally appropriate activities during extended care hours as during conventional care hours.

(2) Electronic Media and Devices.

(a) If electronic media, including but not limited to television, videos/DVDs, or video/computer games, or personal electronic devices are used, they shall be limited as follows:

1. For children less than two (2) years of age, use of electronic media and other electronic devices is prohibited.

2. Television and video/DVD viewing shall be limited to one (1) hour per day and for educational or physical activities only.

Exception: Viewing time may exceed one (1) hour per day for special activities such as movie time as long as the total average time per week does not exceed one hour per day.

3. Computer and personal electronic device time is limited to one (1) hour per day.

4. Television and video/DVD viewing is not allowed during meal or snack time.

5. Exceptions

(i) Use of electronic media for personal recorded messages from relatives serving abroad in the military is not limited.

(ii) Use of electronic media during transition times when there is a single educator such as during preparation of a meal is limited to the duration of the transition.

(iii) School-age children may use computers for completion of homework with

no time limitations.

(iv) All children may participate in activities that utilize computers and electronic devices for educational programs.

(b) If used, computers which allow internet access by children shall be equipped with monitoring or filtering software, or other type of software protection that limits children's access to inappropriate websites, e-mail, and instant messages.

(c) Videos, movies, and video/computer games shall be previewed by staff for content.

(d) Programs, movies, computer games, and music with violent or adult content shall not be permitted in children's presence.

(e) Programs, movies, computer games, and music shall be developmentally appropriate for the viewers.

(f) Child care agencies shall inform parents in writing of any scheduled media program viewing.

(g) Other activity choices shall be available to children who do not wish to participate in media time.

(3) Outdoor Play and Playground Routines.

(a) Children of all ages, including infants, who are in care more than three (3) daylight hours, shall have a daily opportunity for outdoor play when the temperature range, after adjustment for wind chill and heat index, is between thirty-two degrees and ninety-five degrees Fahrenheit (32°F and 95°F) and it is not raining.

Exception: Child care agencies where outdoor play is prohibitive or dangerous, as determined in the discretion of the Department, may substitute unoccupied indoor space providing fifty (50) square feet per child, subject to approval by the Department.

(b) Outdoor play and moderate to vigorous indoor or outdoor physical activity shall be available as follows:

1. Weather permitting, infants shall be taken outside at least once per day.

2. Toddlers and preschoolers shall have sixty (60) to ninety (90) minutes of outdoor play per day.

Exception: Indoor activity can be increased if adverse weather does not permit outdoor play.

3. Toddlers shall have sixty (60) to ninety (90) minutes of moderate to vigorous physical activity per eight (8) hour day.

4. Preschoolers shall have ninety (90) to one hundred and twenty (120) minutes of moderate to vigorous physical activity per eight (8) hour day.

(c) Children shall be properly dressed and the length of time outside adjusted according to the weather conditions and the age of the children.

(d) Educators shall be alert for any signs of weather-related distress, including dehydration, heat stroke and frostbite.

(e) Each child care agency shall develop simple playground rules that use positive language. Staff shall verbally communicate these rules to children prior to outdoor play.

(f) Staff shall plan and implement activities that engage all children in developmentally appropriate active, physical play such as skipping, running, and jumping.

(4) Reclining Rest Period.

(a) All children in care for six (6) hours or more shall have an opportunity for a reclining rest period.

Exception: Not required during extended field trips.

(b) Children who are fatigued shall be offered an opportunity to rest in addition to scheduled rest periods.

(c) Each child shall be allowed to form his or her own patterns of sleep.

(d) When awake, a child shall not be left in a crib/bed or on a cot or mat for any length of time that is unreasonable for the developmental age of the child.

(e) No child shall be forced to lie down or nap or be forced to stay on a cot or on a mat for an extended period of time.

1. Children shall be allowed to participate in a quiet activity if not asleep within in a reasonable time or if they wake up prior to the end of the rest period.

(f) Nap Room Environment.

1. Areas where a child sleeps shall have adequate lighting which allows the educator to see each child with a quick glance and respond appropriately to each child's physical and emotional needs.

2. If music is played in areas where children sleep, the music shall be soothing and soft enough so children can be heard.

(5) Behavior Management and Guidance.

(a) Behavioral interventions shall be developmentally appropriate, with consideration given to the attention spans and skills of individual children.

(b) Discipline shall be reasonable, appropriate, and in terms the child can understand.

(c) Potentially shaming, humiliating, frightening, verbally abusive, injurious discipline methods, and/or techniques that isolate the child are prohibited.

(d) Discipline shall not be related to food, rest, or toileting. Food shall not be used or withheld as a form of discipline.

(e) Spanking and all types of corporal punishment are prohibited.

(f) Mechanical and chemical restraints are prohibited.

(g) Educators shall focus upon positive behavior and on the individual child's strengths.

(Rule 1240-04-01-Appendix F, continued)

(h) The educator shall address each incident of unacceptable behavior by using methods of positive guidance and discipline to help the child manage his/her behavior.

(i) Each time a child is engaging in unacceptable behavior the educator shall first redirect the child's attention and substitute a desirable activity prior to disciplining the child.

(j) Less restrictive, positive behavior management techniques shall be employed before using time-out.

(k) Time-out may be used to intervene with a child whose behavior is disruptive to the group or hurtful to other children and who does not respond to educator redirection or guidance.

1. Time-out shall be reasonable and developmentally appropriate and shall not include restraint or seclusion.

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 no child under thirty-six (36) months shall be placed in time out.

3. Time-out shall take place in an appropriate location within sight of the educator.

4. Restraining devices such as high chairs, cribs, or car seats shall not be used for time-out.

5. Redirection or a similar approach shall be used for children younger than thirty-six (36) months of age.

(l) Physical Restraint

1. Staff shall not restrain a child by any means other than holding and then for only as long as it is necessary for the child to regain control.

(6) Physical Care - Toileting.

(a) Toilet learning shall be done in cooperation with the parents, and communication with parents shall be maintained throughout the process.

(b) Toilet learning shall not be started until a child is able to understand, to demonstrate some degree of bodily control, to do what is asked of them, and to communicate their need to use the bathroom.

(c) Children shall not be made to sit on the potty or toilet for more than five (5) minutes at a time.

(d) Children who are toilet learning shall be cleaned and assisted as needed in a safe, sanitary manner.

(7) Educational Activities.

(a) Activities shall be intentionally planned based upon the developmental age of the child.

(b) A daily program shall provide developmentally appropriate opportunities for learning math, literature, science, and health, as well as opportunities for self-expression through a variety of creative and multi-cultural activities such as art, music, movement, and dramatic play.

(c) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group.

(d) For infants and toddlers, a portion of the day shall include floor time to optimize adult-infant interactions, including direct supervised tummy time for infants less than six (6) months of age, for activities that develop physical, social, language and cognitive skills. The floor shall be clean and safe.

(e) Educators shall listen to and respond verbally to infants and toddlers throughout the day.

(f) The director or primary educator shall observe and document the use of the applicable developmental learning standards.

(8) Personal Safety Curriculum Components and Guidelines.

(a) For ages three (3) years through school age, a personal safety curriculum shall be provided at least once a year.

(b) The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse.

(c) For children four (4) years of age and older, a child sexual abuse prevention component shall be included.

(d) The child care agency may choose terminology and instructional methods for this curriculum that provides clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.

(e) Personal Safety Instruction Requirements for School Age Children.

1. For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.

2. School-age children shall not be required to receive personal safety instruction from the child care agency if they annually receive the personal safety instruction required under this paragraph (8) from their school or other educational setting, as approved by the Department.

3. Documentation of Personal Safety Instruction in Educational Settings.

(i) Written documentation that annual personal safety instruction as required by this paragraph (8) is being provided in a public educational setting to each child enrolled in the child care agency shall be maintained on file with the Department.

(ii) For children who do not attend public schools, the child care agency shall maintain documentation that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this subparagraph (e).

(f) The personal safety curriculum used shall be made available to parents/guardians for review. The child care agency shall use a notification form developed by the Department to document that the parents/guardians have been notified of the curriculum and of their opportunity to review.

(g) The record of each enrolled child shall include a copy of the signed notification form.

(h) If requested, child care agency staff shall meet with the parents/guardians to discuss the curriculum.

(i) Specific requirements for drop-in centers are described in 1240-04-01-.23.

(9) Extended Care. Child care agencies providing nighttime care shall meet the following additional requirements:

(a) Quiet, calming activities shall be provided preceding bedtime, such as reading or listening to a story or soft music. In addition, children shall receive individual attention from educators as needed.

(b) Routine personal hygiene shall be encouraged and supervised. A plan shall be made with parents/guardians for maintaining children's routines such as tooth brushing, bath time, and bedtime rituals.

(10) The parents/guardians shall be consulted in developing a plan to meet the individual needs of a child with special needs.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.16 Physical Facilities.

(1) A temporary or an annual license shall not be issued unless all of the following requirements are met:

(a) An initial and annual inspection verifying compliance with all applicable state and local fire and environmental requirements which includes:

1. Inspection by the State Fire Marshal's Division of the Tennessee Department of Commerce and Insurance and/or local fire authority; and

2. The General Environmental Division of the Tennessee Department of Health.

(b) The physical facilities (indoor and outdoor) present no apparent hazards; and

(c) The physical facilities are otherwise deemed appropriate by the Department for the safe care of children.

(2) Additional approvals are required:

(a) For facilities that have not previously been approved by the State Fire Marshal;

(b) Prior to relocation; and

(c) Prior to occupying newly renovated space, newly constructed space, new building additions, or previously unlicensed space.

(3) The child care agency shall maintain documentation of required inspections and the approvals.

(4) Continuing Compliance.

(a) The child care agency shall maintain compliance with all applicable codes as set forth in paragraph (1) above throughout the licensing year.

(b) The child care agency shall additionally comply with any updated standards issued by the Department of Health and the State Fire Marshal.

(5) The child care agency shall not be located in a building used for purposes which would be hazardous to the children.

(6) The child care agency shall not be located in a building that would prohibit outdoor play.

Exception: A child care agency may request an exception from the Department pursuant to the requirements for "Outdoor Play" found in 1240-04-01-.15(3).

(7) The child care agency shall ensure that the physical facilities are:

(a) Safe;

(b) Clean;

(c) In good repair; and

(d) Free from hazards and clutter.

(8) Telephones and Other Communication Devices.

(a) At least one (1) working telephone shall be available at the child care agency.

(b) The telephone number shall be made available to parents.

(9) Outdoor Play/Care Area.

(a) Outdoor play areas shall contain a minimum of fifty (50) square feet of usable play space for each child using the area at any one time.

(b) The outdoor play area shall be enclosed by a fence or barrier at least four (4) feet in height.

Exception: A child care agency may request that the Department, in its discretion, waive such requirement upon a clear showing that the lack of such fence or barrier poses no apparent or potential risk to children.

(c) The areas where children play or are cared for shall be properly maintained:

1. A pre-play/care inspection of the outdoor play area shall be completed by the child care agency prior to each use by children.

2. The play/care areas shall be free of hazardous conditions, items, or materials.

Exception: Potentially hazardous items/materials shall be kept inaccessible to children, except when utilized in an intentional manner as part of a planned, supervised activity.

3. All such play/care areas shall be free of all animal wastes.

(Rule 1240-04-01-Appendix F, continued)

(10) General Sanitation and Safety of Building and Grounds.

(a) Children shall not be present if an adequate water supply is not available for handwashing and plumbing is not operating properly.

(b) Water Supply.

1. The drinking water supply shall be from a source approved by the health authority having jurisdiction.

2. Drinking water shall be available to all children upon request throughout the day.

(c) Sewage and Waste Disposal.

1. Children shall not be present if the sewage is not operating.

2. Connection to a public sewage disposal system shall be made where possible.

3. The use of a private sewage disposal system shall have the approval of the local Department of Environment and Conservation Division of Ground Water Protection and it shall be operating satisfactorily at all times.

4. All garbage shall be removed from the building daily.

5. All outdoor garbage storage receptacles shall be outside and kept closed.

6. The area surrounding outdoor garbage receptacles shall be kept clean.

(d) Building, Grounds and Pools.

1. The building shall be kept clean and maintained in good repair, without unsafe cracks, leaks, or plumbing that is in disrepair.

2. All outside doors and windows of the licensed space shall be in good repair.

3. Adequate natural and/or artificial lighting shall be provided throughout the facility.

4. All rooms used by children shall be maintained at a temperature of between sixty-eight degrees to seventy-eight degrees Fahrenheit (68°F to 78°F) by means of heating, cooling or ventilation sources approved for use.

5. Children shall not be present if the indoor temperature cannot be maintained between sixty-eight degrees to seventy-eight degrees Fahrenheit (68°F to 78°F).

6. Stoves, hot radiators, steam and hot water pipes, fans, or other potentially hazardous items shall be inaccessible to children.

7. The use of unvented fuel burning heaters is prohibited.

8. The use of portable heaters is prohibited.

9. The building and grounds shall be kept free of broken glass, trash and debris.

10. Building and grounds shall be kept free of unprotected ponds, wells, cisterns, unused refrigerators and similar hazards.

(Rule 1240-04-01-Appendix F, continued)

11. Swimming pools shall be made inaccessible to children through the use of fences and locked gates. Swimming is prohibited in Drop-In Care.

12. Swimming pools and/or wading pools shall not be used without prior approval by the local health department.

13. Grounds, tire swings and containers shall have adequate drainage to prevent standing water that can breed mosquitoes and other insects.

14. Animals shall be:

(i) In good health and immunized in accordance with local health authority;

(ii) Free of fleas, ticks and other parasites;

(iii) Contained in a way that does not allow unsupervised access; and

(iv) Kept away from all food storage and preparation or service areas.

(v) Cages, fish tanks or other containment devices shall be cleaned regularly.

15. Reptiles and amphibians shall not be kept as pets due to the risk of Salmonella.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.17 Transportation.

(1) Transportation shall comply with all state laws and these rules.

(2) Child care agencies shall not transport children without prior written approval by the Department.

(3) Prior to providing child care transportation services of any type, directly or by contract, all new and existing child care agencies shall provide a written statement to the Department that includes:

(a) Scope of transportation that will be offered;

(b) A list and description of the vehicles that will be used, including color, make, and model of vehicle, the license plate number, and provisions for how the child care agency will address emergency situations if the temporary use of alternate vehicles is necessary;

(c) Copies of any contracts, agreements or arrangements with any third parties for transportation; and

(d) Policies, procedures, and staff training plans to ensure that all transportation staff properly performs all duties related to the following requirements:

1. Child care agencies shall adhere to child-safety restraint requirements set forth in state law;

2. Child care agencies shall account for each child when loading or unloading to ensure that no child is left on a vehicle unattended;

3. Child care agencies shall conduct vehicle emergency evacuation drills quarterly;

4. Use of cell phones and texting devices is prohibited while en route;

   Exception: Limited use of cell phones and texting devices by vehicle monitors, who are not driving, to communicate with the child care agency or parents, is allowable, but personal calls are prohibited.

5. Child care agencies shall institute plans for emergency communication during transportation;

6. Carrying, possessing, or storing firearms or other weapons in vehicles is prohibited;

7. Routine transportation shall be limited to forty-five (45) minutes each way;

   (i) An individualized plan may be approved by the Department allowing the child care agency to exceed this time frame if signed by the parent/guardian and the child care agency.

   (ii) Field trip travel time is not limited for school-agers.

8. Child care agencies shall have current documentation of medical and liability insurance as required by law;

9. Child care agencies shall use Department-approved vehicle monitoring devices for all vehicles designed to transport six (6) passengers or more;

   (i) Exceptions:

      (I) Vehicles in which all the children being transported are five (5) years of age and in kindergarten, or older, unless any of the children are developmentally or physically disabled or non-ambulatory;

      (II) Vehicles used exclusively for field trips; or

      (III) Vehicles used by family or group child care homes.

10. Child care agencies shall maintain documentation of daily inspections and necessary repairs or other appropriate action taken before transporting children that includes:

   (i) A visual inspection of the vehicle's tires for wear and adequate pressure;

   (ii) A visual inspection for working headlights and tail lights, signals, mirrors, wiper blades and dash gauges;

   (iii) An inspection for properly functioning child and driver safety restraints;

   (iv) An inspection for properly functioning doors and windows;

   (v) 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;

   (vi) A determination that the vehicle has adequate fuel; and

(Rule 1240-04-01-Appendix F, continued)

(vii) An inspection for, and cleaning of, debris from the vehicle's interior.

11. Hazardous Temperatures and Extreme Weather;

(i) Staff shall consider the special needs of individual children when determining if children can be transported safely during extreme temperatures;

(ii) Child care agency staff shall monitor the interior temperature of a vehicle when transporting children during extreme weather conditions to ensure child safety.

12. Emergency Transportation;

(i) The child care agency shall notify the Department immediately or no later than one business day following emergency transportation that requires the use of alternate vehicles.

(4) The child care agency is fully responsible for compliance with all transportation rules, regardless of whether the agency provides transportation directly, through a third party by contract, or otherwise.

(5) The child care agency shall be fully responsible for the children during transportation on any vehicle which it operates, for which it contracts, or which is otherwise under its direction or control.

(6) The child care agency shall maintain responsibility for all children until the children are signed off the vehicle by the parent/guardian or authorized individual.

(7) Exceptions for field trips.

(a) Child care agencies that are not licensed to transport on a regular basis may provide transportation for up to four (4) field trips per calendar year.

(b) Drivers for these four (4) field trips shall comply with driving regulations that apply to all drivers in Tennessee:

1. Proof of at least a valid Class D driver license;

2. Proof of adequate insurance required by Tennessee law; and

3. Vehicles shall have and use age-appropriate restraints for all adults and children being transported.

(c) All rules regarding monitoring of children apply, except for the requirement of the vehicle to have a monitoring device.

(d) Vehicle capacity and cargo rules shall be followed during these four (4) field trips.

(e) Vehicles utilized for these four (4) field trips, which are designed to carry ten (10) or more passengers but which do not conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses are prohibited.

(f) Vehicles utilized for these four (4) field trips are not required to have signage required by 1240-04-01-.17(13).

(8) Supervision of Children during Transportation.

(a) An adult shall be in the vehicle whenever a child is in the vehicle.

(b) An adult shall be seated behind the steering wheel if the motor is running and children are being loaded and/or are on board.

(c) Adult Monitor Requirements.

1. An adult monitor, in addition to the driver, is required to be in the vehicle for transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten.

2. An adult monitor, in addition to the driver, is required to be in the vehicle on all routes exceeding thirty (30) minutes for children ages six (6) weeks through five (5) years of age who are not in kindergarten, regardless of the total number being transported.

3. An adult monitor, in addition to the driver, is required to be in the vehicle for transportation of twenty (20) or more children ages five (5) years of age and older.

4. An adult monitor, in addition to the driver, is required to be in the vehicle for transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.

5. An adult monitor shall not be seated in the front passenger seat, but shall be seated in the vehicle in a position that allows each child's activities to be observed and that allows the monitor to respond immediately should there be an emergency.

(9) Responsibility for Loading, Unloading and Accounting for Each Child.

(a) Passenger Log:

1. A passenger log provided by, or in a format approved by, the Department shall be used to account for each child during transportation.

2. The first and last name of each child received for transport shall be recorded on the passenger log.

3. Either the driver of the vehicle or the monitor shall be designated by the child care agency as the person responsible for completing the log.

4. Passenger logs shall be maintained for one (1) year.

(b) Loading Procedures:

1. As each child is loaded onto the vehicle the time shall be recorded onto the passenger log.

2. If the child was loaded from home, the parent/guardian or other authorized person will also sign the log indicating that the child was placed on the vehicle.

(c) Unloading Procedures:

1. The individual designated by the child care agency as responsible for the log shall update it immediately upon the child being released from the vehicle. The log shall be updated by the designated staff member by:

   (i) Recording the time the child was released; and

   (ii) Initialing next to the time of release.

2. The parent/guardian or other authorized person shall sign the log indicating that the child was released to them.

(d) Confirming that Every Child Is Off of the Vehicle after Each Trip Destination

1. Immediately upon unloading the last child the driver shall:

   (i) Physically walk through the vehicle;

   (ii) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;

   (iii) Sign the passenger log, with the driver's full name; and

   (iv) Give the passenger log to the reviewer.

2. Reviewer Responsibilities:

   (i) The child care agency shall designate a staff person as a reviewer to conduct an additional inspection once the vehicle has been unloaded.

   (ii) The reviewer shall:

      (I) Have no other responsibilities at the time of the vehicle inspection;

      (II) Physically walk through the vehicle;

      (III) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;

      (IV) Reconcile the passenger log with the child care agency's master sign-in and out sheet to verify that each child is off the vehicle and accounted for in the child care agency;

      (V) Sign the passenger log with the reviewer's full name; and

      (VI) Immediately notify the director or other individual designated in charge of any discrepancies between the passenger log and the master sign-in and out sheet.

3. Additional Responsibilities for a family or group home with a single educator:

   (i) In circumstances when an additional adult is not available the primary educator shall develop a Department approved alternative system for ensuring that all children are off the vehicle.

(e) Loading/Unloading Children at School.

1. When children are transported to school, they shall be released in accordance with the following procedures:

   (i) Children shall be unloaded only at the location designated by the school;

   (ii) Children shall be unloaded from the child care agency's vehicle only at the time the school is officially open with staff present to receive them;

   (iii) When possible, the driver/monitor shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children;

   (iv) Any additional procedures established by the school shall be followed;

   (v) Passenger logs shall be completed in accordance with this Rule 1240-04-01-.17.

2. After all the children have been unloaded at school, the vehicle shall return to the child care agency for the vehicle inspection procedures outlined above.

3. When children are picked up from school they shall be loaded on the vehicle at the location designated by the school. Passenger logs shall be completed in accordance with this Rule 1240-04-01-.17.

4. The child care agency shall develop a written policy approved by the Department that contains procedures for the driver to follow in the event that a child scheduled to be picked up does not report to the vehicle.

(f) Unloading Children at the End of the Day. If a vehicle does not return to the child care agency for the final inspection, the child care agency shall develop procedures approved by the Department, to:

1. Verify that all children are off the vehicle; and

2. Verify that each child was released to the parent/guardian or authorized individual.

(10) Transportation Staff Qualifications.

(a) Driver Qualification. Except as provided in part 2, all drivers and monitors employed by the child care agency or provided through contract or otherwise, shall comply with all applicable transportation staff qualifications set forth in this chapter.

Exception: Drivers providing transportation for up to four (4) off-site trips per year are only subject to the qualifications in 1240-04-01-.17(3)(h)(2).

(b) Documentation of all transportation staff qualifications, including a clearance letter from the Department that specifically states that the individual is clear to drive, shall be kept on file at the child care agency and be available to the Department upon request.

(c) Driver License. At a minimum, the driver shall possess a current, valid Tennessee driver license with an "F" ("For Hire") endorsement or a valid driver license from the state of residence and recognized by the Department of Safety as meeting the minimum qualifications for transportation of children enrolled in the child care agency in the applicable type of vehicle in which the children are being transported.

(d) Health Examinations for Drivers.

1. The child care agency or the contractor shall maintain documentation, updated annually and signed by the examining licensed medical professional, verifying that the driver is physically, mentally and emotionally capable of safely and appropriately providing transportation for children.

(e) Drug Screenings for Drivers.

1. Individuals, including contractors, shall pass a drug screening test no later than ten (10) days prior to assuming driving duties.

2. At a minimum, the drug screening shall utilize a five (5) panel test as defined by this chapter.

3. The child care child care agency shall immediately review the results.

4. In the event of a positive drug screen result, the child care agency shall immediately:

(i) Notify the Department and prohibit the individual from any duties involving any children; and

(ii) Comply with a safety plan that excludes the individual from driving until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties.

5. The child care agency shall be responsible for verifying that a contractor, or other person or entity providing transportation for compensation to the child care agency, has not employed or assigned any driving duties to any individual who fails to pass a drug screen as required by this subparagraph.

6. Based upon reasonable suspicion, the Department may require that a driver to have a drug screening test.

(i) If the results are positive for illegal drug use, such person shall be subject to a safety plan that excludes the individual from driving duties until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties.

(f) Required Transportation Training.

1. Prior to assuming their duties, and no less often than every six (6) months thereafter, all drivers, monitors and reviewers and persons who may become responsible at any time for transportation shall complete and have documented Department-recognized training in:

(i) All Department transportation rules;

(ii) The proper daily safety inspection of the vehicle as required by these rules;

(iii) The proper use of child safety restraints required by these rules and state law;

(iv) The proper loading, unloading, and tracking of children as required by

these rules;

(v) The proper use of a bloodborne pathogen kit, first aid kit, and other required vehicle emergency equipment as required by these rules;

(vi) The proper verification procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and

(vii) The developmentally appropriate practices applicable to the behavior management and supervision of children during transportation.

2. Department of Safety Driver/Monitor Training Requirements.

(i) The child care agency shall maintain documentation of completion of any training and testing required, provided, or otherwise approved by the Department of Safety.

(ii) All drivers and monitors shall obtain annual training offered by the Department of Safety or such other equivalent training as the Department of Safety may determine is appropriate.

(g) Emergency Aid Training. All drivers and monitors, or staff who may become responsible at any time for transportation, shall hold current certification in:

1. Infant/Child Cardiopulmonary Resuscitation (CPR) or equivalent from the American Red Cross, the American Heart Association, or other certifying organization as recognized by the Department; and

(i) The certification shall be applicable to the ages present on the vehicle:

(I) Infant/Child CPR; and/or

(II) Adult CPR if children over age twelve (12) are present.

2. A first aid course from a certifying organization recognized by the Department.

(i) The certification shall be applicable to the ages present on the vehicle:

(I) Infant/Child first aid; and/or

(II) Adult first aid if children over age twelve (12) are present.

(h) The child care agency shall ensure that volunteers meet the requirements described in 1240-04-01-.17(3)(h)(2), and that any individuals who do not appear to be capable of driving for any reason, including, but not limited to, the use of alcohol or drugs, are not permitted to provide transportation for off-site trips.

(11) Vehicle Requirements and Inspections.

(a) The requirements of this paragraph do not apply to vehicles used exclusively for the provision of the allowed four (4) field trips as defined in 1240-04-01-.17(3)(h)(1).

(b) The following equipment shall be maintained in the vehicle and stored in a manner which is not readily accessible to children:

1. Fire extinguisher – a pressurized UL approved dry chemical extinguisher with a

(Rule 1240-04-01-Appendix F, continued)

minimum rating of 2A:10BC, equipped with a pressure gauge which indicates that the extinguisher is sufficiently charged;

2. Emergency reflective triangles;

3. First aid kit;

4. Seat-belt cutter or similar device manufactured and designed to immediately release the vehicle's child restraint system(s) in an emergency;

5. Bloodborne pathogenic clean-up kit; and

6. Working flashlight.

(c) The driver or monitor assigned to the vehicle shall be familiar with the location and use of all equipment required under subparagraph (b) above.

(d) The child care agency shall maintain documentation that:

1. Maintenance of the vehicle used for the transportation of children has been performed by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer; and

2. The vehicle has received regular inspections.

(e) Vehicle Safety Standards.

1. All vehicles utilized by a child care agency which are designed to carry ten (10) or more passengers shall conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses.

(f) Department of Safety Inspections.

1. All child care 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.

Exception: With prior approval by the Department a qualifying replacement vehicle may be used for up to fourteen (14) business days without inspection by the Department of Safety.

(g) Vehicles that do not pass the inspections required in this paragraph (7) shall not be used until necessary repairs have been made and approved in writing by the Department.

(h) Capacity Limitations and Cargo Requirements.

1. The total number of adults and children in vehicles used for the transportation of children enrolled in the child care agency shall never exceed the manufacturer's rated passenger capacity.

2. All cargo, luggage or equipment of any type shall be adequately secured at all times in such manner as to protect the passengers in case of accident or emergency maneuvers.

(12) Passenger Safety Restraints.

(a) The provisions of this paragraph apply to all transportation, including transportation used for field trips.

(b) All vehicles shall have a rear seat that has been factory-installed or professionally-retrofitted.

1. The rear seat shall have factory-installed or professionally-retrofitted passenger restraint anchorages and passenger restraints as required by the provisions of this paragraph for the age and size of the passengers being transported and the type of vehicle being used.

2. Passenger restraint devices which are designed by the manufacturer to be attached to the seat by the end-user, e.g., add-on restraint systems such as infant carriers and harness systems, are not required to be factory-installed.

(c) All restraints shall be used in accordance with the restraint manufacturer's instructions and shall be secured to the vehicle in accordance with the vehicle manufacturer's and the restraint manufacturer's instructions.

(d) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.

(e) No child or adult shall ride on the floor of a vehicle.

(f) No child shall be placed with another child in the same restraint device.

(g) Children under four (4) years of age shall always be placed in a rear seat of the vehicle. For the purposes of this paragraph, a "rear seat" in any vehicle which is categorized as a "school bus" shall mean any passenger seat that has been factory-installed or professionally-retrofitted and that is located behind the bus driver or behind the bus entrance which is directly to the right of the bus driver.

(h) All vehicles shall have qualifying restraints based upon the class of the vehicle in accordance with state and federal law.

(i) Child Restraint Requirements under Applicable State or Federal Law. In addition to the requirements set forth in subparagraphs (a) through (h) above, all children shall be restrained in accordance with the requirements for child passenger restraint systems set forth in T.C.A. §§ 55-9-601—55-9-603 and any applicable federal law or regulation.

(j) Adult Restraint Requirements. Adults shall be restrained in accordance with applicable state or federal law or regulation.

(13) Vehicle Signage Requirements.

(a) On each side of the vehicle the following information shall be displayed in a block font that is not less than one and one-half inches (1 1/2") in height:

1. The name of the child care agency and emergency contact phone number for the child care agency; and

2. The words "Child Care Transportation Complaints" followed by the Department's toll-free Child Care Complaint Hotline phone number.

(b) On the rear of the vehicle the following information shall be displayed:

1. The name of the child care agency and the words "Child Care Transportation Complaints" followed by the Department's toll-free Child Care Complaint Hotline phone number in black letters in a block font not less than one inch (1") in height.

   Exception: Display of the Complaint number is not required on passenger automobiles used for transportation by the child care agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.

(c) Special Requirements for Centralized Transportation. Central transportation operations or any other entity that may own or operate more than one (1) child care agency and which may provide centralized transportation services for its child care agencies, and contractors, or other transportation service providers under the direction or control of the child care agency that may provide centralized transportation services to more than one child care agency, may substitute for the name and phone number of the child care agency the full name and emergency contact number of the central operator, contractor or other transportation service providers under the direction or control of the child care agency. If the name on the vehicle does not clearly designate the child care agency or entity as one providing child care transportation, language such as "Child Care Transportation Vehicle" or "Child Care Transportation Services", or similar language approved by the Department, shall be displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

(d) Exceptions to Vehicle Identification Requirements:

1. Vehicles used exclusively for the provision of the allowed four (4) field trips as defined in 1240-04-01-.17(3)(h)(1).

2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle.

3. The Department may, in its discretion, waive the requirements of this paragraph (9) if circumstances clearly warrant such an exemption.

Authority: T.C.A. §§4-5-201 et seq., 55-9-601 through 55-9-603, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-502(d)(7)(C)(iii); and 49 C.F.R. §§ 571 et seq. and 49 C.F.R.§ 571.208.

1240-04-01-.18 Emergency Preparedness

All persons or entities operating a child care agency as defined in this part, excluding drop-in child care centers and those programs and facilities exempt from licensing as provided in § 71-3-503, shall, in consultation with appropriate local authorities and local emergency management, develop a written multi-hazard plan to protect children in the event of emergencies, including, but not limited to, fires, tornados, earthquakes, chemical spills, and floods. Such persons or entities shall also inform parents and guardians of children attending the child care agency of the plan. The child care agency shall comply will all other requirements related to emergency preparedness provided under T.C.A. § 71-3-517.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(5), 71-3-517.

1240-04-01-.19 Reserved for Future Use.

1240-04-01-.20 Specific Requirements for Family Child Care Homes.

(Rule 1240-04-01-Appendix F, continued)

(1) Required Adult:Child Ratios.

(a) Adult:child ratios shall be maintained by the child care agency while the children are on the premises of the child care agency, including outdoors or on the playground.

(b) A child care family home shall not exceed licensed capacity.

(c) Adult:Child Ratio Requirements for Family Child Care Homes.

1. No more than seven (7) children may be present at any one time;

(i) Exception: Up to twelve (12) children may be present only if any number above seven (7) are related to the primary educator.

(ii) Exception: If the family child care home is the occupied residence of the primary educator, children related to the primary educator nine (9) years of age or older will not be counted in determining the maximum number of children permitted if those children are provided a separate space from that occupied by the family child care home.

(d) Children related to the primary educator nine (9) years of age or older may interact with children in the licensed family child care home provided that the required level of care and supervision is not compromised.

(e) The number of educators in a family child care home required to supervise children enrolled in the home shall comply with one of the options listed on the chart below.

1. Family Child Care Home Ratios and Group Size Chart:

Maximum Number of Children and Ages (including children "related" to the primary educator under nine (9) years of age)	Educators Required
Seven (7) or fewer children; and No more than four (4) under two (2) years	1
Seven (7) or fewer children; and Five (5) or more under two (2) years	2
More than seven (7) children; and No more than four (4) under two (2) years	2
More than seven (7) children; and Five (5) or more under two (2) years	3

(f) Naptime Supervision and Requirements for Naptime and Nighttime Care.

1. If there is a sleeping or resting child, there shall be at least one (1) adult educator awake and supervising.

(i) The educator shall be able to hear the child at all times, shall be able to see the child with a quick glance, and shall be able to physically respond immediately.

(ii) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

(Rule 1240-04-01-Appendix F, continued)

2. Adult:child ratios shall be maintained.

(2) Primary Educator Qualifications for Family Child Care Homes.

(a) Primary educators that received an initial license on or after the effective date of these rules shall be required to have earned a high school diploma or equivalent educational credential as recognized by state law.

(b) The primary educators shall complete a Department-sponsored child-care informational intake meeting and an orientation session that is at least four (4) hours in length no more than six (6) months prior to a license being issued.

(c) The primary educators shall complete at least three (3) hours of training on the applicable developmental learning standards within the first three (3) months.

(d) The primary educator in a family child care home shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:

1. Effective July 1, 2018, at least eighteen (18) clock hours.

(i) At least six (6) hours must be health and safety such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic,

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation;

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

(ii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(iii) After the first year, this training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety, etc.

(iv) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

2. The primary educator shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(e) The primary educator shall not be employed or engaged in any other full-time activities during hours of operation, except in an official capacity in a program sponsored or recognized by the Department.

(f) A qualified educator shall be on-site any time that the primary educator is not on-site during child care operating hours.

(3) Educator Qualifications for Family Child Care Homes.

(a) Educators/Assistants sixteen (16) through seventeen (17) years of age may assist an educator and be counted as an adult in the adult:child ratio if the individual is:

1. Never left alone with children; and

2. Always under the direct supervision of a primary educator.

(b) All educators shall complete at least three (3) hours of training on the applicable developmental learning standards within the first three (3) months.

(c) All educators in a family child care home shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:

1. Effective July 1, 2018 at least twelve (12) clock hours.

(i) At least six (6) hours must be health and safety such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(Rule 1240-04-01-Appendix F, continued)

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation.

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

(ii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(iii) After the first year, this training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety, etc.

(iv) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

2. Educators shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(4) All staff responsible for food service, preparation, or supervision shall be trained on the mealtime supervision plan as described in 1240-04-01-.11(2)(c).

(5) Licensed Capacity of Physical Space.

(a) The maximum number of children who may be present inside a physical space shall be determined in accordance with the minimum square footage requirements.

(b) The Department may, in its discretion, restrict the child care agency's licensed capacity below the maximum set forth in these rules.

(c) If the number of children exceeds seven (7) at one time or the care is provided in one room of the home, the area shall provide thirty (30) square feet per child of usable play

(Rule 1240-04-01-Appendix F, continued)

space.

(d) For the purposes of calculating square footage requirements, the following space or area will not be counted:

1. Restrooms;

2. Hallways;

3. Kitchen;

4. Office space; and

5. Space used by cribs or large pieces of furniture.

(e) Adequate Plumbing Facilities. The child care agency shall have the minimum number of functional toilets and hand-washing stations in accordance with the:

1. Requirements of any applicable local ordinances and regulations;

2. Proximity of the plumbing to the classroom(s); and

3. Ages of the children served.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.21 Specific Requirements for Group Child Care Homes.

(1) Required Adult:Child Ratios.

(a) Adult:child ratios shall be maintained at all times while the children are on the premises, including outdoors or on the playground.

1. All children, including related children younger than age nine (9), shall be counted in the ratio and group size and shall have required records on file before care is provided.

2. The maximum number of children present in a group child care home shall not exceed twelve (12).

(i) Exception:

(I) If the group child care home is in the occupied residence of the primary educator, children nine (9) years of age or older and related to the primary educator are not counted if those children are provided a separate space from that occupied by the group child care home; and

(II) Up to three (3) additional school-age children, related or unrelated to the primary educator, may be in care before and after school, on school holidays, on school snow days and during summer vacation.

3. Children related to the primary educator who are nine (9) years of age or older may interact with the children in the licensed group child care home provided that the required level of care and supervision is not compromised.

4. Adult:child ratios and group sizes in group child care homes may exceed requirements by up to ten percent (10%), rounded to the nearest whole number, no more frequently than three (3) days per week.

(i) At no time shall the licensed capacity be exceeded.

(ii) Infant and toddler groups may never exceed the required ratios and group sizes.

(iii) The Department may terminate this variance in individual cases under provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502.

(iv) Group Child Care Home child care agencies who use the variance may, at the Department's discretion, be required to obtain fire approval prior to enrolling additional children.

(b) The number of educators required shall comply with one of the options listed on the Chart below.

Group Home Ratio and Group Size Chart:

Number of Children	Ages of Children	Educators Required
Twelve (12) – Fifteen (15) (any number over twelve (12) must be school-age)	No more than twelve (12) children three (3) years of age or older	1
Twelve (12) – Fifteen (15) (any number over twelve (12) must be school-age)	Up to nine (9) children under three (3) years of age; and No more than four (4) present under two (2) years of age	2
Twelve (12) – Fifteen (15) (any number over twelve (12) must be school-age)	Ten (10) or more under three (3) years of age	3

(c) If school-age children are enrolled, a school-age program shall be provided.

(d) If four (4) or more infants/toddlers attend a group child care home, they shall have a separate and distinct space and their own educator.

1. The space shall provide thirty (30) square feet per child.

2. Barriers shall be sufficient to provide separation without isolating children.

(e) If attendance drops to seven (7) or fewer children, family child care home ratios apply.

(f) Naptime Supervision and Requirements for Naptime and Nighttime Care.

1. If there is a sleeping or resting child, there shall be at least one (1) adult educator awake and supervising the child.

(i) The educator shall be able to hear the child at all times, shall be able to see the child with a quick glance, and shall be able to physically respond immediately.

(ii) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

2. Adult:child ratios shall be maintained.

(2) Primary Educator Qualifications for Group Child Care Homes.

(a) Primary educators shall have a high school diploma or equivalent educational credential as recognized by state law.

(b) The primary educator shall complete a Department-sponsored child-care informational intake meeting and an orientation session that is at least four (4) hours in length no later than six (6) months prior to a license being issued.

(c) The primary educator shall complete at least three (3) hours of training on the applicable developmental learning standards within the first three (3) months.

(d) The primary educator in a group child care home shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:

1. Effective July 1, 2018, at least eighteen (18) clock hours.

(i) At least six (6) hours must be health and safety such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation (CPR);

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

(ii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(iii) After the first year, this training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety, etc.

(iv) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

2. The primary educator shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(d) Owners who are employed elsewhere shall ensure that a primary educator is always on-site.

(e) The primary educator shall not be employed at any other job during the hours of operation unless the Department has approved the primary educator's employment in an official capacity in a program sponsored or recognized by the Department.

(f) An educator shall be on-site any time that the primary educator is not on-site during child care operating hours.

(3) Educator Qualifications for Group Child Care Homes.

(a) Educators/Assistants sixteen (16) through seventeen (17) years of age may assist a primary educator and be counted in the ratio if the individual is:

1. Never left alone with children; and

2. Always under the direct supervision of a primary educator.

(b) An educator in a group child care home shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:

1. Effective July 1, 2018, at least twelve (12) clock hours.

(i) At least six (6) hours must be health and safety such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(Rule 1240-04-01-Appendix F, continued)

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation;

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

(ii) At least three (3) hours of training on the applicable developmental learning standards within the first three months.

(iii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(c) After the first year, this training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety, etc.

(d) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

(e) Educators shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(4) All staff responsible for food service, preparation, or supervision shall be trained on the mealtime supervision plan as described in 1240-04-01-.11(2)(c).

(5) Licensed Capacity of Physical Space.

(a) A minimum of thirty (30) square feet of usable indoor play space shall be provided for each child.

(b) The maximum number of children who may be present inside a physical space shall be determined in accordance with the minimum square footage requirements.

(c) The Department may restrict the child care agency's licensed capacity below the maximum.

(d) The following shall not be counted toward to the square footage requirements:

1. Restrooms;

2. Hallways;

3. Kitchen;

4. Office space; and

5. Any space used by cribs or large pieces of furniture.

(e) Adequate Plumbing Facilities. The child care agency shall have the minimum number of functional toilets and hand-washing stations in accordance with the:

1. Requirements of any applicable local ordinances and regulations;

2. Proximity of the plumbing to the classroom(s); and

3. Ages of the children served.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.22 Specific Requirements for Child Care Centers.

(1) Required Adult:Child Ratios.

(a) Adult:child ratios in this paragraph shall be maintained by the child care agency while the children are on the premises of the child care agency, including outdoors or on the playground.

(b) Adult:Child Ratio Requirements for Child Care Centers.

1. Adult:child ratios and group sizes in child care centers may exceed requirements set by the rule of the Department of Human Services by up to ten percent (10%), rounded to the nearest whole number, no more frequently than three (3) days per week.

(i) At no time shall the licensed capacity be exceeded.

(ii) Infant and toddler groups may never exceed the required ratios and group sizes.

(iii) The Department may terminate this variance in individual cases under provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502.

(iv) Child care centers that use the variance may, at the Department's

discretion, be required to obtain fire approval prior to enrolling additional children.

2. When more than twelve (12) children are present on the premises, a second adult shall be physically available on the premises.

(c) Child Care Ratio and Group Size Charts.

1. Chart 1 – Age Grouping.

Age of Children	Adult:Child Ratio							Maximum Group Size
Six (6) weeks – Fifteen (15) months	1:4							8
Twelve (12) – Thirty (30) months		1:6						12
Twenty-four (24) – Thirty-five (35) months			1:7					14
Three (3) years					1:9			18
Four (4) years						1:13		20
Five (5) years						1:16		20
School-age (Kindergarten and above)							1:20	No Max

2. Chart 2 – Age Grouping.

Age of Children	Adult:Child Ratio							Maximum Group Size
Six (6) weeks – Thirty (30) months	1:5							10
Two (2) – Four (4) years		1:8						16
Two and one-half (2½) – Three (3) years (Thirty (30) – Forty-seven (47) months)			1:9					18
Two and one-half (2½) – Five (5) years				1:11				20
Two and one-half (2½) – Twelve (12) years	1:10							0
Three (3) – Five (5) years					1:13			22
Four (4) – Five (5) years						1:16		24
Five (5) – Twelve (12) years							1:20	No Max

3. Chart 3 – Allowable Combined Grouping and Adult:Child Ratio Chart for first/last hour and one-half (½) of each day only:

Age of Children	Adult:Child Ratio			Maximum Group Size
Two and one-half (2½) – Five (5) years	1:4			8
Three (3) –		1:6		12

(Rule 1240-04-01-Appendix F, continued)

Twelve (12) years				
Four (4) – Twelve (12) years			1:7	14

(d) Assignment of Children to Groups.

1. Each child shall be on roll in a defined group and assigned to that group with a specific educator(s).

2. Maximum group size requirements, as established in subparagraph (c) above, shall be maintained at all times with the exception of meals served in common dining rooms, napping in common nap rooms, or outdoors on the playground.

3. Infants shall have a separate space and shall never be grouped with children older than thirty (30) months of age.

4. Extended Care. Children age thirteen (13) months and older may be grouped together while sleeping in overnight care.

5. Children shall be kept with the same group throughout the day.

6. Children shall not be promoted to a new group until required based upon the age and developmental needs of the child.

7. 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 sixty (60) minutes duration per day as long as adult:child ratios are met.

8. Pre-school and school-age groups may be combined for up to one and one-half (1½) hours at the beginning of the day and for up to one and one-half (1½) hours at the end of the day as set forth in Adult:Child Ratio Chart 3 in 1240-04-01-.22(1)(c)(3).

9. Groups of children may never be mixed as part of the regular routine or operation.

   Exception: Pre-school and school-age groups may be mixed based upon emergencies, holidays or low attendance days.

10. Child care agencies shall define grouping for each classroom.

(e) Each group shall have a designated classroom with enough space for the entire group.

(f) Child care centers shall provide written lesson plans for each group of children.

(g) When more than twelve (12) children in first grade and above are present, a separate educator, a separate group, a separate space, and a separate program shall be provided for them.

(h) Naptime Supervision and Requirements for Naptime and Nighttime Care.

1. At naptime and during nighttime care, after the children have settled down, adult:child ratios for ages thirty-one (31) months and above may be reduced by fifty percent (50%) in each classroom as long as the children are adequately protected and all of the following requirements are met:

(i) At least one (1) adult educator shall be awake and supervising the children in each nap room/sleeping area;

(ii) There are enough adults on the premises so that the adult:child ratio required for children when they are awake shall be met immediately.

(iii) Ratios for children six (6) weeks through thirty (30) months shall be maintained.

2. Maximum group size limits do not apply.

(2) Multi-Site Personnel Qualifications for Child Care Centers.

(a) Multi-Site Coordinator. The multi-site coordinator shall meet the same requirements listed below for a single-site child care center director.

(b) Qualifications of On-Site Director under a Multi-Site Coordinator.

1. The on-site director under a multi-site coordinator shall have earned at least eighteen (18) credit hours of college course work, or shall have earned a Department-recognized credential and one (1) year of full-time documented work experience with children in a group setting; or

2. The on-site director under a multi-site coordinator shall have a high school diploma or equivalent educational credential recognized by state law, in addition to at least two (2) years of full-time documented work experience with children in a group setting.

(3) Qualifications for Director of a Single-Site Child Care Center.

(a) The director shall meet at least one (1) of the minimum qualifications listed in the chart below:

If Minimum Education Is:	The Minimum Group Care Experience Required Is:
Graduation from an accredited four-year (4-year) college or a registered nurse (RN) with less than a four (4) year degree.	One (1) year of full-time (paid or unpaid) experience with children in a group setting.
Thirty-six (36) credit hours of college coursework at least thirty (30) hours of which shall be in business or management, child or youth development, early childhood education or closely related field or a Tennessee Early Childhood Administrator Credential.	Two (2) years of full-time (paid or unpaid) experience with children in a group setting.
High school diploma (or equivalent as recognized by state law), and Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of the Administrator Orientation training or the equivalent as recognized by the Department.	Four (4) years of full-time (paid or unpaid) experience with children in a group setting.
Continuously employed as an on-site child care director or a child care agency owner since July 1, 2000.	Not Applicable.

(b) Training Requirements:

1. No more than six (6) months prior to issuance of the first license, owners (or a

designee thereof who is not the on-site director) and directors shall complete the Department-sponsored child care informational intake meeting.

2. Within the first three (3) months of employment the director shall complete a Department-provided training that includes but is not limited to applicable licensing rules.

3. The director shall complete pre-employment training, recognized by the Department that includes but is not limited to, training in interviewing and evaluating educators for service in a child care agency and in working effectively with parents.

4. During the first year of employment a new director shall:

(i) Complete an orientation course sponsored by the Department within three (3) months of assuming the position.

(ii) Satisfy one of the following:

(I) Complete thirty (30) hours of administrator training through the TECTA program; or

(II) Earn credit during the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution.

(iii) Complete at least six (6) hours of health and safety training such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation (CPR);

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

5. After the first year of employment, the director shall:

(i) Earn credit during the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution; or

(ii) The director in a child care center shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:

(I) Effective July 1, 2018, at least twenty-four (24) clock hours to include the training topics specified below.

(II) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(III) At least six (6) hours must be health and safety such as but not limited to:

I. Prevention and control of infectious diseases (including immunization);

II. Prevention of sudden infant death syndrome and use of safe sleeping practices;

III. Administration of medication, consistent with standards for parental consent;

IV. Prevention of and response to emergencies due to food and allergic reactions;

V. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

VI. Prevention of shaken baby syndrome and abusive head trauma;

VII. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within

the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

VIII. Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

IX. Precautions in transporting children (if applicable);

X. First aid and cardiopulmonary resuscitation;

XI. Poison prevention;

XII. Nutrition and physical activity;

XIII. Child development; or

XIV. Caring for and inclusion of children with special needs.

(IV) At least three (3) hours of training on the applicable developmental learning standards within the first three (3) months.

(V) Four (4) hours of the required twenty-four (24) hours may be earned by conducting training.

(VI) This training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety, etc.

(VII) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

(iii) The director shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(c) The director of a single-site child care center shall be at least twenty-one (21) years of age.

(4) Assistant Director Qualifications for Child Care Centers.

(a) An assistant director shall have:

1. Earned a bachelor's degree, an associate's degree in child development or early childhood education, a CDA credential, or a Child Care Professional credential; or

2. Earned credit during the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution and one (1) year of full-time (paid or unpaid) documented work experience with children in a group setting; or

3. The on-site assistant director shall have earned a high school diploma or equivalent educational credential recognized by the Department and two (2) years of full-time (paid or unpaid) documented work experience with children in a group setting.

(Rule 1240-04-01-Appendix F, continued)

(b) Initial Training.

1. During the first three (3) months of employment a new assistant director shall:

(i) Complete an orientation course sponsored by the Department within three (3) months of assuming the position; provided, however, that this course shall not be required if the assistant director has received specific training meeting the requirements of this part within three (3) years prior to assuming the assistant director position.

2. During the first year of employment a new assistant director shall:

(i) Satisfy one of the following:

(I) Earn credit for the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution; or

(II) Have evidence of receiving at least eighteen (18) clock hours of Department-recognized, competency-based training, six (6) hours of which shall be in administration, management or supervisory training.

(ii) Complete at least six (6) hours of health and safety training such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation;

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

3. After the first year of employment, the assistant director shall:

(i) Earn credit during the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution; or

(ii) In addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions.

(I) Effective July 1, 2018, at least eighteen (18) clock hours to include the training topics specified below.

(II) Four (4) hours of training shall be in administration, management or supervisory training.

(III) At least three (3) hours of training on the applicable developmental learning standards within the first three months.

(IV) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(V) At least six (6) hours must be health and safety training such as but not limited to:

I. Prevention and control of infectious diseases (including immunization);

II. Prevention of sudden infant death syndrome and use of safe sleeping practices;

III. Administration of medication, consistent with standards for parental consent;

IV. Prevention of and response to emergencies due to food and allergic reactions;

V. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

VI. Prevention of shaken baby syndrome and abusive head trauma;

VII. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-

caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

VIII. Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

IX. Precautions in transporting children (if applicable);

X. First aid and cardiopulmonary resuscitation;

XI. Poison prevention;

XII. Nutrition and physical activity;

XIII. Child development; or

XIV. Caring for and inclusion of children with special needs.

(VI) Two (2) hours of the required eighteen (18) hours may be earned by conducting training.

(VII) This training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety training, etc.

4. Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

5. The assistant director shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(c) The assistant director of a child care center shall be at least eighteen (18) years of age.

(5) Educator Qualifications for Child Care Centers.

(a) Sixteen (16) and seventeen (17) year-old students currently enrolled in a Department-recognized career and technical child care educational program may be used as floaters or assistant teachers provided, however, that they shall always be under the direct supervision of an adult educator and shall not be left alone with a group of children.

(b) Each group shall have at least one (1) educator present who has a high school diploma or equivalent educational credential as recognized by the Department.

(c) Training for Educators during the First Year of Employment.

1. New educators shall complete sixteen (16) clock hours of Department-recognized, competency-based training within the first year of employment, six (6) hours of which shall be completed within the first six (6) months of employment.

(i) At least six (6) hours must be health and safety such as but not limited to:

(I) Prevention and control of infectious diseases (including

immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation;

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

2. Failure of the educator to complete the required six (6) clock hours of training within the first six (6) months of employment shall require that the employee be removed from educator duties until completion of the training.

3. Exception: Educators who hold a Bachelor's or Associate's degree in child development or a related field, a CDA credential, or Certified Child Care Professional (CCP) credential, as recognized by the Department, shall instead comply with the training requirements for experienced educators required in subparagraph (d) below.

(d) Training for Educators after the First Year of Employment.

1. Educators in a child care center shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training or one-on-one consulting sessions:

(i) Effective July 1, 2018, at least twelve (12) clock hours to include the training topics specified below.

(ii) At least three (3) hours of training on the applicable developmental learning standards within the first three months.

(iii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(iv) A maximum of two (2) clock hours training credit annually may be credited for Child and Adult Care Food Program (CACFP) training.

(v) At least six (6) clock hours of the required training shall be non-agency based, e.g., obtained from sources other than training resources developed within the center itself. Multi-location programs may conduct conference-like or pre-service events that meet the required training needs.

(vi) At least six (6) hours must be health and safety training such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation;

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(Rule 1240-04-01-Appendix F, continued)

(XIV) Caring for and inclusion of children with special needs.

6. Up to four (4) clock hours training credit annually may be earned by conducting training.

7. After the first year, this training shall be in addition to other required training in specific subject areas, such as Child and Adult Care Food Program (CACFP), personal safety training, etc.

8. Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

9. Educators shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(6) Licensed Capacity of Physical Space.

(a) The maximum number of children who may be present inside a physical space, e.g., the child care agency's "licensed capacity", shall be determined in accordance with the minimum square footages set forth in this paragraph.

(b) The Department may, in its discretion, as determined reasonably necessary to maintain the health and safety of the children in care, restrict the child care agency's licensed capacity below the maximum set forth in these rules.

(c) A minimum of thirty (30) square feet of usable indoor play space shall be provided for each child in each classroom.

(d) Each nap room shall contain a minimum of thirty (30) square feet of floor space per child.

(e) Teen parenting, occupational/career, and technical education classes shall have a separate space for the group, with a minimum of thirty-five (35) square feet of usable play space per child that is apart from the classroom space for students. The designated separate space may be located in the same room and divided by movable barriers less than four (4) feet in height.

(f) The following are not counted toward required square footage:

1. Restrooms;

2. Halls;

3. Kitchen;

4. Office space; or

5. Any space used by cribs or large pieces of furniture.

(g) Rooms with sufficient floor space may be divided by a barrier at least four (4) feet in height for use by more than one (1) group if each area is adequately equipped and arranged and that each group shall have the security of a stable classroom space.

(h) Adequate Plumbing Facilities. The child care agency shall have the minimum number of functional toilets and hand-washing stations in accordance with the:

(Rule 1240-04-01-Appendix F, continued)

1. Requirements of any applicable local ordinances and regulations;

2. Proximity of the plumbing to the classroom(s); and

3. Ages of the children served.

(7) Equipment for Children.

(a) Individual lockers or cubbies, separate hooks and shelves or other containers, placed so that children may reach them, shall be provided for each child's belongings.

(b) Naptime Sleeping Procedures.

1. Positioning of cots, cribs and sleeping mats.

(i) In order to avoid the spread of airborne diseases children shall be positioned on mats in a face to feet alternating pattern, unless they are separated by an appropriate solid barrier.

(ii) Cots, cribs, and mats shall be positioned at least eighteen inches (18") apart to allow an adult to walk between them, unless they are separated by a solid barrier.

(I) If barriers are used, they shall be arranged to permit staff to observe and have immediate access to each child.

(8) Meals and Snacks. Any person responsible for preparing meals or snacks shall not be included in the adult:child ratio while preparing meals/snacks or doing related tasks, such as washing dishes.

(9) Schedules and Routines. In an infant or toddler room with more than one (1) educator, each educator shall be responsible for providing consistent care for specific infants and toddlers. Consistent care includes, but is not limited to, planning and record-keeping for the child, communication, general interaction with and routine care of the child.

(10) Interim Director. Following the issuance of an annual license, a child care center may operate without an on-site director for a period of no more than sixty (60) days total within the licensing year. A qualified person, as determined by the Department, shall be in charge in the interim.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.23 Specific Requirements for Drop-In Child Care Centers.

(1) Record Keeping. The following records shall be maintained in an organized manner at the drop-in center and made available to the Department upon request:

(a) A signed statement from the parent/guardian verifying that the child or children are in good health and current with immunizations; and

(b) Written consent of the parent/guardian regarding emergency medical care including verification of any food or other allergies from the parent/guardian.

(2) Admission of Children and Communication with Parents.

(Rule 1240-04-01-Appendix F, continued)

(a) Before accepting a child for care, the parent/guardian shall provide a statement regarding the estimated amount of time that the parent/guardian anticipates that the child will be in attendance at the drop-in center.

(b) An individual child may not exceed seven (7) hours per day or fourteen (14) hours per week during regular working hours.

(c) Care may be provided for no more than a total of twenty (20) hours for an individual child per week, exclusive of snow days when the school of the affected child is closed.

(d) The drop-in center shall maintain and make available to the Department attendance records verifying that no child receives care in excess of the maximum allowable hours.

(3) Personal Safety Curriculum.

(a) The child care agency shall familiarize staff with the following required personal safety materials and be prepared to discuss them with parents:

1. "Personal Safety Tips for Children and Their Parents"; and

2. "Personal Safety Curriculum Notification Form for Drop-In Child Care Centers".

(b) The child care agency shall provide parents of children ages three (3) and over with a copy of the above forms.

(c) The child care agency shall maintain a copy of the Personal Safety Curriculum Notification Form signed by the parent/guardian on file at the child care agency.

(4) Care of School-Age Children on Snow Days.

(a) A drop-in center may not accept any school-age child for care on snow days unless the license specifically authorizes the licensee to provide such care.

(b) The number of school-age children that a drop-in center may accept at any given time shall be determined by the Department based upon the amount of floor space.

(c) No child thirteen (13) years of age or older may be cared for by a drop-in center on a snow day.

(d) The center shall annually provide the Department with an updated list of trained educators and staff available for emergency call duty.

(5) Transportation. Transportation is prohibited.

(6) Staff Qualifications.

(a) Director of a Drop-in Child Care Center.

1. The drop-in center shall have an on-site director.

Exception: A drop-in child care center may operate without an on-site director no more than sixty (60) days total within the licensing year.

2. The director of a single-site drop-in child care center shall be at least twenty-one (21) years of age.

(Rule 1240-04-01-Appendix F, continued)

3. The director shall have earned a high school diploma or its equivalent and one (1) year of full-time documented work experience with children in a group setting.

4. No more than six (6) months prior to issuance of the first license, owners (or a designee thereof who is not the on-site director) and directors shall complete a child care informational intake meeting sponsored by the Department.

5. Within the first three (3) months of employment the director shall complete a Department-provided training that includes but is not limited to applicable licensing rules.

6. The director shall complete pre-employment training, recognized and approved by the Department that includes but is not limited to, training in interviewing and evaluating educators for service in an child care agency and in working effectively with parents.

7. If the director has received specific training meeting the requirements of this part within three (3) years prior to employment, the requirement may be waived by the Department.

8. The director shall have evidence of completing at least six (6) clock hours annually of Department-recognized training. At least three (3) of these hours shall be in administration, management or supervisory training.

   (i) The remaining three (3) hours shall be in health and safety such as but not limited to:

      (I) Prevention and control of infectious diseases (including immunization);

      (II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

      (III) Administration of medication, consistent with standards for parental consent;

      (IV) Prevention of and response to emergencies due to food and allergic reactions;

      (V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and ·vehicular traffic;

      (VI) Prevention of shaken baby syndrome and abusive head trauma;

      (VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

      (VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

      (IX) Precautions in transporting children (if applicable);

(Rule 1240-04-01-Appendix F, continued)

(X) First aid and cardiopulmonary resuscitation (CPR);

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

9. The director shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(b) Educators.

1. Each educator who is used to meet the minimum required adult:child ratio shall have a high school diploma.

2. Educators shall have evidence of receiving at least three (3) clock hours annually in Department-recognized training on basic health and safety topics such as but not limited to:

(i) Prevention and control of infectious diseases (including immunization);

(ii) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(iii) Administration of medication, consistent with standards for parental consent;

(iv) Prevention of and response to emergencies due to food and allergic reactions;

(v) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(vi) Prevention of shaken baby syndrome and abusive head trauma;

(vii) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(viii) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(ix) Precautions in transporting children (if applicable);

(x) First aid and cardiopulmonary resuscitation;

(xi) Poison prevention;

(xii) Nutrition and physical activity;

(Rule 1240-04-01-Appendix F, continued)

(xiii) Child development; or

(xiv) Caring for and inclusion of children with special needs.

3. Educators shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(7) Supervision and Grouping of Children.

(a) Age Categories and Adult:Child Ratios.

1. Children shall be placed in age-appropriate groups and with adequate adult educator supervision as established in parts 2-4 below.

2. Age Grouping.

Age of Children	Adult:Child Ratio
Six (6) weeks – Fifteen (15) months	1:4
Twelve (12) months – Thirty (30) months	1:8
Two (2) years	1:12
Three (3) years	1:15
Four (4) years	1:18
Five (5) years (not in Kindergarten)	1:20
School-age (Kindergarten and above)	1:22

3. Multi-Age Grouping.

(i) The adult:child ratio of a multi-age grouping shall be determined by the age of the majority of the children in the group; provided, however:

(I) No majority age: If the ages of the children are evenly divided, the adult:child ratio shall be determined by the age of the youngest child in the group.

(II) Infants: The adult:child ratio of any group containing an infant shall be determined solely by the number of infants in the group.

(ii) The adult:child ratio for any multi-age grouping containing three (3) or more infants is 1:4.

(iii) The adult:child ratio for a multi-age group containing infants is as follows:

(Rule 1240-04-01-Appendix F, continued)

Majority Age of Children Present	One Infant	Two Infants
Twelve (12) months – Thirty (30) months	1:8	1:6
Two (2) years	1:10	1:8
Three (3) years	1:12	1:10
Four (4) years	1:15	1:12
Five (5) years (not in Kindergarten)	1:17	1:13
School-age (Kindergarten and above)	1:19	1:15

4. When more than fourteen (14) children are present, children under two (2) years of age shall have their own designated area.

(8) Nutritional Needs.

(a) A meal or a snack shall be available every three (3) hours according to a normal pattern as follows:

1. Three (3) to five (5) hours: One (1) meal or snack; and

2. Five (5) to six (6) hours: Two (2) meals or snacks.

(b) Extended Care: For a child who is in care for extended or nighttime hours, meals and snacks will be offered in accordance with the child's hunger and the hours of attendance.

(c) If the child care agency provides food, it shall be in accordance with the USDA's Child and Adult Care Food Program (CACFP) nutritional guidelines.

(9) Naptime Sleeping Procedures.

(a) Children shall be positioned on mats in a face to feet alternating pattern, unless separated by an appropriate solid barrier.

(b) Cots, cribs, and mats shall be positioned at least eighteen inches (18") apart, unless separated by a solid barrier.

1. If barriers are used, they shall be arranged to permit staff to observe and have immediate access to each child.

(10) Licensed Capacity of Physical Space.

(a) The maximum number of children who may be present inside a physical space shall be determined in accordance with the minimum square footage. The Department may, in its discretion, restrict the child care agency's licensed capacity below the maximum set forth in these rules.

(b) A minimum of thirty (30) square feet of usable indoor play space shall be provided for each child.

(c) Each nap room shall contain a minimum of thirty (30) square feet of floor space per child.

(Rule 1240-04-01-Appendix F, continued)

(d) For the purposes of calculating square footage requirements, the following shall not be counted:

1. Restrooms;

2. Hallways;

3. Kitchen;

4. Office space; or

5. Any space used by cribs or large pieces of furniture.

(e) Rooms with sufficient floor space, as defined by the requirements set forth in these rules, may be divided by a barrier at least four (4) feet in height and used for more than one (1) group.

(f) Adequate Plumbing Facilities. The child care agency shall have the minimum number of functional toilets and hand-washing stations in accordance with the:

1. Requirements of any applicable local ordinances and regulations;

2. Proximity of the plumbing to the classroom(s); and

3. Ages of the children served.

(11) Staff shall have documentation of all children's allergies and how to deal with any allergic reaction.

(12) Staff shall review emergency preparedness and fire procedures and shall physically walk through the evacuation process every quarter.

(13) First Aid & CPR

(a) At least one staff member who has certification in first aid from a certifying organization recognized by the Department shall be present onsite at all times.

1. The certification shall be applicable to the ages present:

(i) Infant/Child first aid; and/or

(ii) Adult first aid if children over age twelve (12) are present.

(b) At least one staff member who has certification in CPR from a certifying organization recognized by the Department shall be present onsite at all times.

1. The certification shall be applicable to the ages present:

(i) Infant/Child CPR; and/or

(ii) Adult CPR if children over age twelve (12) are present.

(14) Prohibited Activities and Rules Not Applicable to Drop-In Child Care Centers:

(a) Prohibited Activities:

(Rule 1240-04-01-Appendix F, continued)

1. Swimming;
2. Transportation;
3. Provision of specialized services.

(b) Rules Not Applicable to Drop-In Child Care Centers:

1. Completed child application, immunization certificates (for children over two (2) months of age), and health history prior to admission;
2. Written documentation of parent/guardian pre-enrollment visit;
3. License notation to provide extended care hours;
4. Parent/guardian signed receipt of polices and summary of licensing requirements;
5. Ongoing parent/guardian communication regarding curriculum, personnel changes, and changes in child's routine care;
6. Posting a report card;
7. Emergency procedure practice drills for the children;
8. Written action plan for each child with life-threatening allergies;
9. Immunization requirement exceptions;
10. Documentation of specific infant, toddler, or non-verbal child activities under children's records;
11. Documentation of well-child exam prior to care (child under sixty (60) months);
12. Parent/guardian signed kindergarten status acknowledgement;
13. Daily written activity record for children with special needs;
14. Records regarding proof of staff education;
15. Staff sign-in of children during transportation;
16. First aid certification for all staff during extended hours;
17. Accommodations that support and facilitate a family's decision to continue breast feeding;
18. Sufficient indoor equipment, materials, and toys based upon the activities in 1240-04-01-.14;
19. Outdoor play or equipment;
20. Napping or sleeping equipment for each child six (6) weeks to five (5) years in care for six (6) or more hours;
21. Bedding labeled with each child's name or corresponding code;

(Rule 1240-04-01-Appendix F, continued)

22. Time limitation on the use of television, radio, video, computers, and personal electronic devices;

23. A reclining rest period for children in care six (6) or more hours;

24. Individual educator attention to each child described in 1240-04-01-.15;

25. Educational activities described in 1240-04-01-.15(7);

26. Plans for bedtime rituals/routines;

27. Developmental checklist of developmental milestones upon disenrollment; and

28. Requirement regarding when toilet learning is started.

Authority: T.C.A. §§ 4-5-202, 71-3-501 et seq., and 71-3-502(a)(2).

RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION

CHAPTER 1240-4-05
PROCEDURES AFFECTING LICENSES OF CHILD CARE AGENCIES

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1240-4-5-.01 PURPOSE AND SCOPE.

(1) These rules shall apply to all child care agencies licensed by the Department of Human Services pursuant to TCA §§ 71-3-501 et seq. and to all proceedings held before the Child Care Agency Board of Review established pursuant to §§ 71-3-501 et seq. Any conflict between these rules and those governing specific classes of child care agencies shall be resolved by reference to these rules.

(2) These rules establish procedures for the application and issuance of licenses for child care agencies; the placement on probation of a child care agency by the Department of Human Services; the imposition of a civil penalty by the Department of Human Services against a licensee of a child care agency, the summary suspension of licenses of child care agencies and the denial, revocation, or restriction of licenses by the Department of licenses of child care agencies licensed by the Department of Human Services pursuant to TCA §§ 71-3-501 et seq.

(3) All persons or entities operating a child-care center, a family-child care home, a group child care home, a drop-in center as defined by TCA § 71-3-501 and the rules of the Department of Human Services must be licensed by the Department as provided by TCA 71-3-501 et seq. and the rules of the Department unless otherwise exempted by TCA § 71-3-503 and the rules of the Department.

Authority: *TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq., Acts 2000, ch. 981, §§ 1-4 and 14.* ***Administrative History:*** *Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.*

1240-4-5-.02 DEFINITIONS.

(1) Applicant- The person or entity seeking an initial annual license or ~~the issuance or renewal of any annual or extended~~ [renewal of an annual] license from the Department of Human Services.

(2) Application-The form for, and the process of, applying for a license from the Department of Human Services.

(3) Application for Renewal-Application for a new license during the existence of a currently valid license.

(4) Child care agency -The person or entity providing child care as defined by the licensing law in TCA § 71-3-501 et seq. and the rules of the Department of Human Services.

(5) Child Care Agency Board of Review, Board of Review or Board -The entity established by TCA §§ 71-3-510 and 37-5-515 to hear the appeals of the denial, revocation, or the restriction or limitation, other than summary suspensions, of licenses for child care agencies issued by the Departments of Children's Services and Human Services, and which adjudicates civil penalties imposed by the Department of Human Services against a child care agency under its jurisdiction.

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(Rule 1240-4-5-.02, continued)

(6) Civil Penalty-A financial sanction imposed by the Department against a child care agency that has violated a licensing regulation.

(7) Commissioner-Executive head of the Tennessee Department of Human Services.

(8) Denial-The decision of the Department not to issue or renew a license.

(9) Department-The Tennessee Department of Human Services.

~~(10) Extended license-A license issued for two (2) or three (3) years rather than annually. It is issued following completion of at least one (1) year as a licensee and is issued for two (2) or three (3) years. It is based upon the Department's determination that a child care agency has demonstrated that its methods of child care and its adherence to licensing laws and regulations are clearly appropriate to justify an extended licensing period.~~

(11[0]) Hearing Official-The administrative law judge or hearing officer assigned to conduct summary suspension hearings or for Child Care Agency Board of Review hearings as may be permitted by law.

(12[1]) Law-The statutory or regulatory provisions affecting the operation of a child care agency.

(13[2]) License- A permit issued by the Department to a child care agency, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and the regulations of the Department of Human Services. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy.

(14[3]) Licensee-The person, agency, group, or entity to whom or to which a license to operate a child care agency is issued by the Department of Human Services.

(15[4]) Reapplication-Application for a new license following denial or revocation of a license.

(16[5]) Restricted license-A license which, either at the time of issuance, or during the license's existence, is reduced in its operational authority by the Department so that the child care agency's ability to provide certain child care related services are limited because the Department has determined that one or more areas of the agency's operations are not in compliance with child care laws or regulations or the agency's operations are, or have posed, a risk to the health, safety or welfare of children in the agency's care or the agency's operations pose the potential of such risk. A restricted license may also be imposed by the Child Care Agency Board of Review as part of its review of the licensing status of a child care agency in the same manner and for the same reasons as such a license is issued or imposed by the Department. A restricted license may be appealed to the Child Care Agency Board of Review.

(17[6]) Revocation-The permanent removal of an existing license.

~~(18) Suspension-The temporary removal of a license for violation of licensing laws or regulations immediately affecting the health, safety, or welfare of children in a child care agency.~~

[(17) Summary Suspension-The emergency suspension of a license for violation(s) of licensing laws or regulations needed to adequately protect the health, safety, or welfare of children in a child care agency. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or that have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.]

(19[8]) Temporary license:

(Rule 1240-4-5-.02, continued)

(a) A permit issued by the Department to a new child care agency allowing and authorizing the temporary licensee to begin child care operations while the agency attempts to attain full compliance with all other applicable regulations.

(b) The temporary license is valid, unless suspended, for one hundred twenty (120) days or until the application for an annual license is finally determined, and is issued upon application or reapplication by the applicant only if the staff and facility do not present any apparent hazards to the children that may be in care and only if the facility has received fire safety and environmental sanitation approval and if the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the licensing laws and regulations.

(c) If, at the end of the one hundred twenty (120) day period, evidence is provided by the applicant that such child care agency is suitable and properly managed and that the agency is in compliance with the rules governing the applicable class of child care agency, the Department will issue an annual license to the child care agency unless the Department determines that a restricted license should be issued.

Authority: *TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Acts 2000, ch. 981, §§ 1-3, 10 and 14.* ***Administrative History:*** *Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.*

1240-4-5-.03 LICENSING PROCESS.

(1) Licensing Criteria.

(a) A license for the operation of a child care agency is issued and its continued approval is based upon the following general criteria:

1. The safety, welfare and best interests of the children in the care of the agency;

2. The capability, training and character of the persons providing or supervising the care to the children;

3. The quality of the methods of care and instruction provided for the children;

4. The suitability of the facilities provided for the care of the children; and

5. The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

(b) Failure to attain or maintain the criteria in subparagraph (a) either alone, or in conjunction with failure to attain or maintain compliance with any other regulations governing the specific class of child care agency, may be the basis for refusal to grant a license, or for placing the child care agency on probation, or for suspension, denial or revocation of the agency's license.

(2) The Department shall assist applicants or licensees in meeting the child care standards of the Department unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the agency's care and that regulatory action affecting the agency's license is warranted. It is the responsibility of the applicant/licensee to comply with all regulations of the Department of Human Services and those regulations of any other federal, state or local regulatory agency which are necessary for the proper operation of a child care business and to demonstrate to the Department a good faith commitment to attaining and maintaining compliance with all applicable licensing standards. All costs and expenses arising from or related to

(Rule 1240-4-5-.03, continued)

meeting the child care standards of the Department shall be borne entirely by the applicant or licensee; provided, however, the Department may, in its discretion, provide from available funds technical assistance to child care agencies, and for the training of child caregivers and directors.

(3) If a licensee is denied the renewal of a license, or if a license is revoked or suspended, or if any applicant for a license cannot meet the standards, then the Department shall offer reasonable assistance to the parent, guardian or custodian of the child in planning for the placement of such children in licensed child care agencies or other suitable care.

(4) Application for ~~New~~ [an Initial] License or for Renewal of an Existing License.

(a) Application for ~~a~~ [an initial or renewal] license to operate a child care agency shall be made in writing to the Department in such manner as the Department determines and shall be accompanied by the appropriate fee set forth in the fee schedule in paragraph (15).

(b) Application for and Granting of the Renewal of a License.

~~1. Application for renewal of any existing license shall be made before the date of expiration of the existing license. The application shall be filed by the applicant in the office of the Department having responsibility for providing service to the area in which the child care agency is located.~~

[1. Child care agencies currently licensed by the Department shall submit a renewal application, the required fee, and any required supporting documentation sixty (60) calendar days prior to the expiration of the existing license.]

~~2. A renewal application shall be deemed timely received if postmarked before the date of expiration of the existing license. Failure to timely file an application for renewal of an existing license shall preclude further operation of the child care agency on and after the expiration date of the license, and failure to timely re-apply for renewal under the provisions of 1240-4-5-.06(7) shall preclude further operation of the child care agency after the expiration of any time period permitted therein.~~

[2. Failure to submit a completed application and the required fee sixty (60) calendar days prior to the expiration of an existing license, shall result in the automatic termination of the license upon the expiration date, and the child care agency shall cease operations immediately after that date. Child care agencies may initiate a new application process if the child care agency fails to meet the sixty (60) calendar day deadline; however, the agency must cease operations until such time as the new application is approved.]

3. A licensee seeking renewal of a license must demonstrate satisfactory compliance with all health and safety requirements applicable to its operations and any other applicable licensing laws and rules of the Department to obtain renewal of the license.

(5) Temporary License.

(a) If the Department determines that the applicant for ~~a license, which is not the renewal of an existing license,~~ [an initial annual license] has presented satisfactory evidence that the facility which 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 in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the licensing law and regulations, the Department shall issue a temporary license to the applicant. No temporary license will be issued until, at a minimum, fire safety and environmental safety inspections have been conducted and the applicant has received approval from the appropriate agencies.

(Rule 1240-4-5-.03, continued)

(b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license which limits the agency's authority in one or more areas of operation.

(c) The purpose of the temporary license is to permit the license applicant to begin [the operation of a child care agency after meeting certain minimum requirements and to] demonstrate ~~to the Department~~ [during the temporary licensing period] that it has [the ability to attain and maintain compliance] ~~complied~~ with all licensing laws and regulations ~~applicable to its classification prior to the issuance of an initial annual license~~.

(d) Within one hundred twenty (120) days of the issuance of the temporary license, the Department shall determine if the applicant has ~~complied with all regulations governing~~ [demonstrated that it meets all of the] requirements for the issuance of a license for the classification of child care agency for which the application was made.

(6) Annual License.

(a) If the Department determines that the applicant for any license has complied with all licensing regulations for the classification of child care agency for which application was made, the Department shall issue an annual license, or shall, if appropriate issue a restricted annual license as provided in subparagraph (b).

(b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license which limits the agency's authority in one or more areas of operation.

(7) License Information.

(a) Based upon information provided in the license application or as may be requested by the Department, the license shall describe the ownership of the child care agency, the person who is charged with the day-to-day management of the child care agency, and, if the agency is owned by a person other than the director, or if the agency is under the ownership or direction or control of any person or entity who is not also the on-site director or manager of the agency, the license shall also state the corporate or other name of the controlling person or entity, its address and telephone number where the parents, guardians or custodians may have contact regarding the agency's operations.

(b) If the child care agency is operated by a public or private non-profit entity and is subject to the control or direction of a board of directors or other oversight authority, the license shall list the name, address and telephone number of the chairman of the board or other executive head of such controlling body.

(8) Posting of License.

The licensee shall post the license in a clearly visible location as determined by the Department so that parents or other persons visiting the agency can readily view the license and all the information on the license.

(9) Before and After School Services.

(a) In order for a child care agency to offer before or after school services, the Department will issue a license bearing a notation that the agency is authorized to provide such services.

(b) An agency is not authorized to offer such services unless the license bears such a notation.

(Rule 1240-4-5-.03, continued)

(10) In granting a license, the Department may limit the total number of children who may be enrolled at the agency regardless of the agency's physical capacity or the size of its staff.

(11) License Status Following Application or Appeal.

(a) If the Department fails to issue or deny an annual license within one hundred twenty (120) days of the granting of the temporary license, the temporary license shall continue in effect, unless suspended as provided in 1240-4-5-.04(5), until such determination is made.

(b) If an annual license is denied following the issuance of a temporary license, and if a timely appeal is made of the denial of the annual license, the temporary license shall remain in effect, unless suspended as provided in 1240-4-5-.04(5), until the Child Care Agency Board of Review renders a decision regarding the denial of the annual license.

(12) If a temporary or annual license is denied, or an annual license is restricted, the applicant may [file an] appeal ~~the denial or restriction~~ as provided in [T.C.A.] §§ 71-3-509 and ~~71-3-510 and~~ other applicable laws and rules governing the Child Care Agency Board of Review.

~~(13) Extended Licenses.~~

~~(a) Following the expiration of a least one (1) annual license, the Department may issue an extended license to a licensee who seeks renewal of an existing license if the Department determines that the licensee has demonstrated that its methods of child care and its adherence to licensing laws and regulations are clearly appropriate to justify an extended licensing period. An extended license may not be granted as the first license immediately following any temporary license.~~

~~(b) No extended license shall exceed three (3) years duration.~~

~~(c) At the time renewal of the extended license is sought, or at any other time during the licensing period, the Department may reduce the period of the extended license to a shorter period if it determines that the licensee has failed to demonstrate continued adherence to the requirements for the issuance of the extended license. The licensee may appeal such action as provided in TCA §§ 71-3-509 and 71-3-510 and other applicable laws and rules governing the Child Care Agency Board of Review.~~

~~(d) The issuance of an extended license shall not be construed in any manner to prevent the Department from suspending or revoking the license, or placing an agency on probation, or imposing a civil penalty, if it determines that such action is appropriate.~~

(14[3]) Transfers of Licenses.

(a) Except as provided in this chapter, no license for a child care agency shall be transferable from one location to another or from one licensee/operator to another, and the transfer by sale or lease, or in any other manner, of the operation of the agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the agency shall be required to close ~~immediately. If~~ [; provided that if] the transferee has made application for, and is granted, a temporary license[, the child care agency] ~~prior to the transfer of ownership or control of the child care agency, the agency~~ may continue operation under the direction of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

(b) Notice of Termination to Buyer/Lessee/Transferee

(Rule 1240-4-5-.03, continued)

1. Except for transfers subject to the provisions of subparagraph (d), at least thirty (30) days before the sale, lease, or transfer by any other means, of a child care agency, the licensee/owner/management of the child care agency shall notify in writing the buyer, lessee or other prospective transferee of the child care agency that the license of the child care agency is not transferable and that upon the effective date of the transfer, the license of the child care agency will automatically terminate and of the need to seek a temporary license from the Department for continued operation of the child care agency.

2. The licensee/owner/management of the child care agency shall notify in writing the Department at the same time the notice required by part 1 is sent and shall clearly identify the date of the transfer and the identity of the prospective buyer/lessee/transferee.

(c) If the Department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the Department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the Department, the Department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in TCA §§ 71-3-509 and 71-3-510 and other applicable laws and rules governing the Child Care Agency Board of Review.

(d) The license of any agency shall not be voided nor shall any pending appeal be voided pursuant to this paragraph solely for the reason that the agency is subject to judicial orders directing the transfer of control or management of a child care agency or its license to any receiver, trustee, administrator or executor of an estate, or any similarly situated person or entity.

(e) If the current licensee dies [or is incapacitated,] and provided that no licensing violations require the suspension, denial or revocation of the agency's license, the Department may grant family members of the licensee, or administrators or executors of the licensee, a new temporary license to continue operation for a period of one hundred and twenty (120) days if it determines that the persons or entities who will assume operations of the agency otherwise meet the requirements of this chapter and the rules governing the operation of the class of child care agency for which the license is sought. At the end of such period, the Department shall determine whether an annual ~~or extended~~ license should be granted to a new licensee as otherwise provided in this chapter.

(f) Nothing in this paragraph shall be construed to prevent the Department from taking any regulatory or judicial action as may be required pursuant to the licensing laws and regulations that may be necessary to protect the children in the care of such agency.

(15[4]) Licensing Fees.

The following licensing fees shall apply to applications for licenses for child care agencies licensed by the Department effective January 1, 2001:

(a)	Family child care homes:	Annual fee	$100.00
		Biennial fee	$150.00
		Triennial fee	$175.00
(b)	Group child care homes	Annual fee	$125.00
		Biennial fee	$175.00
		Triennial fee	$200.00
(c)	Child care centers (Less than 100 children)	Annual fee	$200.00
		Biennial fee	$250.00
		Triennial fee	$300.00

(Rule 1240-4-5-.03, continued)

(d)	Child care centers (More than 100 children)	Annual fee	$400.00
		Biennial fee	$450.00
		Triennial fee	$500.00
(e)	Child care centers (More than 250 children)	Annual fee	$500.00
		Biennial fee	$550.00
		Triennial fee	$600.00
(f)	Drop-in centers	Annual fee	$200.00
		Biennial fee	$250.00
		Triennial fee	$300.00

Authority: *TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq., Acts 2000, ch. 981, §§ 3 and 14.* ***Administrative History:*** *Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.*

1240-4-5-.04 VIOLATIONS OF LICENSING REGULATIONS.

(1) Right of Inspection

(a) It is the duty of the Department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care agencies or suspected child care agencies, as defined in § 71-3-501.

(b) The Department is given the right of entrance, privilege of inspection, access to accounts, records, and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.

(c) If refused entrance for inspection of a licensed, approved or suspected child care agency, the chancery or circuit court of the county where the licensed, approved or suspected child care agency may be located may issue an immediate ex parte order permitting the Department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the Department in executing such order and inspection. Refusal to obey the inspection order may be punished as contempt.

(d) Except where court orders prohibit or otherwise limit access, parents or other caretakers of children in the care of a child care agency licensed pursuant to TCA 71-3-501 et seq. shall be permitted to visit and inspect the facilities and observe the methods for the care of their children at any time during which the children are in the care of the agency and, except those records of other children in the care of the agency and their parents or caretakers, shall further be permitted to inspect any records of the agency which are not privileged, or are not otherwise confidential, as provided by law or regulation, and the parents' or caretakers' access for these purposes shall not be purposely denied by the agency.

(e) Any violation of the rights given in this paragraph is a Class A misdemeanor.

(2) Probation.

(a) If, during the licensing period, the Department determines that a child care agency is not in compliance with the laws or regulations governing its operation, and, if after reasonable written notice to the agency of the ~~violation~~ [non-compliance], the Department determines that the violation [or related violations] remains uncorrected, the Department may place the licensed agency on probation for a definite period of not less than thirty (30) days nor more than sixty

(60) days as determined by the Department. The Department shall provide the agency a written basis describing the violation of the licensing rules that support the basis for the probationary status.

(b) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the Department of the violations which were the basis for the probation, in a conspicuous place as directed by the Department and with the agency's license, and the agency shall immediately notify in writing the custodians of each of the children in its care of the agency's status, the basis for the probation and of the agency's right to an informal review of the probationary status.

(c) If the agency requests an informal review within two (2) business days of the imposition of probation, either verbally or in writing ~~to the Department's licensing staff which imposed the probation, the Department shall informally review the probationary status by a licensing supervisor or other designee who was not involved in the decision to impose the probation~~ [, an informal review of the probationary statute shall be conducted by Department licensing personnel who were not involved in the decision to impose the probation]. The child care] agency may submit any written or oral statements as argument to the licensing supervisor or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The licensing supervisor or designee shall render a decision in writing upholding, modifying or lifting the probationary status within seven (7) business days of the imposition of the probation.

(d) If the licensing supervisor or designee did not lift the probation under subparagraph (c), the agency may also appeal such action in writing to the Commissioner within five (5) business days of the receipt of the notice of the licensing supervisor or designee's decision regarding the agency's probationary status as determined in subparagraph (c). If timely appealed, the Department shall conduct an administrative hearing pursuant to the contested case provisions of §§ 4-5-301 et seq. concerning the Department's action within fifteen (15) business days of receipt of the appeal and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(e) The [imposition of probation pursuant to the] provisions of ~~this~~ paragraph [(2)] shall be discretionary with the Department, and shall not be a prerequisite to any licensing action, to impose a civil penalty or to suspend, deny or revoke a license of a child care agency.

(3) Civil Penalties.

(a) General Provisions

1. If the Department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to TCA §§ 71-3-501 et seq., the Department may assess a civil penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from Fifty Dollars ($50.00) for minor violations up to a maximum of One Thousand Dollars ($1,000.00) for major violations or violations resulting in death or injury to a child ~~as defined in the rules of the Department~~. Each day of continued violation constitutes a separate violation.

~~2. Civil penalties may not be imposed only upon recommendation of a licensing counselor or licensing supervisor. Any recommendation for a civil penalty shall be reviewed by the Department's state office licensing staff and the Department's legal staff before being imposed.~~

(Rule 1240-4-5-.04, continued)

[2. Any recommendation made by licensing staff for a civil penalty shall be reviewed and approved by the Department's state office management and the Department's legal staff before being imposed.]

(b) Civil Penalties Schedule.

1. Major Violations.

(i) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in serious injury to, or death of, a child, the Department may assess a civil penalty in a range from Seven Hundred Fifty Dollars ($750.00) up to One Thousand Dollars ($1,000.00). The Department shall determine the amount of the penalty based upon the extent of the injury to the child and whether the injury or death of the child was the result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.

(ii) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in an injury to a child, the Department may assess a civil penalty in a range from ~~Three Hundred Dollars ($300.00)~~ [Five Hundred Dollars ($500.00)] up to ~~Five Hundred Dollars ($500.00)~~ [Seven Hundred Dollars ($700.00)]. The Department shall determine the amount of the penalty based upon the extent of the injury and whether the injury to the child was the result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.

[(iii) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in children leaving the agency premises without supervision, or children left unsupervised that may result in imminent harm, the Department may assess a civil penalty in a range from Seven Hundred Fifty Dollars ($750.00) up to One Thousand Dollars ($1,000.00). The Department shall determine the amount of the penalty based upon the extent.]

(~~iii~~[iv]) For violations of the following categories of regulations the Department may impose a civil penalty of Two Hundred Dollars ($200.00) for the first violation, Three Hundred Dollars ($300.00) for the second violation, and Four Hundred Dollars ($400.00) for the third and any subsequent such violation:

(I) Failure to follow any rule related to the proper transportation of children by employees, substitutes, volunteers, agents or contractors of the agency;

(II) Adult: Child Ratios;

[(III) Failure to complete required background checks on staff;

(IV) Corporal punishment / inappropriate discipline;

(V) Lack of Insurance;

(VI) Failure to report suspicion of abuse or neglect;

(VII) Falsification of documents required by the Department;

(Rule 1240-4-5-.04, continued)

(VIII) Failure to have CPR/First Aid certification as required by the Department;]

(~~III~~[IX]) Lack of proper supervision of children;

(~~IV~~[X]) Failure to properly dispense or store medications;

(~~V~~[XI]) Failure to remove persons from access to children following notification of a prohibited criminal background or pending criminal charge or following notification of the person's validated status as a perpetrator of child abuse;

(~~VI~~[XII]) Failure to properly store hazardous items such as, but not limited to, cleaning products, pesticides, hazardous chemicals, or other poisonous items; and

(~~VII~~[XIII]) Failure to properly remove or secure firearms within the child care agency area which are under the ownership or control of the agency, or its staff substitutes or other persons permitted access to the children, or failure to prevent exposure of children in the agency's care to firearms which are under the control of the agency, or its staff, substitutes or other persons who have been permitted by the agency to have access to the children;

(~~iv~~[v]) The existence of six (6) or more minor violations of any type in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars ($200.00) in addition to the penalty for each minor violation. Three (3) or more minor violations of the same regulation in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars ($200.00) in addition to the penalty for each minor violation.

2. Minor Violations.

(i) A minor violation shall be any rule violation not described as a major violation in part 1.

(ii) Each minor violation may subject the licensee to a civil penalty of Fifty Dollars ($50.00).

(c) The Department shall assess any civil penalty that it imposes in an order that states the reasons for the assessment of the civil penalty and the amount of the penalty.

(d) The order may be served on the licensee personally by an authorized agent of the Department who shall complete an affidavit of service, or the order may be served by certified mail, return receipt requested.

(e) The licensee may appeal the penalty to the Child Care Agency Board of Review by filing a request for an appeal in writing with the Commissioner within ten (10) days of the personal service of the order or mailing date of the order. The hearing on the appeal shall be heard within ninety (90) days unless continued for good cause shown.

(f) Civil penalties assessed pursuant to this subsection shall become final ten (10) days after the date an order of assessment is served if not timely appealed, or, if timely appealed, within seven (7) days following entry of the Board's order unless the Board's order is stayed.

(Rule 1240-4-5-.04, continued)

(g) Remedies for Failure to Pay Civil Penalty.

1. If the violator fails to pay an assessment when it becomes final, the Department may apply to the Chancery Court of Davidson County, Tennessee for a judgment and seek execution of such judgment.

2. No application for a new license or for renewal of an existing license will be accepted by the Department until a civil penalty that has become final has been paid in full. Failure to pay in full a civil penalty which has become final is grounds for denial of a pending application for a new annual license or a pending application for renewal or extension of an existing license, and, further, is grounds for revocation of an existing license.

(h) The determination to impose a civil penalty shall be discretionary with the Department and shall not be a prerequisite to any other licensing action to suspend, deny or revoke a child care agency's license. Civil penalties may also be used in conjunction with the probation, suspension, denial or revocation of a license.

(4) Denial and Revocation of Licenses.

(a) If the Department determines that any applicant for a temporary license or for the renewal of an existing license has failed to attain, or an existing licensee has failed to maintain, compliance with licensing laws or regulations after reasonable notice, consistent with the safety of the children in the care of the child care agency, of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, the Department may deny the application for the new or renewed license or may revoke the existing license; provided, however, the Department at any time may deny a temporary license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, if the Department determines that repeated or serious violations of licensing laws or regulations warrant the denial or revocation of the license, then, notwithstanding any provisions of § 4-5-320 or this paragraph to the contrary, the Department may seek denial or revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application or before or after notice of the revocation of the license.

(b) Notwithstanding the provisions of TCA § 4-5-320, the notice of denial or revocation may be served personally by an authorized representative of the Department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.

(c) If application for the temporary, ~~or renewal annual, or extended~~ [initial, or renewal] license is denied or if an existing license is revoked, the applicant may appeal the denial or revocation by requesting in writing to the Department a hearing before the Child Care Agency Board of Review within ten (10) days of the personal delivery or mailing date of the notice of denial or revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.

(d) The hearing shall be held in accordance with the hearing procedures before the Child Care Agency Board of Review pursuant to the licensing law.

(e) If timely appeal ~~is made~~ [of the denial or revocation is made, then, pending the hearing upon the denial or revocation], the child care agency may continue to operate pending the decision of the Child Care Agency Board of Review unless the license is summarily suspended as provided in paragraph (5).

(5) Summary Suspension of Licenses.

(Rule 1240-4-5-.04, continued)

(a) Subject to the following provisions of this section, if the Department determines at anytime that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the Department pending any further proceedings for revocation, denial or other action. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or which have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations[, or for the failure to allow the Department immediate access to the premises].

(b) Contents of the Order of Summary Suspension.

1. The licensee shall be provided written notice of the issuance of the order of summary suspension and shall be notified that the licensee has the opportunity for an informal hearing before an administrative law judge or before a hearing officer who is not an employee of the Department (except as provided in part (e)(3)) within three (3) business days of the issuance of the order of summary suspension.

2. The Department shall set forth with specificity in its order the legal and factual basis for its decision, stating therein the specific laws or regulations which were violated by the agency, and shall state with specificity in the order the reasons that the issuance of the order of summary suspension is necessary to adequately protect the health, safety or welfare of children in the care of the child care agency.

3. The order shall state the time, date and location of a show cause hearing to determine if the suspension is appropriate, shall state the issues involved as described in subparagraph (f) and shall notify the licensee of the right to be represented by counsel.

(c) The notice may be personally delivered by any authorized representative of the Department to any person in charge of or reasonably believed to be in charge or who may be supervising the agency at the time of delivery. If such person is not the licensee, the order shall also be sent to the licensee by certified mail, return receipt requested, but the effect of the order shall not be delayed by mail delivery. The order shall contain a certificate of service or shall have attached to it a certificate verifying its service by personal delivery, and, if required, by certified mail service.

(d) The order shall be effective upon entry by the Commissioner, or the Commissioner's designee, at such time as directed by the order. Upon receipt of the order by any person to whom the order is delivered at the child care agency, the agency shall cease or limit its operations at such time and in such manner as the order directs.

(e) Hearing Official and Authority.

1. Hearings on summary suspension orders shall be heard by an administrative law judge from the Administrative Procedures Division of the Secretary of State's Office, if the administrative law judge is available within the time frames for a summary suspension hearing.

2. If the Administrative Procedures Division of the Secretary of State's Office informs the Department that an administrative law judge is unavailable, the Department may obtain an administrative law judge, or hearing officer who is not an employee of the Department except as provided herein. The substitute administrative law judge or hearing officer may be obtained by the Department by contract with a private attorney or by contract or agreement with another state agency. If the Administrative Procedures Division of the Office of the Secretary of State informs the Department that the Division's contested case

docket prevents the scheduling of a hearing on the issuance of a summary suspension order within the initial timeframes set forth in this subparagraph, and if the Department is unable to obtain a private or state agency administrative law judge or hearing officer to hear the show cause hearing on the summary suspension order within the timeframes set forth in this part, the Department may utilize a hearing officer from the Department's ~~Administrative Review section~~ [Division of Appeals and Hearings].

3. The administrative law judge or hearing officer shall have authority, as otherwise permitted in this section and subject to the provisions of subparagraph (h), to enter orders binding on the Department resulting from show cause hearings involving summary suspension orders.

(f) Hearing Procedures.

1. The informal hearing described by this subdivision shall not be required to be held under the contested case provisions of TCA § 4-5-301 et seq.

2. The hearing is intended to provide an informal, reasonable opportunity for the licensee to present to the hearing official the licensee's version of the circumstances leading to the suspension order and any measures taken to correct the violations leading to the suspension.

3. ~~The only issues to be considered are whether the public health, safety or welfare imperatively required emergency action~~ [The issues to be considered are whether the health, safety or welfare of children required immediate action] by the Department and what, if any, corrective measures have been taken by the child care agency following the violation of the licensing laws or regulations cited by the Department and prior to the issuance of the order of summary suspension, that would eliminate the danger to the health, safety or welfare of the children in the care of the agency.

(g) Hearing Order.

1. Upon conclusion of the hearing, the administrative law judge or hearing officer shall render a decision immediately regarding the status of the agency's license and shall state the basis for the decision.

2. The administrative law judge or hearing officer may lift, modify, or continue the suspension based upon the evidence presented and the stipulations and agreements of the parties.

3. The hearing order containing findings of fact and conclusions of law to support the decision shall be reduced to writing within fifteen (15) days after the hearing and shall be sent to the parties and their counsel.

(h) Revocation, Denial of the License Following Suspension or Modification of the Order of Summary Suspension by the Department.

1. Subsequent to the hearing on the summary suspension, the Department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license, or the Commissioner, upon satisfactory proof that the conditions warrant, may by further order, lift or reduce the restrictions contained in the order of summary suspension without further order by the administrative law judge or hearing officer, or, may, upon agreement of the licensee, further modify the order by imposing new, additional or different restrictions or conditions upon the licensee or the licensee's operations. A summary suspension order

(Rule 1240-4-5-.04, continued)

entered by the Department may be lifted or modified by the Department following its entry by the Department as provided in this part, before, or after, a case is docketed with the Child Care Agency Board of Review, without further approval of the Board or a Board panel.

2. If the Department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by the licensing law.

3. Unless extended by agreement of the licensee, the order of summary suspension shall be dissolved upon motion of the licensee unless the Department has issued a notice of denial or revocation of the license within thirty calendar (30) days of the summary suspension order's entry.

Authority: *TCA §§ 4-5-201 et seq.; 4-5-301 et seq.; 71-1-105; 71-3-501 et seq.; Acts 2000, ch. 981, §§ 10 and 14.* ***Administrative History:*** *Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.*

1240-4-5-.05 RESTRICTED LICENSES FOR CHILD CARE AGENCIES.

(1) Limitation of Authority

(a) In determining whether to deny, revoke or summarily suspend a license, the Department may choose to deny, revoke or suspend only certain authority of the licensee to operate and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency which the Department determines should be restricted or modified to protect the health, safety or welfare of the children.

(b) The restrictions shall be contained in the notice of denial or revocation or in the order of summary suspension entered by the Department and shall state the basis for the restriction and the specific areas of operation which are to be limited.

(2) The actions by the Department authorized by this section may be appealed to the Child Care Agency Board of Review as otherwise provided by the licensing law for any denial or revocation, or as provided in this chapter for summary suspensions of licenses.

(3) Appeal and Status of Restricted License.

(a) If the licensee does not appeal the issuance of a restricted license or the summary suspension of authority to operate, it may petition the Department to request that the restrictions be removed or altered.

(b) If timely appeal is made, then, pending the hearing upon the restricted license, the child care agency may continue to operate pending the decision of the Child Care Agency Board of Review unless the license is summarily suspended as provided in Section .04(5).

(4) The Department may, at any time, modify or remove the restrictions on the license upon order of the Commissioner, or the Commissioner's designee.

(Rule 1240-4-5-.05, continued)

Authority: *TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Act 2000, ch. 981, §§ 10(f)and 14.* ***Administrative History:*** *Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.*

1240-4-5-.06 REAPPLICATION PERIODS.

(1) When an application for a license has been denied, or a license has been revoked, on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the Child Care Agency Board of Review's or reviewing court's order.

(2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2) years from the effective date of the denial or revocation if not appealed or, if appealed, from the effective date of the Child Care Agency Board of Review's or reviewing court's order.

(3) If an application for a license has been denied, or a license has been revoked on three (3) occasions, the agency shall not receive another license for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care agency if that person participated in such capacity in a child care agency which has been denied a license, or which had a license revoked, on three (3) occasions.

(5) Waivers

(a) The time restrictions in paragraphs (1) and (2) may be waived by the Child Care Agency Board of Review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the Commissioner, in a separate subsequent hearing before the Child Care Agency Board of Review or, in the discretion of the Commissioner, upon review by the Commissioner. No waiver may be granted for any permanent restriction imposed pursuant to paragraph (3).

(b) The agency must show to the Child Care Agency Board of Review's or the Commissioner's satisfaction, by a preponderance of the evidence, that the agency has corrected the deficiencies which led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations.

(c) The decision of the Child Care Agency Board of Review or the Commissioner shall be reduced to an order, which shall be a final order pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated, and may be appealed pursuant to TCA § 4-5-322.

(7) When, except for provisions relative to the continuation of the license provided in Rule 1240-4-5-.03(11), 1240-4-5-.04(4)(e) or 1240-4-5-.05(3)(b), a license would have expired during the time a case involving that license is being litigated before the Child Care Agency Board of Review or a reviewing court, and the Child Care Agency Board of Review or reviewing court does not uphold the Department's denial, revocation or restriction of the license, the licensee must apply for a renewal of an annual license within ten (10) business days of the entry of the Child Care Agency Board's or reviewing Court's order.

(8) For purposes of this section, unless otherwise specified in the order, the "effective date of the board's or court's order" shall mean the date the order is entered by the Chair of the Child Care Agency Board of Review or panel chair or vice-Chair of the Child Care Agency Board of Review.

(Rule 1240-4-5-.06, continued)

Authority: *TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Acts 2000, ch. 981, §§ 10(g) and 14.* ***Administrative History:*** *Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.*

USDA Status of Claims Against Households
FNS 209 Summary (From Line 12 Total Collections)
For Federal Fiscal Year Ended 9/30/2017

	IPV		IHE	
Quarter Ended	Claims	Amounts	Claims	Amounts
Dec-16	153	$806,386.00	491	$590,563.00
Mar-17	831	$3,245,695.00	2427	$2,673,634.00
Jun-17	343	$1,306,376.00	885	$987,637.00
Sep-17	214	$850,400.00	527	$565,044.00
Total	1541	$6,208,857.00	4330	$4,816,878.00
Quarterly Average	385	$1,552,214.25	1083	$1,204,219.50

Grand totals (IPV and IHE)	5871	$11,025,735.00
Quarterly Average (IPV and IHE)	734	$1,378,216.88

IPV	Intentional Program Violation
IHE	Inadvertent Household Error

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION

CHAPTER 1240-04-07
REPORT CARDS AND RATED LICENSING FOR CHILD CARE AGENCIES

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1240-04-07-.01 PURPOSE AND SCOPE.

(1) These rules implement the provisions of Tennessee Code Annotated, § 71-3-502(j) requiring that the Department of Human Services, in consultation with the Tennessee Commission on Children and Youth, establish and implement a system for evaluating, individually and collectively, all child care agencies licensed or approved by the Department of Human Services.

(2) This system is to consist of a mandatory annual report card evaluation for each child care agency, and a voluntary rated licensing system that includes a summary which is to be posted at each child care agency reflecting key indicators of performance comparison among all Tennessee child care agencies.

(3) This system is established for the purpose of allowing parents or caretakers of children to make more informed choices regarding the child care options available for their children by comparing the relative quality of child care services offered by licensed child care agencies and to encourage the improvement of child care for Tennessee's children.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j).* ***Administrative History:*** *Original rule filed October 30, 2001; effective January 13, 2002. Repeal and new rule filed October 21, 2008; effective January 4, 2009.*

1240-04-07-.02 DEFINITIONS.

(1) Accreditation. The process by which a credentialing authority endorses or approves the child care methods and programs of a child care agency. The Department does not approve or endorse a credentialing authority's standards and/or methods of evaluation.

(2) Assessment Instrument. The valid and reliable measurement tool(s) identified and utilized by DHS to perform an on-site observation and evaluation of the child care agency program and provide a score to that child care agency. The scoring of the instrument(s) produce(s) a valid measure of the quality of the child care program.

(3) Assessment Results Report. A written report containing additional information about the Program Assessment component of an agency's report card evaluation.

(4) Assessor. An individual trained in the use of the Assessment Instrument who conducts the Program Assessment component of the Report Card Evaluation of a child care agency in accordance with the procedures set by the Report Card system and Star-Quality Program.

(Rule 1240-04-07-.02, continued)

(5) Bonus Payment. An amount paid through the Child Care Certificate Program that is above and beyond the basic subsidy rate and is based upon the Star-Quality rating achieved by a participating agency.

(6) Certificate Payment. Payments made through Child Care Certificate Program to a participating agency, either at the basic subsidy rate or at the higher rate paid to an eligible child care agency based upon the agency's Star-Quality rating.

(7) Child Care Agency. Includes a child care center, group child care home, or family child care home.

(8) Child Care Center Administrator. An individual(s), corporation, partnership, cooperative, or other public or private entity of any kind, or any combination thereof, that, either personally or through an authorized representative, assumes, or is legally required to assume, ultimate legal, financial and administrative responsibility for the management and control of a child care center.

(9) Child Care Certificate Program. A DHS program that provides financial assistance to eligible families to help cover the cost of child care. A child care agency that applies with the Department for enrollment in the program is eligible to receive certificate payments.

(10) Child Care Environment. The organization of space, interactions of children with each other and with staff, the variety and type of activities offered by the child care agency, the schedule of activities for children, and opportunities provided for staff and parents relating to the areas of professional growth, parental involvement, intentional teaching, and social-emotional development.

(11) Child Care Home Administrator. An individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, that, either personally or through an authorized representative, assumes, or is legally required to assume, ultimate responsibility for the management and control of any or all family or group child care homes.

(12) Child Care Resource & Referral (CCR&R). A statewide network of regionally located agencies that assist parents, ~~providers~~ [child care professionals], and the community by offering information on child care and by providing technical assistance, consultation, resource materials, and training to child care ~~providers~~ [agencies].

(13) Civil Penalty. A financial sanction imposed by the Department against a child care agency that has violated a licensing regulation. ~~See Rule 1240-04-05-.04~~

(14) Compliance History. A record of an agency's history with respect to attaining and maintaining compliance with applicable licensing laws and regulations.

(15) Component Areas. The key indicators of performance included on the Star-Quality report card indicating eligibility for levels in the Star-Quality Program.

(16) Criteria. The individual items which are evaluated within each component area of the report card.

(17) Department. The Tennessee Department of Human Services (DHS).

(18) Director. The on-site manager for a child care agency who has overall responsibility for the daily oversight of all staff and direct child care services. The director, with the guidance of the board of directors or owner of the agency, shall be responsible for supervision, training, and evaluation of the staff, the program and the day-to-day operation of the center.

(Rule 1240-04-07-.02, continued)

(19) Early Care and Education. A system that includes pre-kindergarten, Head Start, and licensed center-based and home child care programs, dedicated to the care, education, protection, supervision or guidance of children beginning at birth.

[(20) Gold Sneaker Initiative. An initiative developed to enhance policy related to health and wellness within licensed child care facilities across Tennessee. The voluntary certification program recognizes facilities that complete training on obesity prevention requirements and implement those requirements in their programs.]

(~~20~~[1]) License. A permit issued by the Department to a child care agency authorizing the agency (the licensee) to provide child care in accordance with the provisions of the license, the law, and the regulations of the Department of Human Services.

(~~21~~[2]) Licensing Evaluation. The verification of compliance with all applicable laws and regulations for the issuance of a new or a renewed license. The evaluation includes all component areas of the report card.

(~~22~~[3]) Licensing Program Evaluator. DHS licensing staff responsible for evaluating an agency on all component areas except for the Program Assessment.

(~~23~~[4]) ~~Primary Caregiver~~ [Primary Educator]. The adult who is responsible for direct care and supervision of children in a family or group child care home and for the daily operation of the home. In a child care home, which is not operated by a child care home administrator, the primary ~~caregiver~~ [educator] is the licensee. Duties may include hiring, training and supervision of other ~~caregivers~~ [educators].

(~~24~~[5]) Professional Development Plan. The written document in which a ~~caregiver~~ [educator] has personally identified, with input from the child care agency director/owner, the following:

(a) Long term educational goals;

(b) Early childhood content areas where additional knowledge and skills are needed for delivery of quality child care;

(c) Short term goals for improvement in knowledge and skills of specific early childhood content areas;

(d) A plan of action for successful completion of short term goals which includes steps toward goal(s), available resources, and completion date(s); and

(e) Long term career goals and the support needed for successful completion of these goals.

(~~25~~[6]) Program Assessment. The process by which an on-site observation of the activities of a child care agency is conducted and which results in the assignment of a score utilizing the Assessment Instrument.

(~~26~~[7]) Rated License. A license issued by the Department to a child care agency that is based upon the agency's overall rating if the agency is eligible for, and chooses to participate in, the Star-Quality Program.

(~~27~~[8]) Report Card. A report resulting from the Licensing Evaluation and Program Assessment which details the child care agency's performance in component areas. The report card demonstrates an agency's compliance with licensing requirements and eligibility for the Star-Quality Program.

(Rule 1240-04-07-.02, continued)

(2~~8~~[9]) School-age Developmental Learning Standards. Standards which document the continuum of developmental milestones for school-age children based on the research about the processes, sequences, and long term consequences of learning and development.

(~~29~~[30]) Star-Quality Program. A voluntary program, for which eligibility is determined by receiving scores on the report card evaluation that demonstrate more than basic compliance with licensing requirements. An eligible and participating child care agency will receive a Star-Quality Report Card and will be issued either a One-Star, Two-Star or Three-Star rated license.

(3~~0~~[1]) Star-Quality Report Card. A more detailed report card, issued to an agency that is eligible for and is participating in the Star-Quality Program, which provides the rating for each component area as well as the agency's overall rating.

(3~~1~~[2]) Teaching Staff. Staff of a child care agency that work with children and that are used to meet adult:child ratios.

(3~~2~~[3]) Tennessee Early Childhood Training Alliance (TECTA). An early childhood professional development child care system articulated within Higher Education.

(3~~3~~[4]) Tennessee's Early Childhood Program Administrator Credential (TECPAC). The recognition awarded to early childhood administrators who have demonstrated the specific competencies for effective leadership and management through academics, experiences, and portfolio assessment.

(34[5]) Tennessee Early Learning Developmental Standards (TN-ELDS). A system which documents the continuum of developmental milestones from birth through age five (5) based on the research about the processes, sequences, and long term consequences of early learning and development.

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j).* ***Administrative History:*** *Original rule filed October 30, 2001; effective January 13, 2002. Repeal and new rule filed October 21, 2008; effective January 4, 2009.*

1240-04-07-.03 REPORT CARD EVALUATION.

(1) The licensing evaluation process shall include an evaluation of the child care agency for a report card in accordance with the provisions set forth in this chapter.

(2) A child care agency satisfying basic licensing requirements shall receive a report card with the issuance of its renewed license that sets forth the agency's rating in each component area, based upon applicable criteria contained within each component area.

(3) The component areas [as determined by the Department] measure [certain] ~~the~~ key indicators of performance, set forth in Tennessee Code Annotated § 71-3-502(j), as indicated below:

(a) "Director Qualifications" addresses the key indicator of "training, education, certification, and credentials of all supervisory staff, including the director or licensee."

(b) "Professional Development" addresses the key indicator of "training, education, certification, and credentials of all supervisory staff, including the director or licensee."

(c) "Parent/Family ~~Involvement~~ [Engagement]" addresses the key indicator of "child development and enrichment."

(Rule 1240-04-07-.03, continued)

(d) "Ratio and Group Size" addresses the key indicator of "staffing ratios."

(e) "Staff Compensation" addresses the key indicator of "training, education, certification, and credentials of all supervisory staff, including the director or licensee."

(f) "Program Assessment" addresses the key indicator of "health and safety," "child development and enrichment," and "adequacy of physical facilities."

[(g) "Child Health and Well-being" addresses the key indicator of child health and safety.]

(4) Assignment of Ratings.

(a) The rating for each component area indicates the agency's compliance with basic departmental licensing regulations.

(b) Each component area shall receive the maximum rating available as indicated below:

1. A child care agency that does no more than comply with the report card criteria listed under "Complies with Licensing Regulations" shall receive a rating for that component area of "Complies with Licensing Regulations."

2. A child care agency that does no more than comply with the report card criteria listed under "Level One Criteria" shall receive a rating in that component area of "One Star."

3. A child care agency that does no more than comply with the report card criteria listed under "Level Two Criteria" shall receive a rating in that component area of "Two Stars."

4. A child care agency that complies with the report card criteria listed under "Level Three Criteria" shall receive a sub-rating in that component area of "Three Stars."

(c) The agency's overall rating shall be determined by totaling the ratings for each of the component areas and dividing this amount by the total number of component areas rated.

1. If an agency's accreditation has been approved by the Department, two (2) points shall be added to the total of the agency's component ratings.

2. The total of the agency's component ratings shall be divided by ~~five (5)~~ [six (6)] for a Family Child Care Home or a Group Child Care Home.

3. The total of the agency's component ratings shall be divided by ~~seven (7)~~ [eight (8)] for a Child Care Center.

4. The resulting average shall be rounded to the one-hundredth (1/100th) decimal point.

5. If the average falls on or between one-hundredths (.01) and forty-nine hundredths (.49), the total shall be rounded down to the next lower whole number.

Example: A total score of two and thirty-nine hundredths (2.39) is rounded down to a total score of two (2.0);

(Rule 1240-04-07-.03, continued)

6. If the average falls on or between fifty hundredths (.50) and ninety-nine hundredths (.99), the total shall be rounded up to the next higher whole number.

   Example: An average score of two and fifty-seven hundredths (2.57) is rounded up to a total score of three (3.0).

(5) Neither the agency's overall rating, nor the rating on any component area, is subject to modification following completion of the report card evaluation, regardless of any changes that may have occurred in the agency, except as provided for in Rule 1240-04-07-.04(2) below.

(6) The agency's current report card and license shall be posted together in a conspicuous area, as may be directed by the Department.

(7) Notation of Accreditation Status on Agency License and Report Card.

(a) A child care agency may request that the Department recognize accreditation(s) claimed by the agency by submitting to the Department documentation that reasonably verifies that the agency is accredited by a legitimate credentialing authority.

(b) If the Department recognizes the agency's accreditation status, the Department shall list on the agency's license and on the agency's report card any accreditation(s) so recognized.

(c) The Department's recognition of the accreditation status of a child care agency shall not be based upon religious affiliation or ethnicity.

(d) The Department will utilize a standard process in recognizing accrediting bodies.

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j).* ***Administrative History:*** *Original rule filed October 30, 2001; effective January 13, 2002. Repeal and new rule filed October 21, 2008; effective January 4, 2009.*

1240-04-07-.04 PROGRAM ASSESSMENT.

(1) Program Assessment.

(a) The assessment scores of each rated classroom shall be assigned by an assessor based upon on-site observation(s) of the child care agency in accordance with the provisions of the appropriate Assessment Instrument for the Report Card Evaluation system.

(b) A child care agency shall allow the assessor reasonable access to the facility and shall otherwise reasonably cooperate with the assessor in the performance of the assessment.

~~(c) If a child care agency has unreasonably prevented an assessment or has attempted to manipulate the outcome of an assessment, DHS may take the following actions:~~

~~1. If the assessment must be rescheduled, the rescheduled assessment may be unannounced;~~

~~2. The Department of Human Services may automatically assign the agency a Program Assessment score of zero (0); or~~

(Rule 1240-04-07-.04, continued)

~~3. A legal referral may be made for imposing a civil penalty of $50 for each day of the continuing violation and may subject the violator to other legal enforcement actions as set forth in Chapter 1240-04-05, which may include, but are not limited to, probation, denial, or revocation of the license.~~

[(c) If a child care agency has unreasonably prevented an assessment or has attempted to manipulate the outcome of an assessment, DHS may take the following actions:

1. The assessment will be rescheduled per department policy; and/or

2. The Department of Human Services may automatically assign the agency a Program Assessment score of zero (0).]

(d) The method used to calculate the rating assigned to the component area of Program Assessment shall be determined as follows:

1. If the lowest rated classroom score is between zero (0.00) and two and ninety-nine hundredths (2.99), the agency shall be assigned the lowest rated classroom score as the overall rating in the component area of Program Assessment.

Example: The center has rated classroom scores of 2.0, 3.0 and 3.5. The overall rating assigned to the component area is determined by the lowest score that falls below 3.0. In this example, the overall rating for the component area is two (2.0).

2. If the lowest rated classroom score is between three (3.00) and seven (7.00), the overall rating assigned to the agency in the component area of the Program Assessment shall be an average calculated by totaling all rated classroom scores and dividing this total by the total number of rated classrooms.

Example: The center has rated classroom scores of 3.5, 4.0 and 4.5. The overall rating assigned to the component area is determined by the average score of the three (3) classrooms. In this example, the total of the scores is twelve (12.0). This total is divided by the three (3) classroom scores for an average of four (4.0). The overall rating for the component area is four (4.0).

(2) Program Re-Assessment.

(a) Program Re-Assessment is available in the following circumstances:

1. When requested by a child care agency, prior to the Intradepartmental Review provided for in Rule 1240-04-07-.08(3), to address any new or changed conditions that occurred since the date of the agency's last completed assessment.

(i) The child care agency shall be responsible for any and all costs, as determined by the Department, associated with this Program Re-Assessment which shall be paid in advance of the Program Re-Assessment.

(ii) Bonus Payments.

(I) During the period of the re-assessment, the ~~availability / amount~~ [availability/amount] of any bonus payments made by the Department pursuant to 1240-04-07-.07(7)(b) shall be determined by the results of the most recently completed assessment.

(Rule 1240-04-07-.04, continued)

(II) Following completion of the re-assessment, the ~~availability / amount~~ [availability/amount] of any bonus payments made by the Department shall be determined by the results of the re-assessment.

(iii) The results of any Program Re-Assessment conducted pursuant to the provisions of this subparagraph:

(I) Shall become effective immediately upon the Department's completion of the Program Re-Assessment and shall replace, in their entireties, any prior results for program areas which were re-assessed; and

(II) Shall not be subject to the appeal process set forth in Rule 1240-04-07-.08.

2. When requested by a child care agency following Intradepartmental Review, as an alternative to the administrative hearing provided for in Rule 1240-04-07-.08(4), to address any new or changed conditions that occurred since the date of the agency's last completed assessment. A Program Re-Assessment requested by the child care agency pursuant to this paragraph (2) shall be subject to all provisions specified in part 1 above.

3. When, upon receiving the results of its report card evaluation, the child care agency chooses to appeal the results, pursuant to Rule 1240-04-07-.08, and the appeal results in a Program Re-Assessment due to a finding that the initial assessment conducted by the Department, or some part thereof, was invalid.

(i) The Program Re-Assessment conducted pursuant to this part 3 shall be provided at the expense of the Department.

(ii) The Program Re-Assessment shall be conducted according to the policies and procedures established by the Department and may be limited to the items found to be invalid on the initial assessment.

(iii) Bonus Payments.

(I) During the period of the re-assessment conducted pursuant to this part 3, the ~~availability / amount~~ [availability/amount] of any bonus payments made by the Department shall be determined by the results of the most recently completed assessment.

(II) Following completion of the re-assessment, the ~~availability / amount~~ [availability/amount] of any bonus payments made by the Department shall be determined by the results of the re-assessment.

(iv) The results of any Program Re-Assessment conducted pursuant to the provisions of this subparagraph:

(I) Shall become effective immediately upon the Department's completion of the Program Re-Assessment and shall replace, in their entireties, any prior results for program areas which were reassessed; and

(II) For the Program Re-Assessment conducted pursuant to this part 3, the appeal process of Rule 1240-04-07-.08 shall be available.

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j).* ***Administrative History:*** *Original rule filed October 30, 2001; effective January 13, 2002. Repeal and new rule filed October 21, 2008; effective January 4, 2009.*

1240-04-07-.05 CHILD CARE CENTERS.

(1) Component Areas.

(a) Director Qualifications;

(b) Professional Development;

(c) ~~Early~~ [Developmental] Learning;

(d) Parent/Family ~~Involvement~~ [Engagement];

(e) Ratio and Group Size;

(f) Staff Compensation; ~~and~~

(g) Program Assessment~~.~~[; and]

[(h) Child Health and Well-being.]

(2) Level One Criteria

~~(a) Director Qualifications.~~

~~1. High School diploma or an equivalent approved by the Department of Education;~~

~~2. Thirty (30) hours of pre-service orientation training, including age specific training, inclusion of children with special needs, and business management/administration;~~

~~3. An annually updated Professional Development Plan (PDP); and~~

~~4. One (1) of the following:~~

~~(i) Five (5) years of experience in early (child) care and/or education, with four (4) years experience administering an early (child) care and/or education program; or~~

~~(ii) Beginning October 1, 2009, a Program Administrators Credential.~~

~~5. Level one child care center director qualifications summary chart:~~

~~High School Diploma or approved equivalent; and~~
~~Thirty (30) hours pre-service orientation training; and~~
~~Annually updated professional development plan (PDP); and~~
~~One (1) of the following:~~
~~Five (5) years experience in early care and/or education, with four (4) years experience administering an early care and/or education program; or~~
~~Effective October 1, 2009 a Program Administrators~~

(Rule 1240-04-07-.05, continued)

~~Credential~~

[(a) Director Qualifications.

1. High School diploma or an equivalent approved by the Department of Education with current Child Development Associate credential or Early Childhood Technical Certificate (minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution);

2. Thirty (30) hours of pre-service orientation training, including age specific training, inclusion of children with special needs, and business management/administration;

3. Two (2) hours of training annually, in addition to the Department's annual licensing training requirements for directors;

4. An annually updated Professional Development Plan (PDP); and

5. One (1) of the following:

   (i) Five (5) years of experience in early (child) care and/or education, with four (4) years' experience administering an early (child) care and/or education program; or

   (ii) Program Administrators Credential.

6. Level one child care center director qualifications summary chart:

High School Diploma or approved equivalent with current Child Development Associate credential or Early Childhood Technical Certificate [minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution; and
Two (2) hours of training annually, in addition to the Department's annual licensing training requirements; and
Thirty (30) hours pre-service orientation training; and
Annually updated professional development plan (PDP); and
One (1) of the following:
Five (5) years experience in early care and/or education, with four (4) years experience administering an early care and/or education program; or
Program Administrator's Credential.

]

(b) Professional Development.

~~1. All teaching staff shall have a minimum of a high school diploma or an equivalent approved by the Department of Education;~~

[1. At least one (1) educator in each classroom shall have a minimum educational level above a high school diploma or an equivalent approved by the Department of Education; and

   (i) Have a current CDA; or

(Rule 1240-04-07-.05, continued)

(ii) Have completed one (1) academic course from an accredited academic institution in child development or early childhood education.]

2. At least 50% of the teaching staff, employed at the agency for at least one hundred (120) days, shall have an annually updated Professional Development Plan (PDP) and training hours shall support the goals of the plan;

3. Ten percent (10%) of the teaching staff shall have thirty (30) hours of early childhood education training through TECTA orientation, a Tennessee Technology Center, or, as approved by the Department, equivalent training on a standardized curriculum specific to age group/setting which includes working with children with special needs; and

4. All teaching staff shall annually receive at least three (3) training hours approved by the Department in addition to the minimum training hours required by department regulations.

(c) Developmental Learning.

1. ~~Providers~~ [Child care agencies] shall maintain copies of the applicable developmental learning standards on site and available to staff.

(i) TN-ELDS: For directors and teaching staff of children zero to sixty (0 to 60) months.

(ii) School-age Developmental Learning Standards: For directors and teaching staff of children over sixty (60) months.

2. The director and fifty percent (50%) of teaching staff shall participate in three (3) hours of DHS-approved training on the applicable developmental learning standards.

(i) At the time of the annual licensing evaluation, the director and fifty percent (50%) of the teaching staff who have been employed at least one hundred twenty (120) days must have received this training within the past three (3) years.

(ii) Substitutes who have acted as ~~caregivers~~ [educators] less than two hundred (200) hours in the previous calendar year shall be exempt from this requirement.

3. The director shall observe and document the use of the applicable developmental learning standards as specified above.

(d) Parent/Family ~~Involvement~~ [Engagement].

1. A bulletin board updated at least quarterly shall be used for communications and announcements to parents;

2. A written communication shall be provided to parents quarterly;

3. One group parent meeting for all parents of enrolled children shall be offered and documented per licensing year;

4. One individual parent conference that focuses upon the child's developmental status or needs shall be offered and documented per licensing year and

(Rule 1240-04-07-.05, continued)

5. The ~~provider~~ [child care agency] shall complete one (1) additional item from the three (3) star category.

(e) Ratio and Group Size.

1. The child care agency must meet the following adult:child (A:C) ratios and group sizes:

	Age		A:C Ratio	Group Size
(i)	Infant	1:4	8	
(ii)	Toddler	1:6	12	
(iii)	2 yrs.	1:7	14	
(iv)	3 yrs.	1:9	18	
(v)	4 yrs.	1:13	20	
(vi)	5 yrs., not in Kindergarten	1:16	20	
(vii)	K and above	1:20	25	

2. The adult:child ratio in a multi-age grouping shall be determined by the age of the majority of the children in the group unless the group contains an infant, in which case the adult:child ratio for infants shall always be maintained. If the ages of the children are evenly divided and, thus, there is no majority age, the adult:child ratio for the group shall be determined by the adult:child ratio required in a single age grouping of the youngest child in the group.

(f) Staff Compensation.

1. A pay scale for teaching staff must be established; and

2. At least two (2) of the following employee benefits must be provided:

(i) Payment of individual professional membership or association fees;

(ii) Insurance supplement;

(iii) Paid leave (e.g., sick, vacation, holiday, personal, family, bereavement);

(iv) Reduced fee to staff for child care services;

(v) Money or cash equivalent bonuses (e.g., gift cards);

(vi) Insurance (e.g., health, life, accident, disability, dental, vision);

(vii) Tuition for academic education;

(viii) Paid participation in staff development/training (within federal and state law);

(Rule 1240-04-07-.05, continued)

(ix) Retirement fund (e.g., 401k);

(x) Flex time (within federal and state law);

(xi) Differential shift pay.

(g) Program Assessment.

1. The total average Program Assessment score, as determined in accordance with this chapter, is four (4.0) to four and forty-nine hundredths (4.49); and

2. Following an agency's annual assessment, an improvement plan based on the agency's Assessment Results Report shall be developed.

[(h) Child Health and Well-being

1. Fifty percent (50%) of all staff have current certification in CPR and First Aid; and

2. The child care agency shall provide parent information on health and well-being monthly.]

(3) Level Two Criteria.

~~(a) Director Qualifications.~~

~~1. High School diploma or an equivalent approved by the Department of Education;~~

~~2. Thirty (30) hours of pre-service orientation training, including age specific training, children with special needs, and business management/administration;~~

~~3. An annually updated Professional Development Plan (PDP); and~~

~~4. One (1) of the following:~~

~~(i) Eight (8) years of experience in early (child) care and/or education with four (4) years experience administering an early care and/or education program;~~

~~(ii) A bachelor's degree or higher in a relevant area (including early childhood education, child development, education, liberal arts, business administration, human ecology and/or consumer sciences) and five (5) years of experience in early (child) care and/or education; or~~

~~(iii) Beginning October 1, 2009, a Program Administrator Credential.~~

~~5. Level two child care center director qualifications summary chart:~~

~~High School Diploma or approved equivalent; and~~
~~Thirty (30) hours of pre-service orientation training including age specific training, inclusion of children with special needs, and business management/administration; and~~
~~Annually updated Professional Development Plan (PDP); and~~
~~One (1) of the following:~~
~~Eight (8) years experience in early care and/or education with four (4) years experience administering an early care and/or~~

(Rule 1240-04-07-.05, continued)

~~education program; or~~
~~Bachelor's degree or higher in a relevant area (including early childhood education, child development, education, liberal arts, business administration, human ecology and/or consumer sciences) and five (5) years of experience in early care and/or education; or~~
~~Effective October 1, 2009 a Program Administrators Credential~~

[(a) Director Qualifications.

1. High School diploma or an equivalent approved by the Department of Education with current Child Development Associate credential or Early Childhood Technical Certificate (minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution);

2. Thirty (30) hours of pre-service orientation training, including age specific training, children with special needs, and business management/administration;

3. Four (4) hours of training annually, in addition to the Department's annual licensing training requirements for directors;

4. An annually updated Professional Development Plan (PDP); and

5. One (1) of the following:

   (i) Eight (8) years of experience in early (child) care and/or education with four (4) years' experience administering an early care and/or education program;

   (ii) A bachelor's degree or higher in a relevant area (including early childhood education, child development, education, liberal arts, business administration, human ecology and/or consumer sciences) and five (5) years of experience in early (child) care and/or education; or

   (iii) Program Administrator Credential.

6. Level two child care center director qualifications summary chart:

High School Diploma or approved equivalent with current Child Development Associate credential or Early Childhood Technical Certificate [minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution; and
Four (4) hours of training annually, in addition to the Department's annual licensing training requirements; and
Thirty (30) hours of pre-service orientation training including age specific training, inclusion of children with special needs, and business management/administration; and
Annually updated Professional Development Plan (PDP); and
One (1) of the following:
Eight (8) years' experience in early care and/or education with four (4) years' experience administering an early care and/or education program; or
Bachelor's degree or higher in a relevant area (including early

(Rule 1240-04-07-.05, continued)

childhood education, child development, education, liberal arts, business administration, human ecology and/or consumer sciences) and five (5) years of experience in early care and/or education; or
Program Administrators Credential.

]

(b) Professional Development.

~~1. All teaching staff shall have a minimum of a high school diploma or an equivalent approved by the Department of Education;~~

[1. At least one (1) educator in each classroom shall have a minimum educational level above a high school diploma or an equivalent approved by the Department of Education;] and

(i) Have a current CDA; or

(ii) Have completed one (1) academic course from an accredited academic institution in child development or early childhood education.

2. At least seventy-five percent (75%) of the teaching staff, employed at the agency for at least one hundred twenty (120) days, shall have an annually updated Professional Development Plan (PDP) and training hours that support the goals of the plan; and

3. At least twenty–five percent (25%) of teaching staff shall have one (1) of the following:

(i) Three (3) years of experience in early (child) care and/or education and thirty (30) hours of early childhood education training through TECTA orientation, a Tennessee Technology Center, or, as approved by the Department, equivalent training on a standardized curriculum specific to age group/setting that includes working with children with special needs, or documented enrollment therein; or

(ii) Documentation of enrollment from an instructor showing annual progression in a Child Development Associate credential or Early Childhood Technical Certificate [minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution] program; and

4. All teaching staff shall annually receive at least three (3) training hours approved by the Department in addition to the minimum training hours required by department regulations.

(c) Developmental Learning.

1. ~~Providers~~ [Child care agencies] shall maintain copies of the applicable developmental learning standards on site and available to staff.

(i) TN-ELDS: For directors and teaching staff of children zero to sixty (0 to 60) months.

(ii) School-age Developmental Learning Standards: For directors and teaching staff of children over sixty (60) months.

(Rule 1240-04-07-.05, continued)

2. The director and seventy-five percent (75%) of teaching staff shall participate in three (3) hours of DHS approved training on the applicable developmental learning standards.

   (i) At the time of the annual licensing evaluation, the director and seventy-five percent (75%) of the teaching staff who have been employed at least one hundred twenty (120) days must have received this training within the past three (3) years.

   (ii) Substitutes who have acted as ~~caregivers~~ [educators] less than two hundred (200) hours in the previous calendar year shall be exempt from this requirement.

3. The director shall observe and document the use of the applicable developmental learning standards as specified above.

(d) Parent/Family ~~Involvement~~ [Engagement].

1. A bulletin board updated at least ~~quarterly~~ [monthly] shall be used for communications and announcements to parents;

2. A written communication shall be provided to parents every two months;

3. One group parent meeting for all parents of enrolled children shall be offered and documented per licensing year;

4. One individual parent conference that focuses upon the child's developmental status or needs shall be offered and documented per licensing year;

5. Parent education handouts shall be provided to all parents on a variety of issues pertinent to the parent and child; and

   [(i)] Examples: speech and language Development, toilet learning, healthy snacks, [childhood obesity,] Tips for dealing with challenging behaviors, healthy habits, immunization information, preventing child abuse, activities that promote development (available for different ages), special needs and inclusion, and strengthening families program strategies: facilitate friendships and mutual support; strengthen parenting; respond to family crises; link families to services and opportunities; facilitate children's social and emotional development; observe and respond to early warning signs of child abuse or neglect; value and support parents.

   [(ii)] Handouts related to topics such as these are available from CCR&R and TECTA.

6. The ~~provider~~ [child care agency] shall complete two (2) additional items from the [level three (3) criteria] ~~Three (3) Star category~~.

(e) Ratio and Group Size.

1. The child care agency must meet the following adult:child (A:C) ratios and group sizes:

	Age	A:C Ratio	Group Size
(i)	Infant	1:4	8

(Rule 1240-04-07-.05, continued)

(ii)	Toddler	1:5	10
(iii)	2 yrs.	1:6	12
(iv)	3 yrs.	1:9	18
(v)	4 yrs.	1:13	20
(vi)	5 yrs., not in Kindergarten	1:16	20
(vii)	K–8 yrs.	1:18	25
(viii)	9-12 yrs.	1:20	25

2. The adult:child ratio in a multi-age grouping shall be determined by the age of the majority of the children in the group unless the group contains an infant, in which case the adult:child ratio for infants shall always be maintained. If the ages of the children are evenly divided, and, thus there is no majority age, the adult:child ratio for the group shall be set by the adult:child ratio required in a single age grouping of the youngest child in the group.

(f) Staff Compensation.

1. A pay scale for teaching staff shall be established; and

2. At least three (3) of the following employee benefits shall be provided:

(i) Payment of individual professional membership or association fees;

(ii) Insurance supplement;

(iii) Paid leave (e.g., sick, vacation, holiday, personal, family, bereavement);

(iv) Reduced fee to staff for child care services;

(v) Money or cash equivalent bonuses (e.g., gift cards);

(vi) Insurance (e.g., health, life, accident, disability, dental, vision);

(vii) Tuition for academic education;

(viii) Paid participation in staff development/training (within federal and state law);

(ix) Retirement fund (e.g., 401k);

(x) Flex time (within federal and state law);

(xi) Differential shift pay.

(g) Program Assessment.

(Rule 1240-04-07-.05, continued)

1. The total average Program Assessment score, as determined in accordance with this chapter, shall be four and fifty hundredths (4.50) to four and ninety-nine hundredths (4.99); and

2. Following an agency's annual assessment, an improvement plan based on the agency's Assessment Results Report shall be developed.

[(h) Child Health and Well-being

1. Seventy-five percent (75%) of all staff have current certification in CPR and First Aid;

2. The child care agency shall display updated child health and well-being practices throughout the program;

3. The child care agency shall have a daily lesson plan that reflects health and well-being practices; and

4. The child care agency shall provide parent information on health and well-being monthly.]

(4) Level Three Criteria.

~~(a) Director Qualifications.~~

~~1. Twenty (20) hours of training annually, including the Department's annual licensing training requirements for directors;~~

~~2. An annually updated Professional Development Plan (PDP); and~~

~~3. One (1) of the following:~~

~~(i) High School diploma or an equivalent approved by the Department of Education with current Child Development Associate credential or Early Childhood Technical Certificate [minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution] or equivalent and seven (7) years of experience administering an early care and/or education program; or~~

~~(ii) Associates degree in relevant area (including early childhood education, child development, education, liberal arts, business administration, human ecology, or consumer sciences) and four (4) years experience administering an early care and/or education program; or~~

~~(iii) Relevant bachelor's degree or higher (including early childhood education, child development, education, liberal arts, business administration, human ecology and/or consumer sciences) and two (2) years experience administering an early child care and/or education program; or~~

~~(iv) Beginning October 1, 2009, a Program Administrator Credential.~~

~~4. Level three child care center director qualifications summary chart:~~

~~Twenty (20) hours of training annually, including the Department's annual licensing training requirements for Directors; and~~

(Rule 1240-04-07-.05, continued)

~~Annually updated Professional Development Plan (PDP); and~~
~~One (1) of the following:~~
~~High School diploma or approved equivalent with current Child Development Associate credential or Early Childhood Technical Certificate [minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution] or equivalent and seven (7) years of experience administering an early care and/or education program; or~~
~~Associates Degree in relevant area (including early childhood education, child development, education, liberal arts, business administration, human ecology, or consumer sciences) and four (4) years experience administering an early care and/or education program; or~~
~~Relevant Bachelor's degree or higher (including early childhood education, child development, education, liberal arts, business administration, human ecology and/or consumer sciences) and two (2) years experience administering an early child care and/or education program; or~~
~~Effective October 1, 2009 a Program Administrators Credential.~~

[(a) Director Qualifications.

High School diploma or an equivalent approved by the Department of Education with current Child Development Associate credential or Early Childhood Technical Certificate (minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution) or equivalent and seven (7) years of experience administering an early care and/or education program;

2. Six (6) hours of training annually, in addition to the Department's annual licensing training requirements for directors;

3. An annually updated Professional Development Plan (PDP); and

4. One (1) of the following:

   (i) Associates degree in relevant area (including early childhood education, child development, education, liberal arts, business administration, human ecology, or consumer sciences) and four (4) years' experience administering an early care and/or education program; or

   (ii) Relevant bachelor's degree or higher (including early childhood education, child development, education, liberal arts, business administration, human ecology and/or consumer sciences) and two (2) years' experience administering an early child care and/or education program; or

   (iii) Program Administrator Credential.

5. Level three child care center director qualifications summary chart:

High School diploma or approved equivalent with current Child Development Associate credential or Early Childhood Technical Certificate [minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution] or equivalent and seven (7) years of experience administering

(Rule 1240-04-07-.05, continued)

an early care and/or education program]; and
Six (6) hours of training annually, in addition to the Department's annual licensing training requirements for Directors; and
Annually updated Professional Development Plan (PDP); and
One (1) of the following:
Associates Degree in relevant area (including early childhood education, child development, education, liberal arts, business administration, human ecology, or consumer sciences) and four (4) years' experience administering an early care and/or education program; or
Relevant Bachelor's degree or higher (including early childhood education, child development, education, liberal arts, business administration, human ecology and/or consumer sciences) and two (2) years' experience administering an early child care and/or education program; or

]

(b) Professional Development.

~~1. All teaching staff shall have a minimum of a high school diploma or an equivalent approved by the Department of Education;~~

[1. At least one (1) educator in each classroom shall have a minimum educational level above a high school diploma or an equivalent approved by the Department of Education; and

(i) Have a current CDA; or

(ii) Have completed one (1) academic course from an accredited academic institution in child development or early childhood education.]

2. All teaching staff, employed at the agency for at least one hundred twenty (120) days, shall have an annually updated Professional Development Plan (PDP) and training hours that support the goals of the plan;

3. The agency shall have a written plan for transitioning children affected by teaching staff turnover;

4. All teaching staff shall receive at least six (6) hours of annual training approved by the Department in addition to the minimum training hours required by department regulations; and

5. Fifty percent (50%) of teaching staff shall have one (1) of the following:

(i) Four (4) years experience in an early (child) care and/or education program and documented enrollment in TECTA orientation or equivalent training as approved by the Department;

(ii) Three (3) years experience in an early (child) care and/or education program and documentation of enrollment from an instructor showing annual progression in a Child Development Associate credential or Early Childhood Technical Certificate [minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution] program or equivalent;

(Rule 1240-04-07-.05, continued)

(iii) Two (2) years experience in an early (child) care and/or education program and a current Child Development Associate credential or Early Childhood Technical Certificate [minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution] or equivalent;

(iv) One (1) year experience in an early (child) care and/or education program and associates degree in relevant field;

(v) Bachelor's degree or higher in relevant field. For purposes of the provisions of this item, the term "relevant field" is defined as a degree in early childhood education, child development, education, liberal arts, business administration, human ecology, and/or consumer sciences, or a degree in any field with a minimum of six (6) semester hours in any of these listed fields.

(c) Developmental Learning.

1. ~~Providers~~ [Child care agencies] shall maintain copies of the applicable developmental learning standards on site and available to staff.

(i) TN-ELDS: For directors and teaching staff of children zero to sixty (0 to 60) months.

(ii) School-age Developmental Learning Standards: For directors and teaching staff of children over sixty (60) months.

2. The director and one hundred percent (100%) of teaching staff shall participate in three (3) hours of DHS-approved training on the applicable developmental learning standards.

(i) At the time of the annual licensing evaluation, the director and one hundred percent (100%) of the teaching staff who have been employed at least one hundred twenty (120) days must have received this training within the past three (3) years.

(ii) Substitutes who have acted as ~~caregivers~~ [educators] less than two hundred (200) hours in the previous calendar year shall be exempt from this requirement.

3. The director shall observe and document the use of the applicable developmental learning standards as specified above.

(d) Parent/Family ~~Involvement~~ [Engagement].

1. A bulletin board updated at least ~~quarterly~~ [monthly] shall be used for communications and announcements to parents;

2. A written communication shall be provided to parents monthly;

3. One group parent meeting for all parents of enrolled children shall be offered and documented per licensing year;

4. ~~One~~ [Three] individual parent conference[s] that ~~focuses~~ [focus] upon the child's developmental status or needs shall be offered and documented per licensing year;

(Rule 1240-04-07-.05, continued)

5. Parent education handouts shall be provided to all parents on a variety of issues pertinent to the parent and child;

   (i) Examples: speech and language development, toilet learning, healthy snacks, [childhood obesity], tips for dealing with challenging behaviors, healthy habits, immunization information, preventing child abuse, activities that promote development (available for different ages), special needs and inclusion, and strengthening families program strategies (facilitate friendships and mutual support, strengthen parenting, respond to family crises, link families to services and opportunities, facilitate children's social and emotional development, observe and respond to early warning signs of child abuse or neglect, and value and support parents).

   (ii) Handouts related to topics such as these are available from CCR&R and TECTA.

6. One project or activity involving families in the child care center shall be offered and documented;

7. One parent education training per licensing year to all families receiving service such as child development stages, creative curriculum, infant and toddler curriculum, or age appropriate behavior management shall be offered and documented;

8. A list of current community resources for enrolling parents shall be provided;

9. Parents shall be offered an annual opportunity to evaluate the curriculum, structure, and parent involvement aspects of the program; and

10. A Parent Advisory Council that meets at least two (2) times per year to help implement and improve plans concerning parental involvement, curriculum, and program structure shall be established and maintained, and meetings shall be documented.

[11. Offer monthly documented opportunities for parent participation in the classroom.]

(e) Ratio and Group Size

1. The child care agency must meet the following adult:child (A:C) ratios and group sizes:

	Age	A:C Ratio	Group Size
(i)	Infant	1:4	8
(ii)	Toddler	1:4	12
(iii)	2 yrs.	1:5	10
(iv)	3 yrs.	1:8	16
(v)	4 yrs.	1:13	20
(vi)	5 yrs., not in	1:15	20

(Rule 1240-04-07-.05, continued)

	Kindergarten		
(vii)	K–8 yrs.	1:17	25
(viii)	9-12 yrs.	1:19	25

2. The adult:child ratio in a multi-age grouping shall be determined by the age of the majority of the children in the group unless the group contains an infant, in which case the adult:child ratio for infants shall always be maintained. If the ages of the children are evenly divided and, thus, there is no majority age, the adult:child ratio for the group shall be set by the adult:child ratio required in a single age grouping of the youngest child in the group.

(f) Staff Compensation.

1. A pay scale for all staff shall be established;

2. A pay scale for teaching staff which is tied to the employee's education/training and longevity in child care/early childhood services shall be established; and

3. At least four (4) of the employee benefits listed below shall be provided:

(i) Payment of individual professional membership or association fees;

(ii) Insurance supplement;

(iii) Paid leave (e.g., sick, vacation, holiday, personal, family, bereavement);

(iv) Reduced fee to staff for child care services;

(v) Money or cash equivalent bonuses (e.g., gift cards);

(vi) Insurance (e.g., health, life, accident, disability, dental, vision);

(vii) Tuition for academic education;

(viii) Paid participation in staff development/training (within federal and state law);

(ix) Retirement fund (e.g., 401k);

(x) Flex time (within federal and state law);

(xi) Differential shift pay.

(g) Program Assessment.

1. Total average Program Assessment score, as determined in accordance with this chapter, shall be at least five (5.0); and

2. Following an agency's annual assessment, an improvement plan based on the agency's Assessment Results Report shall be developed.

[(h) Child Health and Well-being

(Rule 1240-04-07-.05, continued)

1. One hundred percent (100%) of all staff have current certification in CPR and First Aid; and

2. The child care agency shall be Gold Sneaker certified (effective with assessments beginning August 1, 2018).]

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j).* ***Administrative History:*** *Original rule filed October 30, 2001; effective January 13, 2002. Amendment filed May 22, 2007; effective August 7, 2007. Repeal and new rule filed October 21, 2008; effective January 4, 2009.*

1240-04-07-.06 FAMILY CHILD CARE HOMES AND GROUP CHILD CARE HOMES.

(1) Component Areas.

(a) Professional Development;

(b) ~~Early~~ [Developmental] Learning;

(c) Parent/Family ~~Involvement~~ [Engagement];

(d) Business Management; ~~and~~

(e) Program Assessment~~.~~[; and]

[(f) Child Health and Well-being.]

(2) Level One Criteria.

(a) Professional Development.

[The primary educator shall have, at a minimum, a Child Development Associate Credential (CDA).]

1. Primary ~~caregivers~~ [educators] and administrators, employed at the agency for at least one hundred twenty (120) days, shall have an annually updated Professional Development Plan (PDP) and training hours that support the goals of the plan;

2. The primary ~~caregiver~~ [educator] shall have thirty (30) hours of family child care training or documented enrollment therein through TECTA, a Tennessee Technology Center, National Association for Family Child Care Foundation accreditation training, or other training as approved by the Department; and

3. One (1) of the following:

(i) Complete ten (10) hours of annual training in addition to the thirty (30) hours of training required in part 2 above and the minimum training hours required by department regulations;

~~(ii) Complete thirty (30) cumulative hours towards the Child Development Associate Credential; or~~

(~~iii~~[ii]) Complete six (6) cumulative credit hours toward an Early Childhood Technical Certificate awarded by an accredited academic institution.

(b) Developmental Learning.

(Rule 1240-04-07-.06, continued)

1. Primary ~~caregivers~~ [educators] shall maintain copies of the applicable developmental learning standards on site and available to staff.

   (i) TN-ELDS: For primary ~~caregivers~~ [educators] and teaching staff of children zero to sixty (0 to 60) months.

   (ii) School-age Developmental Learning Standards: For primary ~~caregivers~~ [educators] and teaching staff of school-age only programs (all children over sixty (60) months).

2. Fifty percent (50%) of teaching staff, including the primary ~~caregiver~~ [educator], shall participate in three (3) hours of DHS approved training on the applicable developmental learning standards.

   (i) At the time of the annual licensing evaluation, fifty percent (50%) of teaching staff, including the primary ~~caregiver~~ [educator], who have been employed at least one hundred twenty (120) days must have received this training within the past three (3) years.

   (ii) Substitutes who have acted as ~~caregivers~~ [educators] less than two hundred (200) hours in the previous calendar year shall be exempt from this requirement.

3. The primary ~~caregiver~~ [educator] shall observe and document the use of the applicable developmental learning standards as specified above.

4. In programs with a single ~~caregiver~~ [educator], the use of the applicable developmental learning standards shall be documented annually.

(c) Parent/Family ~~Involvement~~ [Engagement].

1. An orientation meeting shall be held for parents / family / children new to the agency;

2. A written communication shall be provided to parents quarterly;

3. One individual parent conference that focuses upon the child's developmental status or needs shall be offered and documented per licensing year;

4. ~~Effective January 1, 2010, a~~ [A] bulletin board updated at least quarterly shall be used for communications and announcements to parents; and

5. ~~Effective January 1, 2010, the~~ [The] provider shall complete one (1) additional item from the Three (3) Star category.

(d) Business Management.

A parent packet shall be provided with the following:

1. Personalized contracts between the child care agency and the parent;

2. The child care agency's policies;

3. The child care agency's philosophy;

(Rule 1240-04-07-.06, continued)

4. Parent resources; and

5. If children with special needs are enrolled or are applying for enrollment, information on resources for such children.

(e) Program Assessment.

1. The total average Program Assessment score, as determined in accordance with this chapter, is four (4.0) to four and forty-nine hundredths (4.49); and

2. Following an agency's annual assessment, an improvement plan based on the agency's Assessment Results Report shall be developed.

[(f) Child Health and Well-being

1. Fifty percent (50%) of all staff have current certification in CPR and First Aid; and

2. The agency shall provide parent information on health and well-being monthly.]

(3) Level Two Criteria.

(a) Professional Development.

[The primary educator shall have, at a minimum, a Child Development Associate Credential (CDA).]

1. Primary ~~caregivers~~ [educators] and administrators, employed at the agency for at least one hundred twenty (120) days, shall have an annually updated Professional Development Plan (PDP) and training hours that support the goals of the plan;

2. The primary ~~caregiver~~ [educator] shall have thirty (30) hours of family child care training or documented enrollment therein through TECTA, a Tennessee Technology Center, National Association for Family Child Care Foundation accreditation training, or other training as approved by the Department;

3. Every year the primary ~~caregiver~~ [educator] shall complete ten (10) hours of training in addition to the thirty (30) hours of training required in subpart (ii) above and the minimum training hours required by department regulations; and

4. One (1) of the following:

(i) Maintain membership in a family care support group and/or local, state, or national association;

~~(ii) Complete ninety (90) cumulative classroom hours toward the Child Development Associate credential; or~~

(~~iii~~[ii]) Complete twelve (12) cumulative credit hours toward an Early Childhood Technical Certificate awarded by an accredited academic institution.

(b) Developmental Learning.

1. Primary ~~caregivers~~ [educators] shall maintain copies of the applicable developmental learning standards on site and available to staff.

(Rule 1240-04-07-.06, continued)

(i) TN-ELDS: For primary ~~caregivers~~ [educators] and teaching staff of children zero to sixty (0 to 60) months.

(ii) School-age Developmental Learning Standards: For primary ~~caregivers~~ [educators] and teaching staff of school-age only programs (all children over sixty (60) months).

2. Seventy-five percent (75%) of teaching staff, including the primary ~~caregiver~~ [educator], shall participate in three (3) hours of DHS-approved training on the applicable developmental learning standards.

(i) At the time of the annual licensing evaluation, seventy-five percent (75%) of teaching staff, including the primary ~~caregiver~~ [educator], who have been employed at least one hundred twenty (120) days must have received this training within the past three (3) years.

(ii) Substitutes who have acted as ~~caregivers~~ [educators] less than two hundred (200) hours in the previous calendar year shall be exempt from this requirement.

3. The primary ~~caregiver~~ [educator] shall observe and document the use of the applicable developmental learning standards as specified above.

4. In programs with a single ~~caregiver~~ [educator] the use of the applicable developmental learning standards shall be documented annually.

(c) Parent/Family ~~Involvement~~ [Engagement].

1. An orientation meeting shall be held for parents / family / children new to the agency;

2. A written communication shall be provided to parents every two months;

3. One group parent meeting for all parents of enrolled children shall be offered and documented per licensing year;

4. One individual parent conference that focuses upon the child's developmental status or needs shall be offered and documented per licensing year;

5. Parent education handouts shall be provided to all parents on a variety of issues pertinent to the parent and child;

(i) Examples: speech and language development, toilet learning, healthy snacks, [childhood obesity], tips for dealing with challenging behaviors, healthy habits, immunization information, preventing child abuse, activities that promote development (available for different ages), special needs and inclusion, and strengthening families program strategies (facilitate friendships and mutual support, strengthen parenting, respond to family crises, link families to services and opportunities, facilitate children's social and emotional development, observe and respond to early warning signs of child abuse or neglect, and value and support parents).

(ii) Handouts related to topics such as these are available from CCR&R and TECTA.

(Rule 1240-04-07-.06, continued)

~~6. Effective January 1, 2010, a bulletin board updated at least quarterly shall be used for communications and announcements to parents; and~~

[6. A bulletin board updated at least monthly shall be used for communications and announcements to parents; and]

~~7. Effective January 1, 2010, the provider shall complete two (2) additional items from the Three (3) Star category.~~

[7. The child care agency shall complete two (2) additional items from the level three (3) criteria.]

(d) Business Management.

1. A parent packet shall be provided with the following:

(i) Personalized contracts between the child care agency and the parent;

(ii) The child care agency's policies;

(iii) The child care agency's philosophy;

(iv) Parent resources, and

(v) If children with special needs are enrolled or applying for enrollment, information on resources for such children.

2. A system for financial and program record-keeping shall be maintained.

(e) Program Assessment.

1. The total average Program Assessment score, as determined in accordance with this chapter, shall be four and fifty hundredths (4.50) to four and ninety-nine hundredths (4.99); and

2. Following an agency's annual assessment, an improvement plan based on the agency's Assessment Results Report shall be developed.

[(f) Child Health and Well-being

1. Seventy-five (75%) of all staff have current certification in CPR and First Aid;

2. The child care agency shall display updated child health and well-being practices throughout the program;

3. The child care agency shall have a daily lesson plan that reflects health and well-being practices; and

4. The child care agency shall provide parent information on health and well-being monthly.]

(4) Level Three Criteria.

(a) Professional Development.

(Rule 1240-04-07-.06, continued)

[The primary educator shall have, at a minimum, a Child Development Associate Credential (CDA).]

1. Primary ~~caregivers~~ [educators] and administrators, employed at the agency for at least one hundred twenty (120) days, shall have an annually updated Professional Development Plan (PDP) and training hours that support the goals of the plan;

2. Every year the primary ~~caregiver~~ [educator] shall complete twenty (20) hours of training, that is approved by the Department, in addition to the minimum training hours required for licensure by department regulations;

3. The primary ~~caregiver~~ [educator] shall maintain membership, and documented participation in, a family care support group and/or local, state, or national association; and

~~4. One (1) of the following:~~

~~(i) The primary caregiver shall hold a current Child Development Associate credential and/or an Early Childhood Technical Certificate with a minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution, or equivalent credential as approved by the Department. If the primary caregiver does not hold a current Child Development Associate credential or Early Childhood Technical Certificate, the primary caregiver must have an associates degree or higher and two (2) years of documented child care experience in early (child) care and/or other education program;~~

~~(ii) The primary caregiver must have completed all Child Development Associate credential course work and have applied for testing or must have completed testing and be awaiting the Child Development Associate credential results; or~~

~~(iii) The primary caregiver must have completed and submitted all renewal requirements and be awaiting the renewal from Child Development Associate Credential Council.~~

[4. One (1) of the following:

(i) The primary educator shall hold an Early Childhood Technical Certificate with a minimum of eighteen (18) cumulative credit hours awarded by an accredited academic institution, or equivalent credential as approved by the Department; or

(ii) The primary educator shall have a technical certificate in a related field; or

(iii) The primary educator must have an associate's degree or higher.]

(b) Developmental Learning.

1. Primary ~~caregivers~~ [educators] shall maintain copies of the applicable developmental learning standards on site and available to staff.

(i) TN-ELDS: For primary ~~caregivers~~ [educators] and teaching staff of children zero to sixty (0 to 60) months.

(Rule 1240-04-07-.06, continued)

(ii) School-age Developmental Learning Standards: For primary ~~caregivers~~ [educators] and teaching staff of school-age only programs (all children over sixty (60) months).

2. One hundred percent (100%) of teaching staff, including the primary ~~caregiver~~ [educator], shall participate in three (3) hours of DHS approved training on the applicable developmental learning standards.

(i) At the time of the annual licensing evaluation, one hundred percent (100%) of teaching staff, including the primary ~~caregiver~~ [educator], who have been employed at least one hundred twenty (120) days must have received this training within the past three (3) years.

(ii) Substitutes who have acted as ~~caregivers~~ [educators] less than two hundred (200) hours in the previous calendar year shall be exempt from this requirement.

3. The primary ~~caregiver~~ [educator] shall observe and document the use of the applicable developmental learning standards as specified above.

4. In programs with a single ~~caregiver~~ [educator] the use of the applicable developmental learning standards shall be documented annually.

(c) Parent/Family ~~Involvement~~ [Engagement].

1. An orientation meeting shall be held for parents / family / children new to the agency;

2. A written communication shall be provided to parents monthly;

3. One group parent meeting for all parents of enrolled children shall be offered and documented per licensing year;

4. ~~One~~ [Three] individual parent conference[s] that ~~focuses~~ [focus] upon the child's developmental status or needs shall be offered and documented per licensing year;

5. Parent education handouts shall be provided to all parents on a variety of issues pertinent to the parent and child;

(i) Examples: speech and language development, toilet learning, healthy snacks, [childhood obesity], tips for dealing with challenging behaviors, healthy habits, immunization information, preventing child abuse, activities that promote development (available for different ages), special needs and inclusion, and strengthening families program strategies (facilitate friendships and mutual support, strengthen parenting, respond to family crises, link families to services and opportunities, facilitate children's social and emotional development, observe and respond to early warning signs of child abuse or neglect, and value and support parents).

(ii) Handouts related to topics such as these are available from CCR&R and TECTA.

6. One project or activity involving families in the child care home shall be offered and documented;

(Rule 1240-04-07-.06, continued)

7. A list of current community resources for enrolling parents shall be provided;

8. Parents shall be offered an annual opportunity to evaluate the curriculum, structure, and parent involvement aspects of the program; and

9. ~~Effective January 1, 2010, a~~ [A] bulletin board updated at least quarterly shall be used for communications and announcements to parents.

[10. Offers monthly documented opportunities for parents to participate in the program.]

(d) Business Management.

1. A parent packet shall be provided with the following:

(i) Personalized contracts between the child care agency and the parent;

(ii) The child care agency's policies;

(iii) The child care agency's philosophy;

(iv) Parent resources, and

(v) If children with special needs are enrolled or applying for enrollment, information on resources for such children.

2. A system for financial and program record-keeping shall be maintained.

3. Orientation for staff substitutes shall be documented.

(e) Program Assessment.

1. The Program Assessment score, as determined in accordance with this chapter, shall be at least five (5.0); and

2. Following an agency's annual assessment, an improvement plan based on the agency's Assessment Results Report shall be developed.

[(f) Child Health and Well-being

1. One hundred percent (100%) of all staff have current certification in CPR and First Aid; and

2. The agency shall be Gold Sneaker certified (effective with assessments beginning August 1, 2018).]

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j).* ***Administrative History:*** *New rule filed October 21, 2008; effective January 4, 2009.*

1240-04-07-.07 STAR-QUALITY PROGRAM.

(1) The annual evaluation of a child care agency for the issuance of the report card, in accordance with the provisions of this chapter, shall include an evaluation of the agency's eligibility to voluntarily participate in the Star-Quality Program.

(Rule 1240-04-07-.07, continued)

(2) A newly licensed child care agency shall receive a Star-Quality Report Card after a full year of operation.

(3) Eligibility and Participation.

[(a) A child care agency that wishes to participate in the Star-quality program shall sign and return the elect to participate statement to their assigned program evaluator prior to their annual evaluation.]

(~~a~~[b]) A child care agency that receives an overall rating, pursuant to Rule 1240-04-07-.03(4), of at least One Star shall be eligible to participate in the Star-Quality Program.

(~~b~~[c]) In no event shall an agency be eligible to participate in the Star-Quality Program unless the agency has received a One-Star rating in the Program Assessment component area.

(~~c~~[d]) A child care agency that does not wish to participate in the Star-Quality Program shall sign and return the Decline to Participate Statement that is included in the re-evaluation application packet.

(~~d~~[e]) If, after submitting the Decline to Participate Statement, a child care agency changes its mind about participating in the Star-Quality Program, the agency shall provide to the Department a written request to participate.

(~~e~~[f]) A new child care agency receiving an initial license and report card are not evaluated for an overall rating and shall not be eligible to participate in the Star-Quality Program, unless specifically requested by the agency and approved by the Department.

(4) A child care agency that chooses to participate in the Star-Quality Program shall be issued:

(a) A license which denotes the overall rating assigned to the agency; and

(b) A Star-Quality Report Card that details the agency's rating in each of the report card component areas and provides the agency's compliance history.

(5) A child care agency that receives a Star-Quality Report Card and a rated license through the Star-Quality Program shall immediately post the current license and the report card in a conspicuous manner that is easily viewable by parents.

(6) Biennial and Triennial Application Fees.

(a) A child care center that has earned two (2) stars in the Star-Quality Program is eligible to pay a biennial licensing fee in place of the annual licensing fee.

(b) A child care center that has earned three (3) stars in the Star-Quality Program is eligible to pay a triennial licensing fee in place of the annual licensing fee.

(c) The availability of the biennial or triennial application fee shall be determined by the Department based upon an overall evaluation of the agency's capabilities and history and in accordance with the provisions for the rated license system as governed by this chapter.

(d) Payment of a biennial or triennial licensing fee will not eliminate the requirement for an annual licensing evaluation.

(7) Child Care Certificate Program.

(Rule 1240-04-07-.07, continued)

(a) All licensed child care agencies are eligible to receive at least the base rate of reimbursement paid through the Child Care Certificate Program [if they enter into the contract with the Department to participate in the program].

(b) A licensed child care agency that is eligible for and chooses to participate in the Star-Quality Program is eligible to receive bonus payments through the Child Care Certificate Program as indicated below:

1. Agencies attaining a rating of "One Star" shall receive the base rate plus five percent (5%) of the base rate as a bonus payment.

2. Agencies attaining a rating of "Two Stars" shall receive the base rate plus fifteen percent (15%) of the base rate as a bonus payment.

3. Agencies attaining a rating of "Three Stars" shall receive the base rate plus twenty percent (20%) of the base rate as a bonus payment.

(8) Change in Star Rating.

(a) Licensing enforcement actions for non-compliance with basic licensure rules that occur at any point throughout the licensing-year cycle can result in the loss of stars that were earned in the previous evaluation and/or can disqualify the agency from receiving stars that might have otherwise been earned in a new evaluation.

(b) Licensing enforcement actions that ~~can~~ [will] disqualify the agency from retaining / earning a star rating are the following:

1. Being placed on probation;

2. Having all or part of the license suspended by the Department (excluding voluntary suspension by the agency for the purpose of making immediate correction);

3. Being fined with one (1) major civil penalty; or

4. Being fined with five (5) or more minor civil penalties.

(c) The star rating which results from a licensing enforcement action shall take effect immediately following the completion of due process provided for in Rule 1240-04-05-.04.

(d) The star rating resulting from a licensing enforcement action shall last for a period of six (6) consecutive months, so long as no subsequent licensing enforcement action occurs during the six (6) months which results in an extension of the penalty period.

(e) An agency is not eligible for bonus payments during the six (6) month penalty period.

(f) At the end of the six (6) consecutive months, an agency shall be entitled to the most recently earned star rating and the associated bonus payments, so long as the agency had not been subject to an additional licensing enforcement action during the penalty period. The star rating shall be restored to the agency's records.

(9) A child care agency shall not be eligible to participate in the Star-Quality Program if any of the following occurred between the date of the agency evaluation and the date the rated license through the Star-Quality Program is issued by the Department:

(Rule 1240-04-07-.07, continued)

(a) The child care agency has been assessed with a major civil penalty;

(b) The child care agency has been assessed with five (5) or more minor civil penalties;

(c) The child care agency has been subject to probation or a suspension, denial or revocation of its license.

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j).* ***Administrative History:*** *New rule filed October 21, 2008; effective January 4, 2009.*

1240-04-07-.08 APPEAL PROCESS.

(1) Upon receiving its results, a child care agency may choose to appeal any part of its report card evaluation, including:

(a) The rating of any component area; and/or

(b) The overall agency rating.

(2) Changes made within, or by, the agency after the date of the last complete licensing evaluation and/or the validity of the evaluation instrument used to conduct the agency's Program Assessment shall not be considered in the appeal process.

(3) Intradepartmental Review.

The appeal process shall begin with the request for an Intradepartmental Review, to be conducted according to the policies and procedures established by the Department.

(a) The request for an Intradepartmental Review shall be in writing and shall include:

1. A statement that identifies the specific information and/or rating that is in dispute;

2. A statement that identifies the basis upon which the agency is alleging that an error has occurred;

3. Supporting documentation with the written request; and

4. If the information required by this subparagraph (a) is not provided by the child care agency, the appeal may be dismissed at the sole discretion of the Department.

(b) Issues considered during the Intradepartmental Review shall be limited to:

1. Whether, at the time of the licensing evaluation, the agency was provided proper credit for compliance with the criteria required in each of the report card component areas; and/or

2. Whether the agency's rating was otherwise correctly calculated.

(c) The written request for Intradepartmental Review must be received by the Department within twenty (20) business days following the date of mailing of the notice of the report card evaluation to the child care agency.

(Rule 1240-04-07-.08, continued)

(d) Intradepartmental Review is an informal process not subject to the contested case provisions of the Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. and shall precede, and must be completed before, any Administrative Hearing.

(e) In conducting the Intradepartmental Review, the Department may take any of the following actions as deemed appropriate in its discretion:

1. Request additional information from the child care agency and/or third parties;

2. Examine additional documentation from the child care agency and/or third parties; and/or

3. Conduct an informal hearing, not subject to the provisions of T.C.A. §§ 4-5-301 et seq., that may include statements from the child care agency and/or third parties.

(f) The Department shall complete the review and render a written decision to the child care agency within forty-five (45) business days of receipt by the Department of the written request for review.

~~(g) Bonus Payments.~~

~~1. During the Intradepartmental Review process, the agency can elect to receive its bonus payments based upon the results of the previous report card evaluation or based upon the currently disputed report card evaluation.~~

~~2. If the agency chooses to receive bonus payments based upon the results of the previous report card evaluation and the Intradepartmental Review does not result in an increase to the agency's rating, the agency will be required to refund to the Department the amount of the overpayment, which may be accomplished through recoupment by the Department of future amounts owed to the child care agency.~~

~~3. If the agency chooses to receive bonus payments based upon the results of the currently disputed report card evaluation and the Intradepartmental Review results in an increase to the agency's rating which warrants an increase in the amount of the bonus payment, the Department will pay to the agency the difference between the two amounts that accrued during the Intradepartmental Review process.~~

(~~h~~[g]) Upon completion of the Intradepartmental Review, the agency may request either of the following:

1. If dissatisfied with the results of the Intradepartmental Review, an Administrative Hearing, as provided for in paragraph (4) below; or

2. A Program Reassessment, as provided for in Rule 1240-04-07-.04(2) above, after which an Administrative Hearing shall no longer be available.

(~~i~~[h]) Upon completion of the Intradepartmental Review, the agency shall receive the rating resulting from the review process, as well as the certificate payments that are commensurate with that rating.

(4) Administrative Hearing.

(Rule 1240-04-07-.08, continued)

(a) A request for Administrative Hearing must be submitted to the Department by the agency within ten (10) business days after the mailing date of the Department's written decision from the Intradepartmental Review.

(b) The issues addressed in the Administrative Hearing are limited to the issues raised during the Intradepartmental Review.

(c) The Administrative Hearing shall be conducted as a contested case proceeding by the Department's Appeals and Hearings Division according to T.C.A. §§ 4-5-301 et seq.

(d) The hearing officer shall render a written decision within thirty (30) business days after the hearing and shall send a copy of such decision to the Department and to the child care agency.

(e) Bonus Payments.

1. If the agency requests an Administrative Hearing, the agency's bonus payments shall be based upon the results of the most recently completed assessment.

2. If the Administrative Hearing results in an increase to the agency's report card rating which warrants an increase in the amount of the bonus payment, the Department will pay to the agency the difference between the two amounts that accrued during the Administrative Hearing process.

(5) Issuance of a New Report Card and/or Rated License.

(a) If the results of any process established in paragraphs (3) and (4) above should require the issuance of a new report card, such report card shall be issued to the child care agency within thirty (30) business days of issuance of the written decision.

(b) If the results of any process indicated in paragraphs (3) and (4) above should require a change to the overall rating of the child care agency, a new license with the modified rating shall be issued to the child care agency within thirty (30) business days of issuance of the written decision.

(c) Immediately upon receipt of the new report card and/or rated license, the child care agency shall post the report card and/or rated license as directed by the Department.

***Authority**: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j).* ***Administrative History:** New rule filed October 21, 2008; effective January 4, 2009.*

* 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 Human Services (board/commission/other authority) on 10/03/2017 (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: *07/03/2017*

Rulemaking Hearing(s) Conducted on: (add more dates). *09/11/2017*

Date: 2/7/2018

Signature: Cherrell Campbell-Street

Name of Officer: Cherrell Campbell-Street

Title of Officer: Deputy Commissioner, Programs and Services

Subscribed and sworn to before me on: 02/07/2018

Notary Public Signature: Jacqueline Griffin

My commission expires on: 09/07/2021

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): Chapters 1240-04-01; 1240-04-02; 1240-04-03; 1240-04-04; 1240-04-05; 1240-04-07

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

4/2/2018
Date

Department of State Use Only

Filed with the Department of State on: 5/1/18

Effective on: 7/30/18

Tre Hargett
Secretary of State

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PUBLIC CHAPTERS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	TennCare
SUBJECT:	Nursing Facility Provider Reimbursement
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 71-5-105, 71-5-109, 71-5-130, and 71-5-1413
EFFECTIVE DATES:	July 30, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The purpose of these amendments is to replace the current repealed Rule Chapter 1200-13-02 with a new Rule Chapter 1200-13-02 Nursing Facility Provider Reimbursement. The new Rule Chapter 1200-13-02 implements an acuity and quality based reimbursement methodology for nursing facility services, as an alternative to the current cost-based nursing facility reimbursement system. Rule Chapter 1200-13-01 TennCare Long-Term Care Programs is amended by deleting the content of Rule 1200-13-01-.03 Nursing Facility (NF) Provider Reimbursement in its entirety and incorporating it into Rule Chapter 1200-13-02. ***NOTE: The language of Rule Chapter 1200-13-02 provided in this packet does not include strikethroughs or underlining as all language within the chapter is new language.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

TennCare received one set of comments in response to this rulemaking. The comments and TennCare's responses are summarized below.

The commenter expressed general support for this rule and for the implementation of a nursing facility reimbursement system that encourages the best quality possible for nursing facility residents. The commenter also thanked TennCare for the opportunity to provide input into the development of the new reimbursement system. The commenter also recommended specific revisions to parts of the rule. TennCare thanked the commenter for his support of this initiative, and responded to each specific recommendation.

The commenter expressed concern that the definition of "TennCare" in the rule included references to contractors and agents, in addition to the state Medicaid agency. In response, TennCare modified the definition in the rule to omit any references to contractors or managed care organizations.

The commenter suggested modifications to the language in the rule describing stakeholders who shall have input into the quality component of the nursing facility rule, noting that state statute provides a specific role for the Tennessee Health Care Association (THCA). In response, TennCare noted that the process used to establish reimbursement is intended to be transparent, and while certain organizations (like THCA) may be specifically identified in statute, the intent of the rule is not to restrict the scope of stakeholder participation. TennCare declined to make the requested modification to the rule.

The commenter suggested modifications to language in the rule about the recertification of nursing facility providers who had previously been terminated by CMS or the State. Upon review, TennCare determined that the language in the rule was accurate. TennCare declined to make the requested modification to the rule.

The commenter recommended that the applicability of the term "resident" in the rule be modified to clarify that in the context of the rule, it refers to residents who are TennCare enrollees. TennCare modified the rule based on this comment.

The commenter suggested that the language in the rule concerning the frequency of submissions related to capital improvements be revised from annually to semi-annually. TennCare modified the rule to reflect this recommendation.

The commenter suggested that the rule be revised to clarify that the most current rates (i.e., 2017-2018 rates) will be used during the phase-in process. TennCare modified the rule to reflect this recommendation.

The commenter recommended that a new paragraph be added to the rule to address the reimbursement rates to be paid to nursing facilities during a change of ownership ("CHOW") process. TennCare modified the rule to include a paragraph on CHOW based on this comment.

The commenter recommended that language be added to the rule to specify that the initial quality outcome measures will be based on the Quality Improvement in Long-Term Services and Supports (QuILTSS) initiative, and that these initial measures will be used for three years. TennCare modified the rule based on this recommendation.

The commenter recommended modifications to the language of the rule concerning the role of THCA, as well as individuals receiving services and their family members and representatives in providing input on the quality performance component of the system. TennCare modified the rule based on this recommendation.

The commenter suggested various modifications to the satisfaction component of the quality performance system. These included suggestions about the weighting of the satisfaction measure; modifying language related to the submission of surveys; clarifying that survey instruments will be mutually agreed upon by TennCare and THCA; recommending that providers be given 60 days advance notice of the approved instrument; noting that initial measures shall be based on those used in QuILTSS and will be used for three years; deleting language related to continuous improvement in quality of life outcomes in out years; and deleting language related to the use of process measures or other proxy measures. TennCare modified the rule based on these comments.

The commenter suggested various modifications to the culture change and quality of life component of the quality performance system. These included the use of a short set of uniform questions based on four specific areas, with weights recommended for each of the four areas. The commenter objected to the adoption of the Preferences for Everyday Living Inventory-Nursing Home version assessment (PELI-NH). TennCare modified the rule based on these comments.

The commenter suggested various modifications to the staffing and staff consistency component of the quality performance system. These included suggestions about the weighting of the staffing and staff consistency measure; omitting the staff training component from the measure; deleting language about the counting of staff assigned to assist one or more residents only with mealtime and/or bathing as caregivers; deleting language that includes aides in training and medication aides as nurse aides; and clarifying that nursing facilities are eligible for points on this measure if they appropriately track and report their performance. TennCare made some of the requested modifications to the rule. TennCare retained the staff training component of the staffing and staff consistency measure, noting that TennCare regards this component as particularly critical given ongoing workforce development initiatives in the long-term services and supports field. TennCare also declined to make the requested changes related to the counting of "occasional" staff, aides in training, and medication aides, noting that the language in the rule is consistent with the National Nursing Home Quality Improvement Campaign.

The commenter recommended that the infection prevention component of the clinical performance measurement system be based on the rate of urinary tract infections. TennCare modified the rule to reflect this suggestion.

The commenter recommended that a new section be included in the rules that would allow nursing facilities to earn additional quality performance points based on qualifying awards and/or accreditations, which represent ongoing investments in quality improvement. TennCare modified the rule based on these comments.

The commenter suggested that a new section be included in the rules that address the confidentiality of information submitted in the course of a nursing facility's participation in the quality-based component of the reimbursement methodology. TennCare modified the rule to reflect this recommendation.

The commenter suggested that the rule concerning provider appeals lacked sufficient detail and made various recommendations to the appeals rule intended to provide additional detail. Upon review of the comments and the rule, TennCare determined that provider appeals should be conducted in accordance with existing provider appeals processes as outlined in Rule Chapter 1200-13-18. TennCare modified the rule to reflect this approach.

The commenter made suggestions concerning the calculations used to determine the Medicaid and Non-Medicaid Case Mix Index for Minimum Data Set (MDS) data that has no discernible end date for physical therapy services. TennCare modified the rule to reflect this recommendation.

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 rules are 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 rules are 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;

The purpose of these amendments is to replace the current repealed Rule Chapter 1200-13-02 with a new Rule Chapter 1200-13-02 Nursing Facility Provider Reimbursement. The new Rule Chapter 1200-13-02 implement an acuity and quality based reimbursement methodology for nursing facility services, as an alternative to the current cost-based nursing facility reimbursement system. Rule Chapter 1200-13-01 TennCare Long-Term Care Programs is amended by deleting the content of Rule 1200-13-01-.03 Nursing Facility (NF) Provider Reimbursement in its entirety and incorporating it into Rule Chapter 1200-13-02.

(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 Rules are lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105, 71-5-109, 71-5-130 and 71-5-1413.

(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 these Rules are TennCare enrollees, providers, Tennessee Health Care Association and managed care contractors. The governmental entities most directly affected by this rule chapter are the Tennessee Office of the Comptroller of the Treasury and 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;

These Rules were 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 these Rules 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

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

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (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
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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**
1200-13-02	Nursing Facility Provider Reimbursement
Rule Number	**Rule Title**
1200-13-02-.01	Definitions
1200-13-02-.02	Determination of Payment
1200-13-02-.03	Conditions for Reimbursement of Nursing Facility Care
1200-13-02-.04	Conditions for Reimbursement of Enhanced Respiratory Care
1200-13-02-.05	Cost Reports
1200-13-02-.06	Reimbursement Methodology for Nursing Facilities
1200-13-02-.07	Case Mix Index Calculation
1200-13-02-.08	Case Mix Index Reports Process
1200-13-02-.09	New Nursing Facility Providers
1200-13-02-.10	Changes of Ownership of Existing Nursing Facilities
1200-13-02-.11	Quality-Based Component of the Reimbursement Methodology for Nursing Facilities
1200-13-02-.12	Enhanced Respiratory Care Services Add-On Payment
1200-13-02-.13	Appeals Process
1200-13-02-.14	Audit and Review Authority
1200-13-02-.15	Penalties, Adjustments, and Withholding
1200-13-02-.16	Bed Holds

1200-13-02-.17	Other Reimbursement Issues

Chapter Number	**Chapter Title**
1200-13-01	TennCare Long-Term Care Programs
Rule Number	**Rule Title**
1200-13-01-.03	Nursing Facility (NF) Provider Reimbursement

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.

New Rules

Rules of the Tennessee Department of Finance and Administration, Division of TennCare, are amended by replacing repealed Chapter 1200-13-02 with a new Chapter 1200-13-02 Nursing Facility Provider Reimbursement which shall read as follows:

Rules
of
Tennessee Department of Finance and Administration

Division of TennCare

Chapter 1200-13-02

Nursing Facility Provider Reimbursement

Table of Contents

1200-13-02-.01 Definitions
1200-13-02-.02 Determination of Payment
1200-13-02-.03 Conditions for Reimbursement of Nursing Facility Care
1200-13-02-.04 Conditions for Reimbursement of Enhanced Respiratory Care
1200-13-02-.05 Cost Reports
1200-13-02-.06 Reimbursement Methodology for Nursing Facilities
1200-13-02-.07 Case Mix Index Calculation
1200-13-02-.08 Case Mix Index Reports Process
1200-13-02-.09 New Nursing Facility Providers
1200-13-02-.10 Changes of Ownership of Existing Nursing Facilities
1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities
1200-13-02-.12 Enhanced Respiratory Care Services Add-On Payment
1200-13-02-.13 Appeals Process
1200-13-02-.14 Audit and Review Authority
1200-13-02-.15 Penalties, Adjustments, and Withholding
1200-13-02-.16 Bed Holds
1200-13-02-.17 Other Reimbursement Issues

1200-13-02-.01 Definitions. The following definitions apply to nursing facility (NF) provider reimbursement. Additional definitions are contained in Chapter 1200-13-01.

(1) Acceptable Cost Report – The skilled nursing facility (SNF) cost report (Medicare form 2540-10), or hospital health care complex cost report (Medicare form 2552-10), Medicaid supplemental cost report form, and required additional information. To be acceptable, the appropriate forms and required additional information must be filed with the Comptroller by the required due date, and meet the acceptance criteria on the acceptance check list. The Medicaid supplemental cost report form and acceptance check list are available on TennCare's main website under the LTSS subsection.

(2) Active MDS Assessment – A resident's MDS assessment is considered active when it has been accepted by CMS. The assessment will remain active until a subsequent MDS assessment for the same resident is

received by CMS, or the assessment becomes a Delinquent MDS Resident Assessment.

(3) Administrative and Operating Cost Component – The portion of the Medicaid daily NF rate that is attributable to the general administration and operation of the NF. These costs include the allowable and reimbursable SNF/NF costs that are not included in the Direct Care Case Mix Adjusted, Direct Care Non-Case Mix Adjusted, Capital, Cost-Based, or Excluded cost components.

(4) Annualized Medicaid Resident Day-Weighted Median Cost – A numerical value determined by arraying the per diem costs and total annualized Medicaid resident days of each NF provider from low to high and identifying the point in the array at which the cumulative total of all annualized Medicaid resident days first equals or exceeds half the number of the total annual Medicaid resident days for all Medicaid participating NF providers. The per diem cost at this point is the annualized Medicaid resident day-weighted median cost.

(5) Appraisal Value – The most current depreciated NF appraised value as determined by the certified appraisal firm designated by TennCare. TennCare's certified appraisal contractor must be selected through a formal procurement process for a single statewide contract.

(6) Capital Cost Component – The portion of the NF rate that is designed to compensate providers for their capital costs. These cost centers include the SNF/NF portion of: 1) Capital Related Costs – Building and Fixtures cost center (and applicable subscripted cost centers); 2) The Capital Related Costs – Moveable Equipment (and applicable subscripted cost centers); and 3) Other Capital Related Costs (and applicable subscripted cost centers). If real estate tax cost related to the SNF/NF is reported in one of these cost centers, then real estate tax cost will be excluded from the capital cost component, and included in the cost-based component.

(7) Case Mix – A measure of the intensity of care a resident required, as documented on the MDS and measured using the RUG-IV 48 Grouper resident classification system. CMS nursing-only RUG weights will be utilized.

(8) Comptroller – The Tennessee Office of the Comptroller of the Treasury, or its successor, and the associated work product of its contractors and agents.

(9) CMS – The Centers for Medicare and Medicaid Services.

(10) Cost-Based Component – The portion of the per diem rate attributable to real estate taxes related to NF services, and NF provider assessment costs.

(11) Delinquent MDS Resident Assessment – An MDS assessment that is more than 113 days old as of the end date of the MDS assessment collection period for each semi-annual rate period, as measured from the Assessment Reference Date (ARD) field on the MDS.

(12) Direct Care Case Mix Adjusted Cost Component – The portion of the Medicaid daily NF rate that is attributable to salaries, contract labor, and direct/apportioned payroll tax and employee benefit expense for registered nurses (RN), licensed practical/vocational nurses (LPN/LVN), and certified nurse aides (CNA) or orderlies that are providing direct SNF/NF patient care services. Costs associated with SNF/NF administrative nursing functions (Director of Nursing (DON), Assistant Director of Nursing (ADON), Minimum Data Set (MDS) coordinator, Quality Assurance (QA) coordinator, In-service/training coordinator) are not included in this cost component. Direct care case mix adjusted cost also includes a proportionate allocation of pooled payroll taxes and employee benefits expenses. Pooled payroll taxes and employee benefits will be apportioned to this cost component using Medicare cost report cost apportionment mechanics. All cost component costs are subject to the methods of apportionment in the Medicare cost report. Any portion of cost component expenses that are allocated to non-reimbursable cost centers or non-nursing facility (SNF/NF) cost centers, as designated by TennCare, will be excluded from cost component totals.

(13) Direct Care Non-Case Mix Adjusted Cost Component – The portion of the Medicaid daily NF rate that is attributable to salaries, contract labor, and direct/apportioned payroll tax and employee benefit expense associated with NF DON and ADON duties, the cost of raw food and special dietary supplements reported on the Medicaid supplemental cost report (includes those dietary supplements used for tube feeding or oral feeding, such as elemental high nitrogen diet, even when prescribed by a physician as defined by

CMS Publication 15-1, The Provider Reimbursement Manual – Part I, section 2203.1), and staff associated with the provision of social services and recreational activities to NF residents. Direct care non-case mix adjusted cost also includes a proportionate allocation of pooled payroll taxes and employee benefits expenses. Pooled payroll taxes and employee benefits will be apportioned to this cost component using Medicare cost report cost apportionment mechanics. All cost component costs are subject to the methods of apportionment in the Medicare cost report. Any portion of cost component costs that are allocated to non-reimbursable cost centers or non-nursing facility (SNF/NF) cost centers, as designated by TennCare, will be excluded from cost component totals.

(14) Excluded Cost Component – The portion of NF provider expense that will be excluded from allowable cost and not included in rate determination:

(a) The Nursing and Allied Health cost center (and applicable subscripted cost centers).

(b) The Interns and Residents cost centers (and applicable subscripted cost centers).

(c) The ParaMed Program cost center (and applicable subscripted cost centers).

(d) The direct costs of all non-overhead (general services) and non-routine SNF/NF cost centers.

(e) Overhead (general service) cost center expense allocations to non-SNF/NF routine cost centers, outpatient cost centers, and non-reimbursable cost centers, as determined by TennCare.

(f) For hospital-based NF overhead (general services), cost allocations to cost centers other than the SNF/NF routine cost centers, are excluded from rate setting allowable costs.

(15) Fair Rental Value (FRV) – The methodology used to calculate the capital reimbursement per diem rate for Medicaid participating NF.

(16) Final Case Mix Index Report (FCIR) – A semi-annual report reflecting the Medicaid and facility-wide case mix index for each NF using the time-weighted acuity measurement system, and end of therapy dates.

(17) Fixed Assets – Buildings and building equipment, as described by CMS publication 15-1, The Provider Reimbursement Manual – Part 1, sections 104.2 and 104.3.

(18) Index Factor – The most recently published Skilled Nursing Facility without Capital Market Basket Index, as produced for subscribers by IHS Global Insight (IHS Economics), or a comparable index, if this index ceases to be produced.

(19) Major Movable Equipment – Capitalized assets as defined by CMS Publication 15-1, The Provider Reimbursement Manual – Part 1, section 104.4.

(20) Medicare Cost Report – CMS Forms 2540-10 and 2552-10, or subsequent versions of these forms.

(21) Medicaid Supplemental Cost Report – The supplemental cost reporting schedules designated by TennCare. The Medicaid supplemental cost report form is available on TennCare's main website under the LTSS subsection.

(22) Medicaid Nursing Facility-Wide Semi-Annual Average Case Mix Index – The calendar day weighted average, carried to four (4) decimal places, of all indices for each resident MDS assessment transmitted and accepted by CMS that is considered active within a given semi-annual rate period and where Medicaid is determined to be the primary per diem payer source. The resident case mix indices are calculated utilizing the time-weighted acuity measurement system.

(23) Minimum Data Set (MDS) – A core set of screening and assessment data, including common definitions and coding categories that form the foundation of the comprehensive assessment for all residents of long-term care NF providers certified to participate in the Medicaid program. The Tennessee reimbursement system will employ the current required MDS assessment as approved by CMS.

(24) Neutralized – The process of removing cost variations associated with case mix. Neutralized cost is determined by dividing a provider's inflated per diem direct care case mix adjusted costs by its cost report

period average case mix index (CMI).

(25) New Nursing Facility Provider – A provider whose licensed beds have not previously been certified for participation by the Medicaid program for NF level of care.

(26) Nursing Facility Cost Report Period Case Mix Index – The calendar day weighted average of all applicable NF-wide semi-annual average case mix indices, carried to four (4) decimal places. The case mix index periods used in this weighted average will be the periods that most closely coincide with the NF provider's cost reporting period that is used for rate setting. The average will be determined by weighting the applicable semi-annual case mix index periods by the number of days the MDS assessments were active during the cost reporting period. The semi-annual rate period case mix index averages will be calculated using the time-weighted acuity measurement system, and be inclusive of MDS assessments available as of the date of the applicable FCIRs.

For example, a NF provider with a 1/1/2016 to 12/31/2016 cost reporting period would have a nursing facility cost report period case mix index calculated by the following: ((6/30/2016 Rate Period CMI * 91 days) + (12/31/2016 Rate Period CMI * 183 days) + (06/30/2017 Rate Period CMI * 92 days)) / 366 days, rounded to four (4) decimals.

(27) Nursing Facility-Wide Semi-Annual Average Case Mix Index – The calendar day weighted average, carried to four (4) decimal places, of all indices for all resident MDS assessments transmitted and accepted by CMS that are considered active within a given semi-annual rate period. The resident case mix indices are calculated utilizing the time-weighted acuity measurement system.

(28) Preliminary Case Mix Index Report (PCIR) – The preliminary report that reflects the acuity of the residents in the NF. Resident acuity will be measured for each semi-annual rate period, utilizing the time-weighted acuity measurement system.

(29) Quality Informed – A descriptor of any component of the NF reimbursement methodology that is adjusted based on the NF provider's Quality Tier (e.g., Direct Care Case Mix Adjusted Cost Component and Direct Care Non-Case Mix Adjusted Cost Component) or other specified performance measures (e.g., Fair Rental Value).

(30) Quality Tier – The NF provider's classification within a specified range of scores on quality outcome measures.

(31) Rate Year – A one-year period from July 1 through June 30 during which a particular set of rates are in effect, corresponding to a state fiscal year.

(32) Rebase – The process of reestablishing cost component medians and reimbursement rates by incorporating the most recently audited or reviewed qualifying cost reports.

(33) Resource Utilization Group-IV (RUG-IV) Resident Classification System – The resource utilization group used to classify residents. When a resident classifies into more than one RUG-IV group, or RUG-IV successor group, the RUG with the greatest CMI will be utilized to calculate the NF provider's all residents average CMI and Medicaid residents average CMI. The nursing-only weights RUG-IV Version 1.03 Grouper, or its successor, will be utilized for rate determination purposes.

(34) Sales Comparison Approach – Based upon the principle of substitution, when a property is replaceable in the market its value tends to be set at the cost of acquiring an equally desirable substitute property, assuming no costly delay in making the substitution. Since two (2) properties are rarely identical, the necessary adjustments for differences in quality, location, size, services, and market appeal are a function of appraisal experience and judgment. Land is valued via the sales comparison approach.

(35) Semi-Annual Rate Period – A six (6) month period beginning July 1 or January 1 for which new NF provider reimbursement rates will be calculated. The semi-annual rate period will use all active MDS assessments for the time period beginning nine (9) months prior and ending three (3) months prior to the begin date of the semi-annual rate period.

For example, the July 1, 2018, semi-annual rate period will use active MDS assessment records from October 1, 2017, through March 31, 2018.

(36) TennCare - The program administered by the Single State Agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration Waiver granted to the State of Tennessee, the name of the Division within the Tennessee Department of Finance and Administration encompassing all the health care related agencies located within F&A; and, the name of the Bureau which directly administers the program.

(37) Time-Weighted Acuity Measurement System (TW) – The case mix index calculation methodology that is compiled from the collection of all resident MDS assessments transmitted and accepted by CMS that are considered active within a given semi-annual rate period. The resident MDS assessments will be weighted based on the number of calendar days that the assessment is considered an active assessment within a given semi-annual rate period.

(38) Weighted Construction Year Age – The construction age is determined by subtracting the year the building or building addition was constructed as denoted in the appraisal report from the year the appraisal was performed by TennCare's certified appraisal firm. The average of the construction year is weighted by the finished square footage associated with each separate building or addition as denoted in the appraisal report produced by TennCare's certified appraisal firm.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.02 Determination of Payment.

TennCare, in consultation with the Comptroller and the Tennessee Health Care Association (THCA), shall establish the rules for the determination of payment for services provided to Medicaid recipients as part of the NF program. Payment determination components shall include acuity adjusted direct care, non-acuity adjusted direct care, quality, administration, fair market value capital, and a cost-based component. Other NF stakeholders shall have input into the quality component of the rate.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.03 Conditions for Reimbursement of Nursing Facility Care.

(1) A NF must enter into a provider agreement with one (1) or more TennCare MCOs, for reimbursement of NF services.

(2) A NF must be certified by the Tennessee Department of Health, showing that it has met the standards set out in 42 C.F.R. Part 442.

(3) A NF participating in TennCare shall be terminated as a TennCare provider if certification or licensure is canceled by CMS or the State. A NF whose certification was terminated may be recertified to provide Medicaid services and may be contracted to provide Medicaid services at the discretion of the MCOs.

(4) If a resident has resources to apply toward payment, including Patient Liability as determined by TennCare, or TPL, which may include LTC insurance benefits, the payment for NF services shall be the NF's per diem rate for the applicable level of NF reimbursement authorized minus the resident's available resources.

(5) Regardless of the Medicaid reimbursement rate established, a NF may not charge TennCare Enrollees an amount greater than the amount per day charged to Non-Medicaid payer patients for equivalent accommodations and services.

(6) The specific items and services covered by the NF program shall be those defined and approved by TennCare. A NF shall not charge a TennCare enrollee for a covered service. Non-covered services may be charged directly to the resident, upon prior notification by the NF to the resident that the service is not covered. Rule 1200-13-13-.08(5).

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.04 Conditions for Reimbursement of Enhanced Respiratory Care.

(1) The NF must enter into a provider agreement with one (1) or more TennCare MCOs for the provision and reimbursement of Enhanced Respiratory Care (ERC) in a dual certified and licensed SNF/NF.

(a) A TennCare MCO shall, pursuant to T.C.A. § 71-5-1412, contract with any NF for the provision of Medicaid NF services, but shall not be obligated to reimburse any NF for ERC.

(b) Unless an exception is granted, a TennCare MCO shall not reimburse any NF for ERC unless such NF was contracted by the MCO for ERC Reimbursement as of July 1, 2016. An MCO may request an exception from TennCare to the moratorium on reimbursement for ERC upon the MCO's demonstration of the need for additional capacity or improved quality in the geographic area in which the NF is located, and the NF's compliance with all applicable conditions of ERC Reimbursement specified in this rule.

(2) The SNF/NF providing ERC services must be dual certified for the provision of Medicare SNF and Medicaid NF services, showing it has met the federal certification standards. Any NF providing ERC services in the TennCare Program shall be terminated by all TennCare MCOs as a TennCare provider if certification or licensure is canceled by CMS or the State.

(3) NFs providing ventilator weaning or chronic ventilator services and NFs receiving short-term reimbursement at the Sub-Acute Tracheal Suctioning Rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention, shall also meet or exceed the following minimum standards:

(a) The NF shall ensure that medical direction of all Ventilator Weaning, Chronic Ventilator Care, and Sub-Acute Tracheal Suctioning services is provided by a physician licensed to practice in the State of Tennessee and board certified in pulmonary disease or critical care medicine as recognized by either the American Board of Medical Specialties or American Osteopathic Association, as applicable.

(b) A licensed respiratory care practitioner, as defined by T.C.A. § 63-27-102, shall be on site in the ventilator care unit twenty- four (24) hours per day, seven (7) days per week to provide:

1. Ventilator care;

2. Administration of medical gases;

3. Administration of aerosol medications; and

4. Diagnostic testing and monitoring of life support systems.

(c) The NF shall ensure that an appropriate individualized Plan of Care (POC) is prepared for each resident receiving Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning. The POC shall be developed with input and participation from the medical director of the NF's ERC program as described in Subparagraph (a).

(d) The NF shall establish admissions criteria to ensure the medical stability of ventilator-dependent residents prior to transfer from an acute care setting. The NF shall maintain documentation regarding the clinical evaluation of each resident who will receive ERC for appropriateness of placement in the facility prior to admission.

(e) End tidal carbon dioxide (etCO2) or transcutaneous monitoring of carbon dioxide and oxygen (tcCO2) and continuous pulse oximetry measurements shall be available for all residents receiving Chronic Ventilator Care and provided based on the needs of each resident. For residents receiving Ventilator Weaning or Sub-Acute Tracheal Suctioning, continuous pulse oximetry shall be provided, and end tidal Carbon Dioxide (etCO2) measurements shall be provided no less than every four (4) hours, and within one (1) hour following all vent parameter changes, or for residents receiving Sub-Acute Tracheal Suctioning, after all tracheostomy tube changes, tracheostomy capping trials, or the use of speaking devices.

(f) An audible, redundant external alarm system shall be connected to emergency power and/or battery back-up and located outside the room of each resident who is ventilator-dependent for the purpose

of alerting staff of resident ventilator disconnection or ventilator failure.

(g) Ventilator equipment (and ideally physiologic monitoring equipment) shall be connected to back-up generator power via clearly marked wall outlets.

(h) Ventilators shall be equipped with adequate back-up provisions, including:

1. Internal and/or external battery back-up systems to provide a minimum of eight (8) hours of power;

2. Sufficient emergency oxygen delivery devices (i.e., compressed gas or battery operated concentrators);

3. At least one (1) battery operated suction device available per every eight (8) residents on mechanical ventilator or with a tracheostomy; and

4. A minimum of one (1) patient-ready back-up ventilator which shall be available in the facility at all times.

(i) The NF shall be equipped with current ventilator technology to encourage and enable maximum mobility and comfort, ideally weighing less than fifteen (15) pounds with various mounting options for portability (e.g., wheelchair, bedside table, or backpack).

(j) The facility shall have an emergency preparedness plan specific to residents receiving ERC (i.e., Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning) which shall specifically address total power failures (loss of power and generator), as well as other emergency circumstances.

(k) The facility shall have a written training program, including an annual demonstration of competencies, for all staff caring for residents receiving ERC (i.e., Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning), which shall include alarm response, positioning and transfers, care within licensure scope, and rescue breathing.

(4) A NF must be operating in compliance with all of the conditions specified in Paragraph (3) in order to be eligible for ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning Reimbursement.

(5) The standards set forth in Paragraph (3) are not applicable for Secretion Management Tracheal Suctioning Reimbursement; however, the NF must meet standards specified in Paragraph (6) below for Secretion Management Tracheal Suctioning Reimbursement.

(6) A NF contracted with one or more TennCare MCOs to receive only Secretion Management Tracheal Suctioning Reimbursement shall meet or exceed the following minimum standards:

(a) A licensed respiratory care practitioner as defined by T.C.A. § 63-27-102, shall be on site a minimum of weekly to provide:

1. Clinical Assessment of each resident receiving Secretion Management Tracheal Suctioning (including Pulse Oximetry measurements);

2. Evaluation of appropriate humidification;

3. Tracheostomy site and neck skin assessment;

4. Care plan updates; and

5. Ongoing education and training on patient assessment, equipment and treatment.

(b) The NF shall ensure that an appropriate individualized POC is prepared for each resident receiving Secretion Management Tracheal Suctioning. The POC shall be developed with input and participation from a licensed respiratory care practitioner as defined by T.C.A. § 63-27-102. Medical direction,

including POC development and oversight for persons receiving Sub-Acute Tracheal Suctioning shall be conducted according to Paragraph (3).

(c) The NF shall establish admissions criteria which meet the standard of care to ensure the medical stability of residents who will receive Secretion Management Tracheal Suctioning prior to transfer from an acute care setting. The NF shall maintain pre-admission documentation regarding the clinical evaluation of each resident who will receive Secretion Management Tracheal Suctioning for appropriateness of placement in the facility.

(d) Pulse oximetry measurements shall be provided at least daily with continuous monitoring available, based on the needs of each resident. For any resident being weaned from the tracheostomy, the following shall be provided:

1. Continuous pulse oximetry monitoring; and

2. End tidal Carbon Dioxide (etCO2) measurements at least every four (4) hours and within one (1) hour following tracheostomy tube changes, tracheostomy capping trials, or the use of speaking devices. Transcutaneous (tcCO2) shall not be appropriate for intermittent monitoring.

(e) Mechanical airway clearance devices and/or heated high flow molecular humidification via the tracheostomy shall also be available for secretion management, as appropriate for the needs of each resident.

(f) Oxygen equipment shall be connected to back-up generator power via clearly marked wall outlets.

(g) Adequate back-up provisions shall be in place including:

1. Sufficient emergency oxygen delivery devices (i.e., compressed gas or battery operated concentrators); and

2. At least one (1) battery operated suction device available per every eight (8) residents on mechanical ventilation or with a tracheostomy.

(h) The facility shall have an emergency preparedness plan specific to residents receiving Secretion Management Tracheal Suctioning which shall specifically address total power failures (loss of power and generator), as well as other emergency circumstances.

(i) The facility shall have a written training program, including an annual demonstration of competencies, for all staff caring for residents receiving Secretion Management Tracheal Suctioning which shall include alarm response, positioning and transfers, care within licensure scope, and rescue breathing.

(7) When a NF establishes a "Tracheostomy Unit" by accepting Tracheal Suctioning Reimbursement, including Sub-Acute and Secretion Management, for more than three (3) residents on the same day, the licensed respiratory care practitioner described in Subparagraph (6)(a) shall be on site a minimum of daily for assessment, care management, and care planning of residents receiving Tracheal Suctioning.

(8) A NF must be operating in compliance with all of the conditions specified in Paragraph (6) in order to be eligible for Secretion Management Tracheal Suctioning Reimbursement.

(9) Eligibility for and access to ERC services by individuals from out-of-state is governed by 42 C.F.R. § 435.403. A NF shall not recruit individuals from other states to receive ERC in Tennessee. A NF shall not be eligible to receive TennCare reimbursement for ERC services for a resident placed by another state or any agency acting on behalf of another state in making the placement because such services are not available in the individual's current state of residence, including residents admitted to the NF/SNF under the Medicare Skilled Nursing Facility care benefit when such benefit has been exhausted. The NF shall be responsible for arranging, prior to the resident's admission to the facility, Medicaid reimbursement for ERC services from the Medicaid Agency of the state which placed the resident and which will commence when other payment sources (e.g., Medicare, private pay, but not TennCare) have been exhausted.

(10) If the resident has available resources to apply toward payment, including Patient Liability or TPL, which may include LTC insurance benefits, the payment made by TennCare is the per diem rate established by

TennCare minus the resident's available resources.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.05 Cost Reports.

(1) TennCare, in consultation with the Comptroller and THCA, shall develop the cost report format and submission process to be followed by participating Medicaid NFs. Medicaid participating NFs are required to file annual cost reports in accordance with the following:

(a) Medicaid participating NFs are required to report their allowable costs on the following cost reports:

1. Medicare Cost Report

2. Medicaid Supplemental Cost Report

(b) The version of the Medicaid supplemental cost report required to be filed by the NF providers is the most recently available cost report version on TennCare's website as of the end date of the provider's fiscal year, unless notified by TennCare to use an alternate version. Older versions of the cost report will not be accepted.

(c) All proposed updates and changes to the Medicaid supplemental cost report will be shared with NF industry stakeholders prior to their implementation to ensure the provider community has ample notice and understanding of the changes.

(d) Separate cost reports must be submitted by the home office, central office, or related party management companies when costs of the entity are reported in the NF provider's Medicare cost report or Medicaid supplemental cost report. The Medicare home office cost statement (CMS Form 287-05, or its successor), or an equivalent document must be filed with the provider's cost report submission package.

(e) Cost reports must be submitted annually. The due date for filing annual cost reports is the last day of the fifth (5th) month following the NF provider's fiscal year-end. The year-end utilized for the Medicare cost report and the Medicaid supplemental cost report must be the same.

(f) Changes of Ownership. In the event of a change in ownership (CHOW) of the NF, the previous owner shall be required to submit a final cost report, both Medicare and Medicaid supplemental cost reporting forms, from the date of its last fiscal year-end to the date of sale or lease.

1. The previous owner must file a final cost report pursuant to Subparagraph (i).

2. If the new legal entity continues the operations of the NF as a provider of Medicaid services, the new legal entity shall be required to furnish TennCare with an initial cost report from the date of purchase or lease to the new fiscal year-end selected by the new legal entity.

(g) Initial Cost Report. The initial cost report submitted by all providers of NF services under the Medicaid program shall be based on the most recent fiscal year-end, and must be filed by the last day of the fifth (5th) month following the NF provider's fiscal year end. The year-end utilized for the Medicare cost report and the Medicaid supplemental cost report must be the same.

1. TennCare at its discretion may allow for exceptions to the initial filing period.

2. Subsequent cost reports shall be submitted annually by each NF provider by the last day of the fifth (5th) month following the NF provider's fiscal year-end.

(h) New Nursing Facility Provider. A new NF provider may select an initial cost reporting period of at least one (1) month but not to exceed thirteen (13) months. The NF provider's cost report must be filed by the last day of the fifth (5th) month following the NF provider's fiscal year-end. Thereafter, the cost reports shall be submitted according to the guidelines for subsequent cost reports as defined in Subparagraph (e).

(i) Final (Terminating) Cost Reports. When a NF provider ceases to participate in the Medicaid program, it must file a cost report covering a period up to the effective date the NF provider ceases to participate in the program. Depending upon the circumstances involved in the preparation of the NF provider's final cost report, the NF provider may file for a period not less than one (1) month and not more than thirteen (13) months. The previous entity has until the end of the fifth (5th) month following the effective date the NF provider ceases to participate in the Medicaid program or the effective date of the CHOW (whichever applies) to submit the final cost report.

(j) There shall be no automatic extension of the due date for the filing of cost reports. If a NF provider experiences unavoidable difficulties in preparing its cost report by the prescribed due date, a written request for an extension may be submitted to TennCare prior to the due date.

1. TennCare will have sole authority in approving both the extension and extension time frame.

2. Prior to approving a request for an extension, TennCare maintains the right to request additional information and supporting documentation from the NF in order to support the extension request.

(k) Amended Cost Reports. The Comptroller may accept amended cost reports in electronic format for a period of up to twelve (12) months following the end of the cost reporting period, with the caveat that cost reports may not be amended after an audit or desk review has been initiated. TennCare maintains the right, at its discretion, to supersede the amended cost report filing caveat. Amended cost reports should include a letter explaining the reason for the amendment, an amended certification statement with original signature, and the electronic format completed amended cost reports. Each amended cost report submitted should be clearly marked with "Amended" in the file name.

(2) The Medicare and Medicaid supplemental cost reports must meet all of the following minimum criteria to be deemed acceptable cost reports:

(a) The NF Medicare and Medicaid supplemental provider and home/central office cost reports must be filed in the electronic format prescribed by TennCare.

(b) The Medicaid supplemental cost report version utilized by the NF provider must be the most current version as of the end of its cost reporting period unless notified by TennCare to use an alternate version.

(c) The cost reports must include all supporting documentation as required by the Medicaid supplemental cost report instructions and checklist.

(d) Cost reports must be prepared according to Medicaid supplemental cost reporting instructions, CMS Publication 15-2, cost reporting instructions, and definitions of allowable and non-allowable costs contained in CMS Publication 15-1. The CMS publications will dictate allowable and non-allowable costs, except where Medicaid reimbursement rules and Medicaid supplemental cost reporting instructions are more specific as to the allowability of certain costs.

(e) Medicaid specific accounting principles and allowable cost rules are as follows:

1. Only the straight-line method of computing depreciation is permitted.

2. Bad debt is not an allowable expense.

3. Costs may be included only for covered services as defined by federal regulations at 42 C.F.R. 483 Subpart B and TennCare.

4. Allowable cost must be adjusted for NF compensation limitations as detailed in Rules 1200-13-06-.11 and .12.

5. All cost report information shall be submitted consistent with generally accepted accounting principles unless state and federal rules and regulations require a separate treatment of an item. The accrual method of accounting is the only acceptable method for NF providers.

6. The Medicare cost report may allow more than one option for classifying costs according to CMS Publication 15, Provider Reimbursement Manual; however, Medicaid will only recognize costs in the cost component totals and direct care floor limit calculations based on the definitions of those cost components contained in this Chapter. If a NF provider classifies cost on the Medicare cost report in a manner other than in compliance with this Chapter, then the cost will be excluded from the applicable cost components and the direct care floor calculation, unless adjusted at audit or desk review.

7. The Medicaid NF assessment is an allowable cost to the Medicaid program; however, the NF assessment will be included in the excluded cost component for rate setting purposes.

(f) The Medicare and Medicaid supplemental cost reports must include consideration of all prior year adjustments and observations from Medicare and Medicaid audits, desk reviews, and settlements. Unresolved or protested prior year adjustments and observations should be noted in the cost reports or in a separate letter filed with the cost reports but cannot be disregarded.

(g) Patient Accounts and Patient Funds. Gross charges to the patients' accounts must match the charges to the patient log. Adjustments to the patients' accounts must then be made to bring the actual charges in line with the contractual and legal collection limits of the various medical programs. All charges in the patients' accounts must be supported by charge slips and the proper notes in the patients' files and must correspond to the charges reported on TennCare billing forms. Personal funds held by the provider for Medicaid patients used in purchasing clothing and personal incidentals must be properly accounted for with detailed records of amounts received and disbursed and shall not be commingled with NF funds. Patient funds in excess of $100 per patient must be kept in an insured interest bearing account. Interest earned must be credited to the patients. Bank fees or charges associated with resident trust fund accounts shall not be charged to or debited against individual resident trust fund accounts.

(h) Patient Logs and Census. Each facility must maintain daily census records and an adequate patient log. The format of the log is to be determined by each individual provider and may be combined with the revenue journal or other records at the convenience of the provider. This log must be sufficient to provide the following information on an individual basis and to accumulate monthly and yearly totals for Medicaid patients and for all other patients:

1. Days of service;

2. Charges for items and services covered by the Medicaid NF Program;

3. Charges for items and services not covered by the Medicaid NF Program;

4. Patient income applicable to the cost of covered items and services received by Medicaid NF patients;

5. Amounts collected and receivable from the Medicaid Program; and

6. Amounts collected and receivable from all other sources.

(i) Patient Log.

1. Suggested Patient Log. The headings below should be listed across the top of the page above the respective columns.

Column No.	Heading
(i)	Patient Name
(ii)	Patient Days
(iii)	Room and Board Charge
(iv)	Total Other NF Covered Charges (Non-Room and Board)
(v)	Total NF Covered Charges (Col. 3 + Col. 4)
(vi)	Total NF Non-covered Charges
(vii)	Total Actual Charges (Col. 5 + Col. 6)

(viii) Date Medicaid NF Claim Paid
(ix) Amounts Collected and Receivable from NF Program
(x) Patient Income Applicable to NF Covered Services
(xi) Amounts Collected and Receivable from Patients from NF Non-covered Services
(xii) Amounts Collected and Receivable from Other Sources
(xiii) Total Amounts Collected and Receivable
(xiv) Comments

2. Directions for Completion of the Patient Log. The log should be maintained on a monthly basis with separate pages used for each month. Medicaid NF patients should be listed in a separate section of the log so that Medicaid NF program statistics can be generated. The columns should be completed and totaled as soon after the end of the month as the figures are available. Adjustments should be made to the monthly totals to reflect adjustments in the log due to changes in patient status, additional information, or other reasons. Complete explanations should accompany each adjustment. For non-TennCare patients, columns 8 through 14 can be omitted or adapted for other uses.

(3) Auditing of Cost Reports. The cost reports filed in compliance with this Chapter and all applicable provider records shall be subject to audit or desk review by the Comptroller. The cost reports filed in compliance with this Chapter must provide adequate cost and statistical data. This data must be based on and traceable to the provider's financial and statistical records and must be adequate, accurate and in sufficient detail to support payment made for services rendered to beneficiaries. This data must also be available for and capable of verification by the Comptroller. The provider must permit the Comptroller to examine any records and documents necessary to ascertain information pertinent to the determination of the proper amount of program payments due. Data reflected on the cost report which cannot be substantiated may be disallowed.

(4) Records Retention. Each Medicaid participating provider of NF services is required to maintain adequate financial and statistical records which are accurate and in sufficient detail to substantiate the cost data reported. These records must be retained for a period of not less than ten (10) years from the date of the submission of the cost report, and the provider is required to make such records available upon demand to representatives of the Department of Finance and Administration, the Comptroller of the Treasury, or the United States Department of Health and Human Services.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.06 Reimbursement Methodology for Nursing Facilities.

(1) Effective July 1, 2018, Medicaid participating NFs will be reimbursed using a case mix reimbursement system with quality informed rate components, and a stand-alone quality-based component. The initial base-year cost report data used to establish the case mix rates will be the most recently audited or desk reviewed NF cost reports covering a period greater than six (6) months, with an end date on or before December 31, 2015.

(2) The base-year annualized Medicaid resident day-weighted median costs and prices shall be rebased at an interval no longer than three (3) years after a new base year period has been established. The new base year median costs and prices will be established using the most recently audited or desk reviewed cost reports that have a cost reporting period greater than six (6) months, with a cost report end date eighteen (18) months or more before the start of the rebase period.

(a) Cost reports issued a disclaimer of opinion during the audit process or cost reports containing substantial issues (including incomplete filing) during the desk review process, as solely determined by the Comptroller, will be excluded from the median and price calculations.

(b) Only audited or reviewed cost reports available prior to the July 1 rate setting will be considered in the median and price calculations.

(3) For rate periods between rebasing, an index factor shall be applied to the following:

(a) Direct care base year annualized Medicaid resident-day-weighted medians;

(b) Administrative and Operating base year annualized Medicaid resident-day-weighted medians; and

(c) The provider's cost-based component.

(4) Each NF provider's reimbursement rate will be determined through the sum of the following cost components:

(a) The sum of the NF provider's direct care case mix adjusted cost component, direct care non-case mix adjusted cost component, and the direct care spending floor adjustment;

(b) The statewide administrative and operating cost component;

(c) The NF provider's capital cost component (FRV);

(d) The NF provider's cost-based component; and

(e) Adjustments to the rate.

(5) Determination of Rate Components.

(a) The NF provider's direct care portion of the reimbursement rate is calculated as the sum of the direct care case mix adjusted cost component, the direct care non-case mix adjusted cost component, and the direct care spending floor adjustment.

1. The direct care case mix adjusted cost component reimbursement rate shall be determined as follows:

(i) The per diem direct care case mix adjusted cost for each NF is determined by dividing the facility's direct care case mix adjusted cost from the base year cost reporting period by the NF's actual total resident days during the cost reporting period. These costs shall be trended forward from the midpoint of the NF provider's base year cost reporting period to the midpoint of the rate year using the index factor.

(ii) The per diem neutralized direct care case mix adjusted cost is calculated by dividing each NF provider's inflated direct care case mix adjusted cost per diem by the NF provider's NF cost report period case mix index.

(iii) The per diem neutralized inflated direct care case mix adjusted cost, for each Medicaid participating NF that meets the criteria to be included in the cost component median, is arrayed from low to high and the annualized Medicaid resident-day-weighted median cost is determined.

(iv) The statewide direct care case mix adjusted price is established at one hundred six percent (106.00%) of the direct care case mix adjusted annualized Medicaid resident-day-weighted median cost.

(v) The statewide direct care case mix adjusted price is then multiplied by each NF's own Medicaid NF-wide semi-annual average case mix index for the rate period to establish the direct care case mix adjusted cost component.

2. The direct care non-case mix adjusted cost component reimbursement rate shall be determined as follows:

(i) The per diem inflated direct care non-case mix adjusted cost for each NF provider is determined by dividing the facility's direct care non-case mix adjusted cost during the base year cost reporting period by the NF provider's actual total resident days during the cost reporting period. These costs shall be trended forward from the midpoint of the NF's base year cost reporting period to the midpoint of the rate year using the index factor.

(ii) The per diem inflated direct care non-case mix adjusted cost, for each NF that meets the criteria to be included in the cost component median, is arrayed from low to high and the

annualized Medicaid resident-day-weighted median cost is determined.

(iii) The statewide direct care non-case mix adjusted price is established at one hundred six percent (106.00%) of the direct care case mix adjusted annualized Medicaid resident-day-weighted median cost.

(iv) The statewide direct care non-case mix adjusted price is then multiplied by each NF provider's direct care non-case mix adjusted quality incentive multiplier to establish the NF provider's direct care non-case mix adjusted cost component.

(v) The direct care non-case mix adjusted quality incentive multiplier is determined by the NF provider's Quality Tier. The quality incentive multiplier is determined as follows:

(I) Quality Tier 1 – One hundred five percent (105.00%) multiplier

(II) Quality Tier 2 – One hundred two and one-half percent (102.50%) multiplier

(III) Quality Tier 3 – One hundred percent (100.00%) multiplier

3. The direct care spending floor adjustment is calculated as follows:

(i) The sum of the NF provider's direct care case mix adjusted and direct care non-case mix adjusted cost components calculated above are multiplied by the NF provider specific spending floor percentage to determine the direct care spending floor threshold.

(ii) The direct care spending floor percentage for each NF provider is determined by the NF provider's Quality Tier. The spending floor percentage is determined as follows:

Effective Date of Quality Tier Floor Percentage	Quality Tier 1	Quality Tier 2	Quality Tier 3
July 1, 2018	82.50%	85.00%	87.50%
July 1, 2019	85.00%	87.50%	90.00%
July 1, 2020	87.50%	90.00%	92.50%
July 1, 2021	90.00%	92.00%	94.00%

(iii) The NF provider's Medicaid NF-wide semi-annual case mix index is multiplied by the provider's neutralized inflated direct care case mix adjusted cost. This calculated cost is then added to the NF provider's inflated direct care non-case mix adjusted per diem cost to create the Medicaid direct care cost per diem.

(iv) The direct care spending floor adjustment is calculated as the lesser of the Medicaid direct care cost per diem minus the direct care spending floor threshold, or zero.

(v) As a transition to this new reimbursement methodology, during the initial base period (i.e., prior to first rate system rebase) the direct care spending costs used in the floor calculation will be updated each July 1 for those providers subject to the floor rate reduction effective July 1, 2018. This update will be as follows:

(I) The most recently audited or desk reviewed cost reports covering a period of six (6) months or more, with an end date eighteen (18) months or more prior to the July 1 rate setting period will be utilized in the spending floor calculation process.

(II) The per diem inflated direct care non-case mix adjusted cost for each NF provider is determined by dividing the facility's direct care non-case mix adjusted cost during the applicable cost reporting period by the NF provider's actual total resident days during the cost reporting period. These costs shall be trended forward from the midpoint of the applicable cost reporting period to the midpoint of the rate year using the index factor

(III) The per diem direct care case mix adjusted cost for each NF is determined by dividing the facility's direct care case mix adjusted cost from the applicable cost reporting period by the NF provider's actual total resident days during the cost reporting period. These costs shall be trended forward from the midpoint of the cost reporting period to the midpoint of the rate year using the index factor.

(IV) The per diem neutralized inflated direct care case mix adjusted cost is calculated by dividing each NF provider's inflated direct care case mix adjusted cost per diem by the NF provider's NF cost report period case mix index.

(V) The per diem neutralized inflated direct care case mix adjusted cost is then multiplied by each NF provider's own Medicaid NF-wide semi-annual average case mix index for the rate period to create the Medicaid direct care case mix adjusted cost per diem.

(VI) The Medicaid direct care case mix adjusted cost per diem is then added to the inflated direct care non-case mix adjusted cost per diem to create the Medicaid direct care cost per diem.

(VII) The reestablished Medicaid direct care cost per diem will be used for rate setting only if it is greater than the Medicaid direct care cost per diem utilized during the previous rate period.

(VIII) For those NF providers that were not subject to the floor rate reduction during the initial July 1, 2018, rate setting period, but subsequently become subject to the floor rate reduction due to direct care spending floor threshold changes over time, the annual process for reestablishing the Medicaid direct care cost per diem will be applied.

(IX) After the first reimbursement system rebasing, the annual reestablishment of the Medicaid direct care cost per diem will no longer be performed.

(b) The statewide administrative and operating cost component will be determined as follows:

1. The per diem administrative and operating cost for each NF provider is determined by dividing the provider's administrative and operating cost during the base year cost reporting period by the NF provider's actual total resident days during the cost reporting period. These costs shall be trended forward from the midpoint of the NF provider's base year cost reporting period to the midpoint of the rate year using the index factor.

2. The per diem administrative and operating cost, for each NF that meets the criteria to be included in the cost component median, is arrayed from low to high and the annualized Medicaid resident-day-weighted median cost is determined.

3. The statewide administrative and operating cost component is established at one hundred one percent (101.00%) of the administrative and operating annualized Medicaid resident-day-weighted median cost.

4. Every NF provider will receive the statewide administrative and operating cost component as reimbursement in full for its administrative and operating expenditures.

(c) The capital cost component of the reimbursement rate shall be based on a fair rental value (FRV) appraisal based reimbursement system, in lieu of reimbursement for capital specific costs such as depreciation, amortization, interest, rent/lease expense, etc. The capital cost component will be determined as follows:

1. Each NF provider will receive an appraisal from TennCare's certified appraisal contractor. TennCare's certified appraisal contractor must be selected through a formal procurement process for a single statewide contract.

2. NF appraisal values will be subject to a statewide mandatory reappraisal process in conjunction with the second (2nd) rebase following the implementation of new statewide appraisal values.

3. A NF provider may apply for a voluntary reappraisal. The voluntary NF reappraisal will be effective for rate setting purposes beginning with the semi-annual rate period directly following the completion of the reappraisal process. The reappraisal process will not be determined complete until the reappraisal is final. To obtain a voluntary reappraisal, the NF must meet all of the following criteria:

   (i) The NF satisfies one of the following conditions:

      (I) NF provider has moved its certificate of need/operations to a new permanent location. The new location is not required to be new construction. However, if the new location is one that has a current active appraisal or reappraisal valuation, the provider will be given the active appraisal value for rate setting purposes.

      (II) NF provider has moved more than ten percent (10%) of its total licensed bed capacity to a new location on the current NF campus, and the new location was not previously included in any appraisal or reappraisal process.

      (III) NF provider has performed and placed into service within the last 12 months a renovation/improvement greater than or equal to fifteen percent (15%) of its current net depreciated facility appraisal value (excluding land, but including site improvements). The total cost of the renovation shall only consider the cost of fixed assets as defined in this Chapter.

      (IV) Any renovation/improvement included in a previous appraisal/reappraisal process must not be considered when determining if the reappraisal participation criteria has been met.

   (ii) The NF has provided sufficient documentation to TennCare to support it has satisfied one of the conditions in subpart (i) above.

   (iii) The NF agrees to utilize the certified appraisal firm and appraisal methodology designated by TennCare.

   (iv) The NF agrees to be responsible for the cost of the appraisal.

   (v) The NF agrees that all semi-annual capital improvement updates submitted prior to the reappraisal request will be considered as part of the new reappraisal, and removed from being separately considered in the rate setting process.

4. TennCare's appraisal contractor will utilize the Marshall and Swift (Boeckh) Building Valuation System for Nursing Facilities, or its successor, to calculate the fee simple replacement cost (undepreciated and depreciated) of the building(s), site improvements and the market value of land for each NF provider.

   (i) The fee simple replacement cost of buildings and site improvements is calculated using the cost approach appraisal method.

   (ii) Only physical deterioration is considered. The appraisals are performed under the assumption that the NF is financially and functionally viable and economic obsolescence is not considered.

   (iii) Land values are determined using the sales comparison approach.

5. Determination of the Building(s) fee simple replacement cost.

   (i) The comparative unit method (calculator method) from Marshall and Swift section 15, or its successor, is utilized for this calculation.

(I) All costs, multipliers, and economic lives are directly pulled from the Marshall and Swift Commercial Estimator 7, or its successor.

(II) Only physical depreciation is considered, and assumptions are made that no obsolescence is present.

(III) Physical depreciation is determined based on the certified appraiser's opinion of effective age based on the actual age of the facility and renovations and updates over time.

(IV) Only fixed assets are determined through the appraisal process. Moveable equipment values are determined separately.

(ii) First, an actual weighted age of the facility is determined based on the age of building improvements, and the square footage of each section. Separate buildings or additions to original buildings may be separately valued by the appraiser, if determined necessary. The weighted age will then be grouped into the following ranges:

Actual Age	Implied Age for Depreciation
0 – 10 years	Actual Age
11 – 15 years	13 years
16 – 20 years	18 years
21 – 25 years	23 years
26 – 30 years	28 years
31 -35 years	33 years
35 Year +	10 years remaining life

(iii) After the determination of implied age, recent NF provider capital improvements will be considered to determine whether the implied age needs to be adjusted for depreciation purposes. Capital improvements submitted by the NF provider during the appraisal process are considered for effective age purposes. The allowed range of placed in service dates of capital improvements allowed for submission will be determined by TennCare.

(iv) The final calculated effective age (implied age less improvement considerations) will be divided into an economic life based on Marshall and Swift guidelines as detailed in the table below. At no time will remaining economic life (economic life less effective age) be less than 10 years.

Class	Low Cost and Average	Good and Excellent
A	45	50
B	45	50
C	40	45
D	35	40

(v) The following is a listing of the description of the class of construction:

Class	Description
A	Fireproofed structural steel
B	Reinforced concrete columns/beams
C	Masonry bearing walls
D	Wood or steel studs

(vi) The following is a listing of the rank, or estimate of construction quality based on the Marshall and Swift definition of quality:

Rank	Description
1	Low Cost
2	Average
3	Good

4+	Excellent

6. Determination of Site Improvement fee simple replacement cost. Site improvement cost estimates are based on Marshall and Swift section 66, or its successor. The site improvements will be depreciated based on a 15 year economic life.

7. Determination of Land Market Value. Land values are determined through the sales comparison approach.

   (i) Sales and listings of vacant land comparable to the subject property are collected and analyzed.

   (ii) The appraiser adjusts the prices to some common unit of comparison, and then adjusts the prices for market conditions, location, physical characteristics, available utilities, zoning, highest and best use, and other relevant variations.

   (iii) From this information the appraiser derives a unit value applicable to the NF. This unit value is then utilized to establish the market value of land as if it was vacant.

   (iv) The maximum value of land used in determining FRV per diem rates will be $7,500.00 per licensed bed. Licensed beds used in this calculation will be total current NF licensed beds as of the April 1 prior to each July 1 rate setting.

   (v) The lesser of the maximum land value or the appraised land value will be the allowable land value utilized for FRV calculation purposes.

8. Fair Rental Value Per Diem Calculation.

   (i) The undepreciated and depreciated values of the NF provider's building(s), site improvements, and land (which is not depreciated) are determined through the appraisal process.

   (ii) The depreciated values are subtracted from the undepreciated values to determine the total value of depreciation.

   (iii) The calculated depreciation is then modified in the following manner to determine the total modified depreciation to be applied to the fair rental value system:

      (I) NF providers with a weighted construction year age less than thirty (30) years will have calculated depreciation multiplied by fifty percent (50%) to determine their total modified depreciation to be applied to the fair rental value system.

      (II) NF providers with a weighted construction year age of thirty (30) years or more will have their calculated depreciation multiplied by seventy percent (70%) to determine their total modified depreciation to be applied to the fair rental value system.

   (iv) Total modified depreciation is subtracted from the undepreciated facility values (buildings, site improvements, and allowable land) and the value of NF provider fixed asset additions is added to the totals to determine total base facility value.

   (v) The total base facility value is then compared to a maximum allowable base value threshold.

   (vi) The maximum allowable base facility value threshold is established by multiplying the NF provider total licensed beds by $75,000. NF providers may increase the per licensed bed threshold of $75,000 based on their specific Medicaid private room resident day percentage. The Medicaid private room resident day percentage is calculated from base year cost report Medicaid private room resident days divided by total base year bed days available. Each NF provider is then compared to the thresholds established in the table below to determine any additions to the total per licensed bed value.

Quality Incentive Tier	Total Addition to Per Bed Value	Medicaid Private Room Resident Day Percentage Threshold
1	$3,000	10%
2	$1,500	5%
3	$0	Less than 5%

(vii) A moveable equipment value will be determined for each provider by multiplying total licensed beds by $7,500.

(viii) The lesser of the maximum allowable base facility value threshold or the actual total base facility value calculated above will be added to the total moveable equipment value to determine the total facility value.

(ix) The total facility value will be multiplied by a rental factor to establish an annual fair rental value. The rental factor will vary depending on the NF provider's quality tier. The rental factor will be established as follows:

(I) Quality Tier 1 – Eight and seven-tenths percent (8.70%)

(II) Quality Tier 2 –Eight and thirty-five hundredths percent (8.35%)

(III) Quality Tier 3 – Eight percent (8.00%)

(x) The annual fair rental value will be divided by the greater of total annualized actual resident days, or the minimum occupancy percentage threshold of eighty-five percent (85%) of annualized licensed beds capacity of the provider to establish the provider's fair rental value per diem.

(xi) The licensed beds utilized for fair rental value purposes will be recognized once annually. Total NF licensed beds will be determined using the current facility licensed beds as of the April 1 prior to each July 1 rate setting.

(xi) No depreciation or inflation factors will be applied to the appraisal totals in non-appraisal years.

9. Modification of Total Facility Value between Appraisal Periods.

(i) In order to continue to incentivize providers to perform capital improvement in non-appraisal years, TennCare will allow each NF provider to modify its total facility value on a semi-annual basis for capitalized fixed assets if they meet the following requirements:

(I) The request for modification of total facility value is submitted at a minimum three (3) months prior to the July 1 or January 1 rate setting periods, and the modification is reported on the applicable form designated by TennCare.

(II) The total capitalized fixed assets are greater than $1,000 per licensed bed. Licensed bed totals will be determined as of the April 1 following the submission for modification.

(III) The cost must be capitalized according to CMS Publication 15-1, The Provider Reimbursement Manual – Part 1, and have been placed into service within the previous 12 months prior to the submission date of the modification request.

(IV) Capitalized assets must contain only fixed assets as defined by CMS Publication 15-1, The Provider Reimbursement Manual – Part 1, sections 104.2 and 104.3. Major movable equipment that has been capitalized must not be included for modification purposes.

(V) The capitalized assets must be reported to TennCare net of any grant monies or insurance proceeds associated with the purchasing of the asset.

(ii) Qualifying capitalized fixed asset expenditures will be added to the total facility base value portion of the FRV per diem calculation.

(iii) No inflation or depreciation will be applied to the qualifying items.

(iv) A NF statewide mandatory appraisal or voluntary reappraisal will eliminate all previously submitted and accepted fixed asset addition amounts from the FRV per diem calculation.

(v) Request for modification will not be accepted during a statewide mandatory appraisal year, as it is assumed the provider will have received credit for these items within the appraisal process, regardless of whether or not the provider actually submitted the information to TennCare's certified appraisal firm.

(d) Cost-Based Component. The NF provider's cost-based component is the sum of the provider's NF related real estate tax per diem calculation and the provider assessment cost-based reimbursement rate determined by TennCare. The cost-based component is determined as follows:

1. The NF provider's NF real estate tax cost reported on the Medicaid supplemental cost report is divided by the greater of actual base year cost report resident days or eighty-five percent (85%) of base year cost report licensed beds capacity of the provider. These costs shall be trended forward from the midpoint of the NF provider's base year cost reporting period to the midpoint of the rate year using the index factor.

2. The provider assessment cost-based reimbursement rate is determined by TennCare for only the Medicaid share of the provider assessment cost incurred by NF providers. NF providers will receive their cost-based reimbursement rate based on their specific provider class. The provider class will be determined for each NF provider from the cost report year information utilized in the calculation of the provider assessment. The provider class criteria and associated provider assessment cost-based reimbursement rate are determined as follows:

(i) NF providers with 50,000 or more annual Medicaid patient days. The reimbursement rate is calculated as the total assessment fee collected from this class of NF providers divided by total class resident days (all payer types).

(ii) NF providers that are designated as Continuing Care Retirement Center (CCRC), or NF providers with 50 or fewer licensed beds. The reimbursement rate is calculated as the total assessment fee collected from this class of NF providers divided by total class resident days (all payer types).

(iii) New NF Providers. The reimbursement rate is calculated as $2,225 divided by the number of calendar days in the rate year.

(iv) All other Medicaid participating NF providers that do not meet the criteria for subparts (i), (ii) or (iii) above. The reimbursement rate is calculated as the total assessment fee collected from this class of NF providers divided by total class resident days (all payer types).

(e) Adjustments to the Reimbursement Rate.

1. Adjustments to the Medicaid daily rate may be made when changes occur that will eventually be recognized in updated cost report data, for example an increase in the federal minimum wage rate. These adjustments would be effective until the next rebasing of cost report data or until such time as the cost reports fully reflect the change. Adjustments to the rate will be made solely at the discretion of TennCare.

2. Budget Adjustment Factor (BAF). For the beginning of each state rate year effective July 1st TennCare will establish a NF program budget target and compare that to the annual expected Medicaid expenditures on nursing facility days for the upcoming rate year using established rate setting mechanics. TennCare will establish the BAF to adjust the annual expected Medicaid expenditures to meet the program's NF budget target. The BAF may be positive or negative

and will be applied as an across the board percentage adjustment to all providers reimbursement rate components calculated according to this rule. The following is the detailed calculation of the BAF:

(i) Rate System Expected Cost

(I) Projected July 1 Provider Reimbursement Rates Calculated Using All Applicable Reimbursement Provisions Specified within this Chapter (prior to application of the BAF)

(II) X New Cost Report Medicaid Days (From Most Recent Comptroller Reviewed Cost Report data, or paid claims data if TennCare determines this data source to be more appropriate)

(III) = Expected Cost of NF Reimbursement System.

(ii) NF Budget Target

(I) Projected July 1 Provider Reimbursement Rates Calculated Using All Applicable Reimbursement Provisions Specified within this Chapter (prior to application of the BAF)

(II) X New Cost Report Medicaid Days (From Most Recent Comptroller Reviewed Cost Report data, or paid claims data if TennCare determines this data source to be more appropriate)

(III) = Target Cost of NF reimbursement System Prior to Adjustments

(IV) +/- State Budgetary Adjustments

(V) = Final Budget Target of NF Reimbursement System.

(iii) BAF Calculation

(I) NF Budget Target / Rate System Expected Cost = BAF % to apply to all provider rates.

(II) For each non-July 1 rate setting period, TennCare will recalculate the BAF to accommodate changes to the reimbursement system from new CMI, new facilities, legislative mandates, and other factors. The BAF is applied to all provider reimbursement rate components, and will be adjusted to ensure the state will continue to meet the NF budget target. The BAF adjustment may be positive or negative depending on circumstance.

3. For rate setting periods from July 1, 2018, to June 30, 2020, a phase-in of provider reimbursement rates will occur in an effort to ease the transition for providers to the case mix reimbursement system. The phase-in process will be calculated as follows:

(i) A NF provider's base reimbursement rate will be established as the Medicaid day weighted average of the Level 1 and Level 2 NF reimbursement rate in effect for each NF provider on July 1, 2017, as determined on January 1, 2018. The Medicaid day weighted average will also consider the NF provider's quarterly bridge payments for acuity and quality. The base reimbursement rate will be the starting point for all phase-in calculations.

(ii) For each July 1 rate setting, the current base reimbursement rates shall be trended forward from the midpoint of the previous rate year to the midpoint of the new rate year using the index factor.

(iii) The providers case mix system reimbursement rate will be determined according to the rate calculation procedures identified in this rule.

(iv) The reimbursement rate differential will be determined by subtracting the NF provider's base reimbursement rate from the applicable case mix system reimbursement rate.

(v) If the calculated reimbursement rate differential exceeds a positive or negative TennCare determined corridor amount, then a rate adjustment will be applied to the NF provider's case mix system reimbursement rate in an amount equal to the difference between the rate differential total and the corridor amount, in order to ensure the NF provider's reimbursement rate is not increased or decreased more than the corridor amount from the calculated base reimbursement rate.

(vi) Effective for rate periods beginning July 1, 2018, the corridor amount will be a floor of minus six dollars (-$6) from the base reimbursement rate, with the ceiling being determined at an amount above the base reimbursement rate necessary to achieve statewide budget neutrality.

(vii) Effective for rate periods beginning July 1, 2019, the corridor amount will be a floor of minus twelve dollars (-$12) from the base reimbursement rate, with the ceiling being determined at an amount above the base reimbursement rate necessary to achieve statewide budget neutrality.

(viii) Effective for rate periods beginning July 1, 2020, the case mix system reimbursement rate will no longer be subjected to a phase-in.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.07 Case Mix Index Calculation.

(1) The Resource Utilization Groups-IV (RUG-IV) Version 1.03, 48-Grouper, or its successor, index maximizer model shall be used as the resident classification system to determine all case mix indices, using data from the minimum data set (MDS) submitted by each NF provider. Standard Version 1.03, or its successor, case mix indices developed by CMS, using nursing-only RUG weights, shall be the basis for calculating average case mix indices to be used to adjust the direct care case mix adjusted cost component.

(2) Each resident in the facility with a completed and submitted assessment shall be assigned a RUG-IV 48-Grouper, or its successor. The RUG-IV 48 Grouper, or its successor, will be calculated using each resident MDS assessment transmitted and accepted by CMS. These assessments are then translated to the appropriate case mix index using the time-weighted acuity measurement system. Using the individual resident case mix indices, two NF provider case mix indices are calculated, the NF-wide semi-annual average case mix index and the Medicaid NF-wide semi-annual average case mix index. The two case mix indices for each Medicaid participating NF shall be determined two times per year.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.08 Case Mix Index Reports Process.

(1) TennCare or its contractor shall provide each NF provider with the Preliminary Case Mix Index Report (PCIR) by approximately the fifteenth (15th) day of the second (2nd) month following the end of the MDS assessment collection period for each semi-annual rate period. The PCIR will serve as notice of the MDS assessments transmitted and provide an opportunity for the NF provider to correct and transmit any missing MDS assessments or tracking records or apply the CMS correction policy where applicable.

(2) As part of the PCIR process, providers are required by TennCare to verify the end of therapy dates associated with their submitted MDS assessments. TennCare will designate the format and process providers must follow in order to satisfy the end of therapy dates reconciliation process. Should a provider choose not to perform the reconciliation of therapy dates, records with no discernable end of therapy date will be given a default date of two days after the start of therapy date associated with the record.

(3) TennCare or its contractor shall provide each NF provider with a Final Case Mix Index Report (FCIR) utilizing MDS assessments after allowing the NF provider two (2) weeks, or ten (10) business days, to process its corrections. TennCare may extend this time period if a request is received from the provider.

(a) A cut-off date will be published for each case mix index report period. New or revised MDS assessment records or end of therapy date updates submitted by the NF provider after the cut-off date will not be included in the case mix index FCIR. TennCare, at its sole discretion, may override the cut-off date if there are extraordinary circumstances affecting a provider's ability to submit information.

(b) If TennCare determines that a NF provider has delinquent MDS resident assessments, for purposes of determining both average CMIs, such assessments shall be assigned the case mix index associated with the RUG-IV group "BC1-Delinquent" or its successor. A delinquent MDS shall be assigned a CMI value equal to the lowest CMI in the RUG-IV, or its successor, classification system.

(4) The case mix index values from the FCIR will be utilized in establishing NF provider reimbursement as described in Rule .06.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.09 New Nursing Facility Providers.

(1) The reimbursement rate for new NF providers will be determined following the methodology detailed in Rules .06 – .08 with the following exceptions:

(a) The provider's Medicaid NF semi-annual case mix index will be calculated as the statewide annualized Medicaid resident day-weighted average Medicaid NF semi-annual case mix index until the provider has completed one full semi-annual rate period of operation following the acceptance of Medicaid recipients.

(b) The provider will be exempt from the direct care spending floor until the July 1 rate setting following the date the initial cost report filing is submitted to TennCare, and the Comptroller has completed its review of the cost report filing.

(c) The provider will be included in quality tier three (3) for the rate determination process, as defined in Rule .06, until the July 1 rate setting following the date the provider has submitted at least six (6) consecutive months of quality performance data in order to determine the provider's Quality Tier.

(d) The provider will be included in the new provider class for provider assessment cost-based reimbursement rate purposes. The provider will remain in the new provider class until such time that the provider has its information included in a provider assessment calculation base period. The provider will then receive its provider assessment cost-based reimbursement rate according to its specific provider class attributes as defined in Rule .06.

(e) The provider, if required to pay real estate tax, will receive the statewide annualized Medicaid resident day-weighted average inflated real estate tax cost value. The established real estate cost value will then be divided by the minimum occupancy percentage threshold of eighty-five percent (85%) of annualized bed days available to create the per diem real estate tax portion of the cost-based component of the rate. The per diem real estate tax cost-based rate will remain in effect until at least one of the two timelines and criteria below are met:

1. The July 1 rate setting after the provider has submitted an acceptable initial cost reporting package to the Comptroller and the Comptroller has completed the review of the real estate tax portion of the report. The approved NF provider's real estate tax amount from the Medicaid supplemental cost report is divided by the greater of actual base year cost report resident days, or eighty-five percent (85%) of base year cost report licensed beds capacity of the provider. These costs shall be trended forward from the midpoint of the NF provider's base year cost reporting period to the midpoint of the rate year using the index factor.

2. The semi-annual rate period immediately following compliance with the criteria listed in subparts (i) and (ii). The approved NF provider's real estate tax amount will be divided by the minimum occupancy percentage threshold of eighty-five percent (85%) of the NF provider's annualized licensed bed days available of the provider. No trending factor will be applied as the tax amounts accepted will be assumed to be from the current period.

(i) The provider submits to the Comptroller documentation to support its real estate tax expense for the current cost reporting period. TennCare will be solely responsible for determining the format in which the information must be submitted, and what supporting documentation will be considered acceptable.

(ii) The Comptroller has reviewed the provider submission and has determined it to be acceptable.

(f) The capital component of the reimbursement rate will be determined as follows:

1. An appraisal will be conducted by TennCare's certified appraisal contractor. The appraisal will be utilized in capital component reimbursement consistent with Rule .06.

2. Should an assessment process not be completed prior to the facility accepting Medicaid recipients, the facility will have a maximum of ninety (90) days from the Medicaid certification date to complete the appraisal process.

3. A new facility without an appraisal will receive the maximum total facility value possible under the FRV system until the semi-annual rate period in immediate succession to the completion of the appraisal process. When the appraisal process is complete, the appraisal will be utilized in capital component reimbursement consistent with Rule .06. The annual FRV will be divided by the minimum occupancy percentage threshold to establish the FRV per diem for the NF provider. The minimum occupancy percentage threshold applied to the FRV calculation will be modified for a new facility as follows:

(i) If the NF provider has not previously provided the NF level of care for any payer type, then the minimum occupancy percentage threshold will be calculated as follows:

(I) The minimum occupancy percentage threshold will be calculated at sixty-five percent (65%) of annualized NF provider bed days available until the July 1 rate setting immediately following the NF providers Medicaid certification date.

(II) If the initial July 1 rate setting period occurs prior to the NF provider receiving the sixty-five percent (65%) minimum occupancy percentage threshold for a full semi-annual rate period, then the NF provider will receive a minimum occupancy percentage threshold of seventy-five percent (75%) of annualized NF provider bed days available until the next July 1 rate setting occurs.

(III) All subsequent rate periods will have the minimum occupancy percentage threshold calculated according to capital component reimbursement Rule .06.

(ii) A NF provider that is new to Medicaid certification, but has previously provided NF level of care services, will not be subject to the modified minimum occupancy percentage threshold provisions.

4. If the new facility does not meet the ninety (90) day appraisal completion timeline, the facility will receive the lowest total FRV facility value in the state beginning with the semi-annual rate period in immediate succession to the ninety (90) day timeline expiring. The lowest total FRV facility value will be utilized to set the capital component per diem reimbursement rate according to reimbursement Rule .06. The lowest total FRV facility value mandate will remain in effect for a minimum of one (1) semi-annual rate period, and will remain in effect until the semi-annual period in immediate succession to the facility's completion of the appraisal process. Once the appraisal process is complete and the lowest total FRV facility value mandate period has elapsed, the appraisal will be utilized in capital component reimbursement in line with Rule .06.

5. No modification of the minimum occupancy percentage threshold will be applied for providers who have failed to complete the appraisal process within the required ninety (90) day timeline.

6. An appraisal process will not be determined complete until the appraisal is final.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.10 Changes of Ownership of Existing Nursing Facilities.

(1) A CHOW exists if the beds of the new owner have previously been certified to participate, or otherwise participated, in the Medicaid program under the previous owner's provider agreement. Rates paid to NF providers that have undergone a CHOW will be calculated in the following manner:

(a) The initial NF provider reimbursement rate will be based upon the acuity, costs, days, appraisal data and quality information of the prior owner.

(b) If the CHOW is as a result of a non-related party transaction, the new NF provider may request from TennCare a provisional waiver of the application of any direct care spending floor rate reduction that would otherwise occur. If a direct care spending floor provisional waiver is granted by TennCare, the new NF provider reimbursement rate will be determined without a direct care spending floor reduction. However, for the entire period when a provisional waiver of the direct care spending floor is in effect, the new NF provider will be subject to a retroactive direct care spending floor settlement process, as follows:

1. If the new NF provider's cost reporting period(s) Medicaid direct care cost per diem(s) are less than the spending floor(s) calculated at each rate period, the new NF provider will be responsible for a retroactive recoupment of the difference between its cost per diem and the spending floor for each Medicaid paid day. At no time will the retroactive recoupment per diem exceed the per diem amount granted under the provisional waiver.

2. In the event there is more than one direct care spending floor active during the new provider's cost reporting period(s), the direct care spending floor settlement process will be independently applied to each spending floor. If the new NF provider's cost reporting period(s) Medicaid direct care cost per diem(s) are less than any of the active spending floor(s), the calculated differences will be multiplied by the number of provider paid Medicaid days associated with the time period each direct care spending floor was active during the applicable cost reporting period. At no time will the retroactive recoupment per diem exceed the per diem amount granted under the provisional waiver.

3. Provisional waivers of the direct care spending floor will not be granted following the first rebase period in which the new NF provider has a six (6) month or more cost reporting period that could have been used in a rebase period.

(c) If the CHOW is as a result of a non-related party transaction, the new NF provider's real estate tax cost-based reimbursement rate will be recalculated, according to Rule .06, on the first July 1st after the new NF provider has submitted a cost report of six (6) months or longer, and that cost report has been reviewed by the Comptroller.

(2) The previous owner and current owner must comply with the cost report filing requirements in Rule .05.

(3) TennCare maintains the right to withhold up to ten percent (10%) of the previous owner's final Medicaid program payments until an acceptable final (terminating) cost report is received by the Comptroller. After receipt of the acceptable cost report, be it timely or non-timely, the withholding amount will be released to the facility (less any incurred penalties for non-timely filing).

(4) When there is a proposed CHOW of any Nursing Facility, the new provider shall provide to TennCare documents sufficient to obtain a Medicaid ID as specified in TennCare policy. TennCare shall issue a new Medicaid ID based on appropriate documentation submitted by the new provider. Any Managed Care Contractor (MCC) previously contracted with the former owner or operator shall, subject to T.C.A § 71-5-1412, enter into a provider agreement with the new owner/operator. A new provider with a Medicaid ID shall be reimbursed at one hundred percent (100%) from the effective date of the CHOW. A new provider with a CHOW that has not acquired a Medicaid ID shall not be reimbursed, including retroactively, until such provider acquires a Medicaid ID.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities.

(1) In addition to Quality Informed aspects of the NF reimbursement methodology, a specified amount of the funding for NF services shall be set aside during each fiscal year for purposes of calculating a quality-based component of each NF provider's per diem payment (i.e., a quality incentive component). At implementation of this Chapter, the amount of funding set aside for the quality-based component of the reimbursement methodology for NFs shall be no less than forty million dollars ($40 million) or four percent (4.00%) of the total projected fiscal year expenditures for NF services, whichever is greater. In each subsequent year, the amount of funding set aside for the quality-based component of the reimbursement methodology for NFs shall increase at two (2) times the rate of inflation of the index factor. Index factor inflation shall be calculated from the midpoint of the prior state fiscal year to the midpoint of the new state fiscal year. This annual quality-based component index factor adjustment shall continue until such time that the quality-based component of the reimbursement methodology for NFs constitutes ten percent (10%) of the total projected fiscal year expenditures for NF services. Once the quality-based component of the reimbursement methodology constitutes ten percent (10%) of the total projected fiscal year expenditures for NF services, it shall then increase or decrease at a rate necessary to ensure that the quality-based component of the reimbursement methodology remains at ten percent (10%). All noted minimum quality-based component thresholds and index factor inflationary adjustments are made prior to consideration of the BAF.

(2) The quality-based component of each NF provider's per diem payment shall be calculated based on the facility's volume of Medicaid resident days and the percentage of total quality points earned for the measurement period.

(3) The initial quality outcome measures and point values established for the NF reimbursement system implemented on July 1, 2018, shall be based upon the structure of the QuILTSS Nursing Facility Value-Based Purchasing Quality Framework as described in the memorandum of August 5, 2014, to Medicaid NF Providers and described in this rule. Quality outcome measures and point values for each measure shall not be modified for the first three (3) fiscal years of reimbursement following implementation of the reimbursement system. Performance benchmarks shall be established as described in this rule. After the initial three (3) year period, quality outcome measures, performance benchmarks for each measure, and point values shall be reviewed and may be modified as appropriate in consultation with THCA and other NF stakeholders. Any modifications to such criteria shall be established through rulemaking and shall not be changed for another three-year period.

(4) Quality outcome measures shall reflect those aspects of the delivery of NF services determined based on input from individuals receiving services, their family members and representatives, and other NF stakeholders, and in consultation with THCA and the QuILTSS Stakeholder Advisory Group, to most impact the day-to-day experience of care for NF residents, as follows:

(a) Satisfaction shall be valued at thirty-five (35) of the one hundred (100) possible quality performance points.

1. Satisfaction shall include three separate measures:

(i) Resident satisfaction shall be valued at fifteen (15) of the one hundred (100) possible quality performance points.

(ii) Family satisfaction shall be valued at ten (10) of the one hundred (100) possible quality performance points.

(iii) Staff satisfaction shall be valued at ten (10) of the one hundred (100) possible quality performance points.

2. In order to measure Satisfaction on the basis of outcomes and to establish performance benchmarks for each of the three (3) Satisfaction measures, NFs shall be required to use a standardized survey instrument and methodology that provides for anonymous submission to a neutral third party, which shall be responsible for submission of required data to TennCare.

3. The survey instrument(s) and methodology for conducting each survey shall be selected or designed with input from NF stakeholders, and subject to mutual agreement between TennCare and THCA. Providers shall be notified of the acceptable survey instrument(s) and methodology no later than two (2) months prior to their implementation.

4. For purposes of the NF reimbursement rates effective on July 1, 2018, the methodology used for calculating a facility's Satisfaction score shall be based upon the criteria established by TennCare in the QuILTSS #10 memorandum of March 20, 2017.

5. For purposes of the NF reimbursement rates effective on July 1, 2019, the methodology used for calculating a facility's Satisfaction score shall be based on the facility's adoption and implementation of the survey instrument(s) according to with the methodology described in this subparagraph. Data collected during the baseline year of the Satisfaction survey instrument(s) described in this subparagraph shall be used to establish a performance benchmark for each of the three (3) Satisfaction measures, in consultation with THCA and other NF Stakeholders.

6. For purposes of the NF reimbursement rates effective on July 1, 2020, the methodology used for calculating a facility's Satisfaction score shall be based in part on whether the facility achieves the performance benchmark for each of the three (3) Satisfaction measures described in this subparagraph, and for facilities who do not achieve the performance benchmarks, a lesser score based on the percentage of improvement over the baseline year. Providers shall be notified of the performance benchmark for each of the three (3) Satisfaction measures and the specific methodology for calculating a facility's Satisfaction score no later than July 1, 2019.

7. TennCare shall provide (or arrange for the provision of) training regarding each survey instrument, the survey methodology, and the methodology that will be used to calculate a facility's score for each of the three (3) Satisfaction measures.

8. Upon the collection and analysis of two (2) years of data pertaining to each of the survey instruments, this Chapter shall be modified to include performance benchmarks for each of the three (3) Satisfaction measures that will be applied for the next three-year period.

9. Results of each NF's surveys (excluding any information that could be used to identify respondents) shall be made available to the NF for purposes of quality improvement activities.

(b) Culture Change and Quality of Life shall be valued at thirty (30) of the one hundred (100) possible quality performance points.

1. Culture Change and Quality of Life shall encompass four (4) different aspects of the degree to which a NF's environment, programs, policies, and practices are individualized and person-directed; reflect the core values of self-determination, choice, dignity, and respect; and support meaningful roles and relationships for residents and staff. Culture Change and Quality of Life shall include four (4) separate measures:

   (i) Respectful Treatment shall be valued at ten (10) out of the one hundred (100) possible quality performance points.

   (ii) Resident Choice shall be valued at ten (10) out of the one hundred (100) possible quality performance points.

   (iii) Resident and Family Input shall be valued at five (5) out of the one hundred (100) possible quality performance points.

   (iv) Meaningful Activities shall be valued at five (5) out of the one hundred (100) possible quality performance points.

2. In order to measure Culture Change and Quality of Life on the basis of outcomes and to establish performance benchmarks for each of the four (4) Culture Change and Quality of Life

measures, NFs shall be required to use a standardized survey instrument and methodology that provides for anonymous submission to a neutral third party, which shall be responsible for submission of required data to TennCare. The survey questions for measuring Culture Change and Quality of Life may be incorporated into the Resident satisfaction survey described in Subparagraph (a) above to ease survey fatigue.

3. The survey questions and/or instrument and methodology for conducting the survey shall be selected or designed with input from NF stakeholders, and subject to mutual agreement between TennCare and THCA. Providers shall be notified of the acceptable survey instrument(s) and methodology no later than two (2) months prior to their implementation.

4. For purposes of the NF reimbursement rates effective on July 1, 2018, the methodology used for calculating a facility's score encompassing each of the four (4) aspects of Culture Change and Quality of Life shall be developed in consultation with THCA and with input from the NF stakeholders, including individuals receiving services and their family members and representatives. These criteria shall be provided to NFs and posted on the TennCare website no later than two (2) months prior to the implementation of the reimbursement system.

5. For purposes of the NF reimbursement rates effective on July 1, 2019, the methodology used for calculating a facility's Culture Change and Quality of Life score shall be based on the facility's adoption and implementation of the survey questions and/or instrument(s) in accordance with the methodology described in this subparagraph. Data collected during the baseline year of the Culture Change and Quality of Life survey instrument(s) described in this section shall be used to establish a performance benchmark for each of the four (4) Culture Change and Quality of Life measures, in consultation with THCA and other NF Stakeholders.

6. For purposes of the NF reimbursement rates effective on July 1, 2020, the methodology used for calculating a facility's Culture Change and Quality of Life score shall be based in part on whether the facility achieves the performance benchmark for each of the four (4) Culture Change and Quality of Life measures described in this subparagraph, and for facilities who do not achieve the performance benchmarks, a lesser score based on the percentage of improvement over the baseline year. Providers shall be notified of the performance benchmark for each of the four (4) Culture Change and Quality of Life measures and the specific methodology for calculating a facility's Satisfaction score no later than July 1, 2019.

7. TennCare shall provide (or arrange for the provision of) training regarding the methodology that will be used to calculate a facility's score encompassing each of the four (4) aspects of Culture Change and Quality of Life.

8. Upon the collection and analysis of two (2) years of data pertaining to the survey questions and/or survey instrument, this Chapter shall be modified to include performance benchmarks for each of the four (4) Culture Change and Quality of Life measures that will be applied for the next three-year period.

9. Results of each NF's performance on each of the four (4) aspects of Culture Change and Quality of Life (excluding any information that could be used to identify respondents) shall be made available to the NF for purposes of quality improvement activities.

(c) Staffing and Staff Competency shall be valued at twenty-five (25) of the one hundred (100) possible quality performance points.

1. Staffing and Staff Competency shall include five (5) separate measures, with each measure valued at five (5) of the one hundred (100) possible quality performance points, as follows:

   (i) Registered Nurse (RN) hours per resident day.

   (ii) Nurse Aide (NA) hours per resident day.

   (iii) RN, LPN, and CNA Staff Retention.

   (iv) Consistent Staff Assignment.

(v) Staff Training (Onboarding and Continuing).

2. NA resident hours per resident day shall be calculated consistent with the methodology described in the CMS Five Star Nursing Home Quality Rating System.

(i) The source document for the reported NA hours is the CMS form CMS-671 (Long Term Care Facility Application for Medicare and Medicaid) obtained from CASPER, Certification And Survey Provider Enhanced Reports, the CMS system which NFs must use to report data pertaining to survey and certification processes.

(ii) The resident census is based on the count of total residents from the CMS form CMS-672 (Resident Census and Conditions of Residents).

(iii) NA hours include certified nurse aides, aides in training, and medication aides/technicians.

(iv) Staffing data include both NF employees (full-time and part-time) and individuals under an organization (agency) or individual contract.

(v) Staffing data do not include staff reimbursed by a resident or his/her family, hospice staff, or feeding assistants.

(vi) Staffing hours reported are for the residents in Medicare- and/or Medicaid-certified beds only.

(vii) Performance benchmarks for RN and NA hours per resident day measures shall be established in consultation with THCA, and with input from other NF stakeholders, including individuals receiving services and their family members and representatives. These criteria shall be provided to NFs and posted on the TennCare website no later than two (2) months prior to the implementation of the reimbursement system.

3. Consistent Staff Assignment shall be defined and calculated consistent with the methodology described in the National Nursing Home Quality Improvement Campaign.

(i) Consistent Staff Assignment shall include two measurements:

(I) The percentage of long-stay residents who have no more than twelve (12) caregivers within a one (1) month measurement period; and

(II) The percentage of short-stay residents who have no more than twelve (12) caregivers within a two-week measurement period.

(ii) Long-stay residents shall be defined as residents who have been in the facility for greater than one hundred (100) days.

(iii) Short-stay-residents shall be defined as residents who have been in the facility for no more than one hundred (100) days.

(iv) A caregiver shall be defined as any staff assigned to provide and delivering direct NA-type care to the resident during the measurement period.

(I) For purposes of measuring Consistent Staff, licensed staff shall not be counted as caregivers unless they are working in the capacity of a CNA. For example, if a nurse is in a resident's room administering medications or performing other skilled tasks, and stops to take the resident to the bathroom, that nurse shall not be counted as a caregiver. However, if a nurse (or other staff) is working as a CNA because the home is short staffed or because nurses (or other staff) routinely provide direct care to residents, that person shall be included in the caregiver count.

(II) Staff assigned to assist one or more residents only with mealtime and/or bathing shall be counted as a caregiver for all residents for whom such assistance is provided, even if the staff functions as a float or as part of a care team dedicated to such functions on behalf of multiple residents.

(v) NAs shall include certified nurse aides, aides in training, and medication aides/technicians.

(vi) Caregivers shall include both NF employees (full-time and part-time) and individuals under an organization (agency) or individual contract that provide care to the resident during the measurement period.

(vii) To be eligible for Consistent Staff Assignment points, a NF must track its performance using the tools created by the National Nursing Home Quality Improvement Campaign (NNHQIC), and report data to it in a manner consistent with the NNHQIC. A NF must also provide permission to the NNHQIC for it to share the facility's performance data with TennCare.

(viii) The performance benchmark for the Consistent Staff Assignment measure shall be established in consultation with THCA, and with input from other NF stakeholders, including individuals receiving services and their family members and representatives. The performance benchmark for rates effective on July 1, 2018, shall be provided to NFs and posted on the TennCare website no later than two (2) months prior to the implementation of the reimbursement system. The performance benchmark for rates effective on July 1, 2019, and July 1, 2020, shall be provided to NFs and posted on the TennCare website by May 1 of each year.

4. Staff Retention shall be defined as the percentage of specified staff that have been employed (or contracted) by the NF for at least one (1) year.

(i) Specified staff shall include only RNs, LPNs, and NAs.

(ii) RNs shall include registered nurses, RN directors of nursing, and nurses with administrative duties.

(iii) LPNs shall include licensed practical/licensed vocational nurses.

(iv) NAs shall include certified nurse aides, aides in training, and medication aides/technicians.

(v) Specified staff shall include both NF employees (full-time and part-time) and individuals under an organization (agency) or individual contract. Retention of contracted staff shall be reported and measured based on the length of service of each staff person, and not the length of the contract. For example, if a staffing agency is used, a person shall be considered "continuously" contracted only if that staff person has been assigned to and working at the facility throughout the course of the twelve (12) month measurement period, even if the contract with that organization (agency) has been in place for a longer period.

(vi) Specified staff shall not include staff reimbursed by a resident or his/her family, hospice staff, or feeding assistants.

(vii) Specified staff information at the beginning and end of the measurement period shall be provided to TennCare in the required form and format.

(viii) A NF's performance on the Staff Retention measure shall be calculated by dividing the number of specified staff continuously employed (or contracted) by the facility for the twelve (12) month measurement period divided by the total number of specified facility staff employed at the outset of the twelve (12) month measurement period.

(ix) The performance benchmark for the Staff Retention measure shall be established in

consultation with THCA, and with input from other NF stakeholders, including individuals receiving services and their family members and representatives. The performance benchmark for rates effective on July 1, 2018, shall be provided to NFs and posted on the TennCare website no later than two (2) months prior to the implementation of the reimbursement system. The performance benchmark for rates effective on July 1, 2019, and July 1, 2020, shall be provided to NFs and posted on the TennCare website by May 1 of each year.

5. Staff Training shall be defined as the percentage of specified staff who complete specified training activities.

(i) For purposes of the NF reimbursement rates effective on July 1, 2018, July 1, 2019, and July 1, 2020, the methodology used for calculating a facility's score for the Staff Training measure and the performance benchmark for the Staff Training measure shall be developed in consultation with THCA, and with input from other NF stakeholders including individuals receiving services and their family members and representatives. These criteria shall be provided to NFs and posted on the TennCare website no later than May 1 of each year.

(ii) Upon implementation of the QuILTSS comprehensive competency-based workforce development training program, specified training activities shall be completion of badges based on the CMS-funded core competencies for direct support workforce.

(d) Clinical Performance shall be valued at ten (10) of the one hundred (100) possible quality performance points.

1. Clinical Performance shall include two (2) separate measures, with each measure valued at five (5) of the one hundred (100) possible quality performance points, as follows:

(i) Antipsychotic Medications shall include two measurements:

(I) The percentage of long-stay residents who receive an antipsychotic medication during the measurement period.

(II) The percentage of short-stay residents who receive an antipsychotic medication during the measurement period but not on their initial assessment.

(III) Long-stay and short-stay residents shall be as defined in Subparagraph (c).

(IV) Antipsychotic Medications measures shall be calculated consistent with the methodology described in the CMS Five Star Nursing Home Quality Rating System.

(ii) Infection Prevention measures shall be calculated based on the rate of urinary tract infections among patients consistent with the methodology described in the CMS Five Star Nursing Home Quality Rating System.

2. Performance benchmarks for each of the Clinical Performance measures shall be established in consultation with THCA, and with input from other NF stakeholders, including individuals receiving services and their family members and representatives. These criteria shall be provided to NFs and posted on the TennCare website no later than two (2) months prior to implementation of the reimbursement system.

(e) In addition to the one hundred (100) possible quality performance points that a NF may score in the areas described in Subparagraphs (a), (b), (c) and (d) above, a NF may also earn ten (10) bonus points for qualifying awards and/or accreditations that evidence the facility's commitment to quality improvement processes. Qualifying awards or accreditations must be current in the review period and are restricted to the following:

1. Full participation in the National Nursing Home Quality Improvement Campaign, which must be active during the period in which bonus points are sought.

2. Membership in Eden Registry, which must be active during the period in which bonus points are sought.

3. Achievement of the Malcolm Baldrige Quality Award. This includes AHCA Award (Bronze, Silver, or Gold) and the TN Center for Performance Excellence Award (Level 2, 3, or 4, which correspond with the Commitment Award, Achievement Award, and Excellence Award; the Level 1 Interest Award is specifically excluded from points). Any such award must have been achieved within the three (3) years prior to the end of the period in which bonus points are sought.

4. Accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARE).

5. Accreditation by the Joint Commission.

(5) A NF shall be eligible to receive the quality-based component of the per diem payment for NF services only if it has fully satisfied the following threshold measures:

(a) The facility must be current on its payment of the NF Assessment Fee. Anytime a facility is more than 60 days delinquent on its NF Assessment Fee, the quality-based component of the per-diem payment for NF services shall be suspended, and the facility shall forfeit any quality-based component of its per diem reimbursement rate until such time that the NF is current on its Assessment Fee payments.

(b) The facility has submitted complete, accurate and timely quality measurement data as required by TennCare in order to determine the NF's quality performance.

1. Except as otherwise specified by TennCare, quality measurement data shall be submitted by the NF on an annual basis. Where possible and appropriate, TennCare will utilize existing data sources to minimize administrative burden.

2. The data measurement period shall be January 1 through December 31 of each year, which shall be used to inform the quality-based component of the per diem payment for the fiscal year beginning July 1 immediately after.

3. A NF shall not be entitled to a quality-based component of the per diem payment for any NF services provided if the facility has not complied with quality performance reporting requirements, or if the facility knowingly submits, or causes or allows to be submitted any such data used for purposes of setting quality-based rate components that is determined (including upon post-payment audit or review) to be inaccurate or incomplete.

4. Any facility knowingly submitting false (including inaccurate or incomplete) quality performance data for purposes of calculating its Medicaid payment shall be subject to all applicable federal and state laws pertaining to the submission of false claims.

5. For purposes of this subparagraph, the term "knowingly" shall mean that a NF, or any person acting on its behalf: (a) has or should have, upon exercise of due diligence, actual knowledge of the information; (b) acts in deliberate ignorance of the truth or falsity of the information; or (c) acts in reckless disregard of the truth or falsity of the information. No proof of specific intent is required.

(6) Based on quality incentive program scoring a NF will be placed into one of three quality tiers. The quality tier cut points may only be updated for the July 1 rate setting of a rebase period. For the July 1, 2018, rate effective date, the quality tier cut points will be as follows:

Quality Tier	Cut Point Range
Quality Tier 1	75 - 100
Quality Tier 2	50 – 74.99
Quality Tier 3	0 – 49.99

(7) A NF's quality tier and quality incentive program score will be established for each July 1 rate setting. The quality tier and quality incentive program score will be based on the quality incentive program measurement

period for the calendar year period immediately preceding the applicable July 1 rate setting.

(8) A NFs quality incentive program score is based on the point structure previously described in this rule. As quality data is collected throughout the quality incentive program measurement period, the following score weighting will be applied to the varying metric collection intervals:

(a) Quality incentive program scoring metrics that are annual in nature will not be weighted.

(b) Quality incentive program scoring metrics that are semi-annual in nature will be weighted as follows:

1. 2/3rds weight for the most recent six month period.

2. 1/3rd weight for the first six month period.

(c) Quality incentive program scoring metrics that are quarterly in nature will be weighted as follows:

1. 50% weight for the fourth quarter of the calendar year.

2. 25% weight for the third quarter of the calendar year.

3. 15% weight for the second quarter of the calendar year.

4. 10% weight for the first quarter of the calendar year.

(d) For any metric collection period, regardless of collection interval, in which the final period is not the highest scoring period, the NF provider's quality incentive program scoring metrics will use the metric weighting method below that results in the greatest overall quality incentive program score:

1. The quality incentive program scoring metric weighting methods previously described in this paragraph.

2. A Quality incentive program scoring metric weighting method that equally weights all metric collection periods, regardless of collection interval.

(9) Confidentiality of Submitted Quality Information. Any submissions by any facility relating to documentation of and participation in the Quality-based Component of the Reimbursement Methodology for Nursing Facilities pursuant to Rule .11 shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena or admission into evidence in any judicial or administrative proceeding. However, nothing in this rule shall not be construed to make immune from discovery or use in any judicial or administrative proceeding information, record, or documents that are otherwise available from original sources kept in the facility, and would otherwise be available to a litigant through discovered requested from the Facility. The confidentiality provisions of this paragraph shall also not apply to any judicial or administrative proceeding contesting the determination of TennCare regarding the Facility's quality component reimbursement.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.12 Enhanced Respiratory Care Services Add-On Payment.

(1) ERC Reimbursement in a dual certified and licensed SNF/NF shall be made only by TennCare MCOs in compliance with this Chapter and rates established by TennCare.

(2) Each level of ERC Reimbursement shall be an add-on payment to the NF's established per diem rate. The amount of the NF's add-on payment for each of the specified levels of reimbursement shall be based on the facility's performance on quality outcome and technology measures pursuant to a methodology established by TennCare and set forth in an ERC Operations Manual which shall be provided to NFs and posted on the TennCare website. Quality outcome and technology measures, performance benchmarks, and the methodology to apply such measures and performance benchmarks to each of the specified levels of ERC Reimbursement shall be adjusted no more frequently than annually in order to continuously improve the quality of care and quality of life outcomes experienced by individuals receiving ERC in a NF.

(3) ERC Reimbursement shall be provided only for services authorized and delivered in a facility operating in compliance with conditions of reimbursement for ERC specified in this chapter, and in a bed specifically licensed for such purpose, as applicable. A NF shall not be eligible for ERC Reimbursement if it does not meet the conditions for reimbursement, or for any ERC services provided in excess of the facility's licensed capacity to provide such services, regardless of payer source. Because Sub-Acute Tracheal Suctioning Reimbursement provides for intensive respiratory intervention during the period immediately following a person's liberation from the ventilator, Sub-Acute Tracheal Suctioning Reimbursement shall be provided only in a bed specifically licensed for ventilator care.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.13 Appeals Process. Appeals of recoupment or withhold actions shall be filed and conducted according to Chapter 1200-13-18.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.14 Audit and Review Authority. TennCare maintains the right to audit or review all aspects of the case mix reimbursement system. Findings or adjustments generated from the audit or review may be used to adjust current or future NF provider reimbursement rates. The following are common aspects of the case mix reimbursement system that are subject to an audit or review process:

(1) NF provider MDS assessments, end-of-therapy date reconciliation submissions, and associated supporting documentation.

(2) NF Provider quality incentive program add-on payment and supporting documentation.

(3) ERC services add-on payment and supporting documentation.

(4) NF provider submitted Medicare and Medicaid cost reports and supporting documentation.

(5) New NF provider submitted documentation.

(6) CHOW NF Provider submitted documentation.

(7) NF provider submitted FRV updates, licensed bed totals, and requests for reappraisal.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.15 Penalties, Adjustments, and Withholding.

(1) NF providers may be subject to penalties, cost report adjustments, and payment withholdings for:

(a) Disclaimed Cost Reports.

(b) Cost Report Delinquent Filing.

(c) Cost Report Non-Filer.

(d) Final (Terminating) Cost Report.

(2) Disclaimed Cost Reports. A provider who has a disclaimed cost report will have its Medicare and Medicaid supplemental cost reports adjusted for use in the provider's specific reimbursement rate. These cost report adjustments may include, but are not limited to the following:

(a) Adjusting costs without sufficient documentation to zero.

(b) Adjusting total resident days to one hundred percent (100%) occupancy, and reconciling Medicaid's portion of those days to paid claims records.

(c) The direct care spending floor adjustment, as defined in Rule .06, will be calculated utilizing the adjusted cost report.

(3) Cost Report Delinquent Filing.

(a) A cost report will be considered delinquent if an acceptable cost reporting package has not been filed within the timelines specified in Rule .05. The NF provider will be subject to a penalty of ten dollars ($10) per day for each day the NF is not in compliance.

(b) Should the NF provider file a cost report that is received timely and initially accepted by the Comptroller, but upon further review by the Comptroller is determined to not be an acceptable cost report, the following will occur:

1. The Comptroller will provide written notice to the NF provider that an acceptable cost report has not been filed.

2. The NF provider will have thirty (30) days from receipt of the written notice to correct any issues noted and file an acceptable cost report.

3. If the NF provider does not file a corrected acceptable cost report within thirty (30) days of notice, it will be subjected to the penalty outlined in this paragraph from the date of the received written notice.

(4) Cost Report Non-Filer.

(a) A NF provider will be considered a cost report non-filer if its cost report is delinquent as of February 1 prior to the July 1 rate rebase in which it would have been used regardless if rebase actually occurs. A NF provider that is considered a cost report non-filer will have its reimbursement rates adjusted to be set equal to the lowest rate of any other active NF provider. The rate adjustments will commence with the July 1 rate setting following the NF provider obtaining a cost report non-filer status, and remain in effect for a minimum of one (1) year. The non-filer reimbursement rate will be determined using NF provider reimbursement rates prior to phase-in considerations. Reimbursement rate phase-in provisions established in Rule .06 are not applicable to the non-filer reimbursement rates.

(b) TennCare maintains the right to grant a waiver from the application of a portion or all of the rate and direct care spending floor adjustments should certain extenuating circumstances exist with the NF provider. TennCare must be contacted by the NF provider prior to the initial cost report filing deadline, for a waiver to be considered by TennCare.

(5) Final (Terminating) Cost Report. A NF provider is required to submit a final cost report as defined in Rule .05, and will be subject to a withholding of up to ten percent (10%) of the previous owner's final Medicaid recipient payments until an acceptable terminating cost report is received by the Comptroller. After receipt of the acceptable cost report, whether timely or non-timely, the withholding amount will be released to the facility (less any incurred penalties for non-timely filing).

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109, 71-5-130 and 71-5-1413.

1200-13-02-.16 Bed holds. Effective July 1, 2018, Medicaid bed hold days will no longer be reimbursed.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

1200-13-02-.17 Other Reimbursement Issues.

(1) No change of ownership or controlling interest of an existing Medicaid provider, including NFs, can occur until monies as may be owed to TennCare or its contractors are provided for. The purchaser shall notify TennCare of the purchase at the time of ownership change and is financially liable for the outstanding liabilities to TennCare or its contractors for one (1) year from the date of purchase or for one (1) year following TennCare's receipt of the provider's Medicare final notice of program reimbursement, whichever is later. The purchaser shall be entitled to use any means available to it by law to secure and recoup these funds from the selling entity. In addition, purchasers of NFs are responsible for obtaining an accurate accounting and transfer of funds held in trust for Medicaid residents at the time of the change of

ownership or controlling interest.

(2) If TennCare or an MCO has not reimbursed a business for TennCare services provided under the TennCare Program at the time the business is sold, when such an amount is determined, TennCare or the MCO shall be required to reimburse the person owning the business provided such sale included the sale of such assets.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-1413.

Rule Chapter 1200-13-01 TennCare Long-Term Care Programs is amended by deleting Rule 1200-13-01-.03 Nursing Facility (NF) Provider Reimbursement in its entirety and replacing it with the following language: See Chapter 1200-13-02.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE
AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-01
TENNCARE LONG-TERM CARE PROGRAMS

1200-13-01-.03 ~~Nursing Facility (NF) Provider Reimbursement~~ See Chapter 1200-13-02.

~~(1) Definitions. See Rule 1200-13-01-.02.~~

~~(2) Level 1, Level 2, and Enhanced Respiratory Care NF Reimbursement.~~

~~(a) Reimbursement for NF services provided to a Medicaid Eligible member enrolled in the TennCare Program shall be categorized according to the needs of the individual and the level of skilled and/or rehabilitative services required as specified in Rule 1200-13-01-.10.~~

~~(b) Level 2 or Enhanced Respiratory Care NF Reimbursement shall be provided only for beds that are certified by both Medicaid and Medicare for the provision of NF/SNF care.~~

~~(c) Effective July 1, 2016, each level of Enhanced Respiratory Care Reimbursement shall be an add-on payment to the NF's established Level 2 per diem rate or the NF's blended per diem rate, when established. The amount of the NF's add-on payment for each of the specified levels of reimbursement shall be based on the facility's performance on quality outcome and technology measures pursuant to a methodology established by TennCare. Quality outcome and technology measures, performance benchmarks, and the methodology to apply such measures and benchmarks to each of the specified levels of Enhanced Respiratory Care Reimbursement may be adjusted during FY 2016-2017 to ensure compliance with the Appropriations Act, Public Chapter 758, and no more frequently than annually thereafter in order to continuously improve the quality of care and quality of life outcomes experienced by individuals receiving Enhanced Respiratory Care in a NF.~~

~~(d) Enhanced Respiratory Care Reimbursement shall be provided only for services authorized and delivered in a facility operating in compliance with conditions of reimbursement for Enhanced Respiratory Care specified in this rule, and in a bed specifically licensed for such purpose, as applicable. A NF shall not be eligible for Enhanced Respiratory Care Reimbursement if it does not meet the conditions for reimbursement, or for any Enhanced Respiratory Care services provided in excess of the facility's licensed capacity to provide such services, regardless of payer source. Because Sub-Acute Tracheal Suctioning Reimbursement provides for intensive respiratory intervention during the period immediately following a person's liberation from the ventilator, Sub-Acute Tracheal Suctioning Reimbursement shall be provided only in a bed specifically licensed for ventilator care.~~

~~(e) A NF shall be eligible for Enhanced Respiratory Care Reimbursement only if the facility has submitted complete, accurate and timely quality measurement data as required by TennCare in order to determine the NF's quality performance.~~

~~1. Quality measurement data shall be submitted by the NF on a monthly basis.~~

2. A NF's add-on per diem payment for each specified level of Enhanced Respiratory Care Reimbursement provided for NF services shall be adjusted based on the NF's quality performance no more frequently than semi-annually.

3. A NF shall not be entitled to Enhanced Respiratory Care Reimbursement for any NF services provided if the facility has not complied with quality performance reporting requirements, or if any such data is determined (including upon post-payment audit or review) to be inaccurate or incomplete.

4. Any facility submitting false (including inaccurate or incomplete) quality performance data for purposes of Medicaid payment shall be subject to all applicable federal and state laws pertaining to the submission of false claims.

(3) Conditions for Reimbursement of Level 1 NF Care.

(a) A Level 1 NF must enter into a provider agreement with the Bureau or, upon implementation of CHOICES in the Grand Division, one or more TennCare MCOs, for reimbursement of Level 1 NF services.

(b) A Level 1 NF must be certified by the Tennessee Department of Health, showing that it has met the standards set out in 42 C.F.R., Part 442.

(c) NFs reimbursed for Level 1 NF services participating in TennCare shall be terminated as a TennCare provider if certification or licensure is canceled by CMS or the State.

(d) If the resident has resources to apply toward payment, including Patient Liability as determined by DHS, or TPL, which may include LTC insurance benefits, the payment for NF services shall be the NF's per diem rate for the applicable level of NF reimbursement authorized minus the resident's available resources.

(e) Payments for residents requiring reimbursement for Level 1 NF Services shall not exceed per diem costs or charges, whichever is less.

(f) Regardless of the reimbursement rate established for a Level 1 NF, no Level 1 NF may charge TennCare Enrollees an amount greater than the amount per day charge to private paying patients for equivalent accommodations and services.

(g) Personal laundry services in a Level 1 NF shall be considered a covered service and included in the per diem rate. TennCare Enrollees may not be charged for personal laundry services.

(4) Conditions for Reimbursement of Level 2 NF Care.

(a) A Level 2 NF must enter into a provider agreement with the Bureau, or, upon implementation of CHOICES in the Grand Division, one or more TennCare MCOs, for reimbursement of Level 2 NF services.

(b) Level 2 NFs (Medicare SNFs and TennCare NFs receiving reimbursement for Level 2 NF care) must be certified by Medicare, showing they have met the federal certification standards. Any of these NFs participating in TennCare shall be terminated as a TennCare provider if certification or licensure is canceled by CMS or the State.

(c) If the resident has available resources to apply toward payment, including Patient Liability as determined by DHS, or TPL, which may include LTC insurance benefits, the payment for NF services shall be the NF's per diem rate for the applicable level of NF reimbursement authorized minus the resident's available resources.

(d) If the Level 2 NF (upon submission of a cost report and a desk review or examination of its cost), has collected on a per diem basis during the period covered by the cost report and examination, more than cost reimbursement allowed, the Level 2 NF shall be required to reimburse the State for that portion of the reimbursement collected in excess of the actual recorded and examined cost.

(e) Regardless of the reimbursement rate established for a Level 2 NF, no Level 2 NF may charge TennCare Enrollees an amount greater than the amount per day charged to private paying patients for equivalent accommodations and services.

(5) Conditions for Enhanced Respiratory Care Reimbursement.

(a) The Level 2 NF must enter into a provider agreement with one or more TennCare MCOs for the provision and reimbursement of ERC in a dual certified and licensed NF/SNF.

1. A TennCare MCO shall, pursuant to T.C.A. § 71-5-1412, as amended, contract with any nursing facility for the provision of Medicaid NF services, but shall not be obligated to reimburse any NF for Enhanced Respiratory Care.

2. Unless an exception is granted, a TennCare MCO shall not reimburse any NF for Enhanced Respiratory Care unless such NF was contracted by the MCO for Enhanced Respiratory Care Reimbursement as of July 1, 2016. An MCO may request an exception from TennCare to the moratorium on reimbursement for Enhanced Respiratory Care upon the MCO's demonstration of the need for additional capacity or improved quality in the geographic area in which the NF is located, and the NF's compliance with all applicable conditions of Enhanced Respiratory Care Reimbursement specified in this paragraph.

(b) NFs providing Enhanced Respiratory Care services must be dual certified for the provision of Medicare SNF and Medicaid NF services, showing they have met the federal certification standards. Any NF participating in the TennCare Program shall be terminated by all TennCare MCOs as a TennCare provider if certification or licensure is terminated by CMS or the State.

(c) NFs providing Ventilator Weaning or Chronic Ventilator Care services and NFs receiving short-term reimbursement at the Sub-Acute Tracheal Suctioning rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention, shall meet or exceed the following minimum standards:

1. The NF shall ensure that medical direction of all Ventilator Weaning, Chronic Ventilator Care, and Sub-Acute Tracheal Suctioning services is provided by a physician licensed to practice in the State of Tennessee and board certified in pulmonary disease or critical care medicine as recognized by either the American Board of Medical Specialties or American Osteopathic Association, as applicable.

2. A licensed respiratory care practitioner as defined by T.C.A. § 63-27-102, shall be on site in the ventilator care unit twenty four (24) hours per day, seven (7) days per week to provide:

(i) Ventilator care;

(ii) Administration of medical gases;

(iii) Administration of aerosol medications; and

(iv) Diagnostic testing and monitoring of life support systems.

3. The NF shall ensure that an appropriate individualized POC is prepared for each resident receiving Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning. The POC shall be developed with input and participation from the medical director of the NF's Enhanced Respiratory Care program as described in Part 1.

4. The NF shall establish admissions criteria to ensure the medical stability of ventilator-dependent residents prior to transfer from an acute care setting. The NF shall maintain documentation regarding the clinical evaluation of each resident who will receive Enhanced Respiratory Care for appropriateness of placement in the facility prior to admission.

5. End tidal carbon dioxide (etCO2) or transcutaneous monitoring of carbon dioxide and oxygen (tcCO2) and continuous pulse oximetry measurements shall be available for all residents receiving Chronic Ventilator Care and provided based on the needs of each resident. For residents receiving Ventilator Weaning or Sub-Acute Tracheal Suctioning, continuous pulse oximetry shall be provided, and end tidal Carbon Dioxide (etCO2) measurements shall be provided no less than every four (4) hours, and within one (1) hour following all vent parameter changes, or for residents receiving Sub-Acute Tracheal Suctioning, after all tracheostomy tube changes, tracheostomy capping trials, or the use of speaking devices.

6. An audible, redundant external alarm system shall be connected to emergency power and/or battery back-up and located outside the room of each resident who is ventilator-dependent for the purpose of alerting staff of resident ventilator circuit disconnection or ventilator failure.

7. Ventilator equipment (and ideally physiologic monitoring equipment) shall be connected to back-up generator power via clearly marked wall outlets.

8. Ventilators shall be equipped with adequate back-up provisions, including:

(i) Internal and/or external battery back-up systems to provide a minimum of eight (8) hours of power;

(ii) Sufficient emergency oxygen delivery devices (i.e., compressed gas or battery operated concentrators);

(iii) At least one (1) battery operated suction device available per every eight (8) residents on mechanical ventilator or with a tracheostomy; and

(iv) A minimum of one (1) patient-ready back-up ventilator which shall be available in the facility at all times.

9. The NF shall be equipped with current ventilator technology to encourage and enable maximum mobility and comfort, ideally weighing less than fifteen (15) pounds with various mounting options for portability (e.g., wheelchair, bedside table, or backpack).

10. The facility shall have an emergency preparedness plan specific to residents receiving Enhanced Respiratory Care (i.e., Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning) which shall specifically address total power failures (loss of power and generator), as well as other emergency circumstances.

11. The facility shall have a written training program, including an annual demonstration of competencies, for all staff caring for residents receiving Enhanced Respiratory Care (i.e., Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning), which shall include alarm response, positioning and transfers, care within licensure scope, and rescue breathing.

(d) A NF contracted with one or more TennCare MCOs to receive Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning Reimbursement must be operating in compliance with Department of Health Rule 1200-08-06-.06(12) in order to be eligible for Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning Reimbursement. In addition, the NF shall provide attestation of its compliance with each of the requirements specified in Subparagraph (c) or shall submit a plan of correction regarding how it will achieve compliance with any condition not currently specified in Rule 1200-08-06-.06(12) no later than January 1, 2017, and shall maintain compliance on a continuous basis thereafter. As of January 1, 2017, a NF must be operating in compliance with all of the conditions specified in Subparagraph (c) in order to be eligible for Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning Reimbursement.

(e) The standards set forth in Subparagraph (c) are not applicable for Secretion Management Tracheal Suctioning Reimbursement; however, the NF must meet standards specified in Subparagraph (f) below for Secretion Management Tracheal Suctioning Reimbursement.

(f) A NF contracted with one or more TennCare MCOs to receive only Secretion Management Tracheal Suctioning Reimbursement shall meet or exceed the following minimum standards:

1. A licensed respiratory care practitioner as defined by T.C.A. § 63-27-102, shall be on site a minimum of weekly to provide:

   (i) Clinical Assessment of each resident receiving Secretion Management Tracheal Suctioning (including Pulse Oximetry measurements);

   (ii) Evaluation of appropriate humidification;

   (iii) Tracheostomy site and neck skin assessment;

   (iv) Care plan updates; and

   (v) Ongoing education and training on patient assessment, equipment and treatment.

2. The NF shall ensure that an appropriate individualized POC is prepared for each resident receiving Secretion Management Tracheal Suctioning. The POC shall be developed with input and participation from a licensed respiratory care practitioner as defined by T.C.A. § 63-27-102. Medical direction, including POC development and oversight for persons receiving Sub-Acute Tracheal Suctioning shall be conducted in accordance with Subparagraph (c).

3. The NF shall establish admissions criteria which meet the standard of care to ensure the medical stability of residents who will receive Secretion Management Tracheal Suctioning prior to transfer from an acute care setting. The NF shall maintain pre-admission documentation regarding the clinical evaluation of each resident who will receive Secretion Management Tracheal Suctioning for appropriateness of placement in the facility.

4. Pulse oximetry measurements shall be provided at least daily with continuous monitoring available, based on the needs of each resident. For any resident being weaned from the tracheostomy, the following shall be provided:

(i) Continuous pulse oximetry monitoring; and

(ii) End tidal Carbon Dioxide (etCO2) measurements at least every four (4) hours and within one (1) hour following tracheostomy tube changes, tracheostomy capping trials, or the use of speaking devices. Transcutaneous (tcCO2) shall not be appropriate for intermittent monitoring.

5. Mechanical airway clearance devices and/or heated high flow molecular humidification via the tracheostomy shall also be available for secretion management, as appropriate for the needs of each resident.

6. Oxygen equipment shall be connected to back-up generator power via clearly marked wall outlets.

7. Adequate back-up provisions shall be in place including:

(i) Sufficient emergency oxygen delivery devices (i.e. compressed gas or battery operated concentrators); and

(ii) At least one (1) battery operated suction device available per every eight (8) residents on mechanical ventilation or with a tracheostomy.

8. The facility shall have an emergency preparedness plan specific to residents receiving Secretion Management Tracheal Suctioning which shall specifically address total power failures (loss of power and generator), as well as other emergency circumstances.

9. The facility shall have a written training program, including an annual demonstration of competencies, for all staff caring for residents receiving Secretion Management Tracheal Suctioning which shall include alarm response, positioning and transfers, care within licensure scope, and rescue breathing.

(g) When a NF establishes a "Tracheostomy Unit" by accepting Tracheal Suctioning Reimbursement, including Sub-Acute and Secretion Management, for more than three (3) residents on the same day the licensed respiratory care practitioner described in Part (f)1 shall be on site a minimum of daily for assessment, care management, and care planning of residents receiving Tracheal Suctioning.

(h) A NF contracted with one or more TennCare MCOs to receive Secretion Management Tracheal Suctioning Reimbursement shall provide attestation of its compliance with each of the requirements specified in Subparagraph (f) or shall submit a plan of correction regarding how it will achieve compliance no later than January 1, 2017, and shall maintain compliance on a continuous basis thereafter. As of January 1, 2017, a NF must be operating in compliance with all of the conditions specified in

Subparagraph (f) in order to be eligible for Secretion Management Tracheal Suctioning Reimbursement.

(i) Eligibility for and access to ERC services by individuals from out of state is governed by 42 C.F.R. § 435.403. A NF shall not recruit individuals from other states to receive Enhanced Respiratory Care in Tennessee. A NF shall not be eligible to receive TennCare reimbursement for Enhanced Respiratory Care services for a resident placed by another state or any agency acting on behalf of another state in making the placement because such services are not available in the individual's current state of residence, including residents admitted to the NF/SNF under the Medicare Skilled Nursing Facility care benefit when such benefit has been exhausted. The NF shall be responsible for arranging, prior to the resident's admission to the facility, Medicaid reimbursement for Enhanced Respiratory Care services from the Medicaid Agency of the state which placed the resident and which will commence when other payment sources (e.g., Medicare, private pay, but not TennCare) have been exhausted.

(6) Reimbursement methodology for Level 1 Care.

(a) A Level 1 NF shall be reimbursed on the lowest of the following:

1. Allowable cost;

2. Allowable charges;

3. An amount representing the sixty-fifth (65th) percentile of all such NFs or beds, whichever is lower, participating in the Level 1 Medicaid NF Program. In determining the sixty-fifth (65th) percentile for purposes of this part, each provider's most recently filed and reviewed cost report shall be inflated from the mid-point of the provider's cost reporting period to the mid-point of the State's payment period. The trending factor shall be computed for NFs that have submitted cost reports covering at least six (6) months of program operations. For NFs that have submitted cost reports covering at least three (3) full years of program participation, the trending factor shall be the average cost increase over the three (3) year period, limited to the seventy-fifth (75th) percentile trending factor of NFs participating for at least three (3) years. Negative averages shall be considered zero (0). For NFs that have not completed three (3) full years in the program, the one (1) year trending factor shall be the fiftieth (50th) percentile trending factor of NFs participating in the program for at least three (3) years. For NFs that have failed to file timely cost reports, the trending factor shall be zero (0);

4. An amount representing the reimbursable cost of the sixty-fifth (65th) percentile of NFs or beds, whichever is lower, participating in the NF Level 1 Program. In determining the sixty-fifth (65th) percentile ceiling for purposes of this part, operating costs from each provider's most recently filed and reviewed cost report will be inflated from the mid-point of the provider's cost reporting period to the mid-point of the state's payment period. The inflation factor shall be as described in Part 3. above. Capital-related costs are not subject to indexing. Capital-related costs are property, depreciation, and amortization expenses included in Section F.18 and F.19 of the NF Cost Report Form. All other costs, including home office costs and management fees, are operating costs. No inflation factor will be allowed for providers not filing timely cost reports. For providers in the program less than three (3) years, the inflation factor shall be the fiftieth (50th) percentile of allowable inflation factors for providers participating in the program for at least three (3) years. Budgeted cost reports receive no inflation allowance; or

5. For State Fiscal Year 1997-98, the budgeted amount for Level 1 and Level 2 care of $672,040,000. For State Fiscal Year 1998-99, the budgeted amount for Level 1 and Level 2 care of $705,642,000. For State Fiscal Year 1999-2000 and subsequent years, a proportional share of expenditures not to exceed the amount budgeted by the State for NF reimbursement. Expenditures shall be monitored throughout each year to determine if rate adjustments are necessary to assure that each LOC is within the budgeted amount.

6. To assure the proper application of Part 5. above, the Comptroller's Office shall be authorized to adjust per-diem rates up or down as necessary during the year.

7. The annual NF tax shall be passed through as an allowable cost, but shall be excluded for purposes of computing the inflation allowance and cost-containment incentive. The NF tax shall not be subject to the sixty-fifth (65th) percentile limits but is subject to the limit specified in Rule 1200-13-01-.03(6)(a)5.

8. If the resident has no available resources to apply toward payment, the Medicaid payment is the lower of per-diem cost, charges, or the sixty-fifth (65th) percentile of all such NFs or beds participating in the Medicaid Program, whichever is less. Cost is determined on a facility-by-facility basis.

9. The cost report closing date for determination of the Level 1 sixty-fifth (65th) percentile shall be the first working day of the month preceding the month in which the recomputed sixty-fifth (65th) percentile is effective. All clean cost reports received by the Comptroller's Office on or before the closing date shall be included in the determination of the sixty-fifth (65th) percentile ceiling. A clean cost report is one upon which rates may be set without additional communication from the provider. Home office cost reports must be filed before any individual NF cost reports included in a chain can be processed.

(b) Costs for supplies and other items billed, including any NF staff required to deliver the service, which are billed to Medicare Part B on behalf of all patients must be included as a reduction to reimbursable expenses in Section G of the NF cost report.

(c) Once a per-diem rate is determined from a clean cost report, the rate will not be changed until the next ceiling redetermination except for audit adjustments, correction of errors, or termination of a budgeted rate, or as necessary to comply with Rule 1200-13-01-.03(6)(a)5.

(7) Reimbursement Methodology for Level 2 Care.

(a) A Level 2 NF shall be reimbursed on the lowest of the following:

1. Allowable costs;

2. Allowable charges;

3. An amount representing the reimbursable cost of the sixty-fifth (65th) percentile of all such NFs or beds, whichever is lower, participating in the Level 2 Medicaid NF Program. In determining the sixty-fifth (65th) percentile for purposes of this part, each provider's most recently filed and reviewed cost report shall be inflated from the mid-point of the provider's cost reporting period to the mid-point of the Bureau's payment period. The trending factor shall be computed for NFs that have submitted cost reports covering at least six (6) months of program operations. For NFs that have submitted cost reports covering at least three (3)

~~full years of program participation, the trending factor shall be the average cost increase over the three (3) year period, limited to the seventy-fifth (75th) percentile trending factor of NFs participating for at least three (3) years. Negative averages shall be considered zero (0). For NFs that have not completed three (3) full years in the program, the one (1) year trending factor shall be the fiftieth (50th) percentile trending factor of NFs participating in the program for at least three (3) years. For NFs that have failed to file timely cost reports, the trending factor shall be zero (0);~~

~~4. A prospective amount representing the reimbursable cost of the sixty-fifth (65th) percentile of NFs or beds, whichever is lower, participating in the NF Level 2 Program. In determining the sixty-fifth (65th) percentile ceiling for purposes of this part, operating costs from each provider's most recently filed and reviewed cost report will be inflated from the midpoint of the provider's cost reporting period to the mid-point of the Bureau's payment period. The inflation factor shall be as described in Part 3. above. Capital-related costs are not subject to indexing. Operating and capital-related costs are as specified on Worksheet B of the Medicare SNF cost report form. Budgeted cost reports receive no inflation allowance; or~~

~~5. For State Fiscal Year 1997-98, the budgeted amount for Level 1 and Level 2 care of $672,040,000. For State Fiscal Year 1998-99, the budgeted amount for Level 1 and Level 2 care of $705,642,000. For State Fiscal Year 1999-2000 and subsequent years, a proportional share of expenditures not to exceed the amount budgeted by the State for NF reimbursement. Expenditures shall be monitored throughout each year to determine if rate adjustments are necessary to assure that each LOC is within the budgeted amount.~~

~~6. To assure the proper application of Part 5. above, the Comptroller's Office shall be authorized to adjust per-diem rates up or down as necessary during the year.~~

~~7. The cost report closing date for determination of the Level 2 sixty-fifth (65th) percentile shall be the first working day of the month preceding the month in which the recomputed sixty-fifth (65th) percentile is effective. All clean cost reports received by the Comptroller's Office on or before the closing date shall be included in the determination of the sixty-fifth (65th) percentile. A clean cost report is one upon which rates may be set without additional communication from the provider. Home office cost reports must be filed before any individual NF cost reports included in a chain can be processed.~~

~~8. The annual NF tax shall be passed through as an allowable cost, but shall be excluded for purposes of computing the inflation allowance and cost-containment incentive. The NF tax shall not be subject to the sixty-fifth (65th) percentile limits but is subject to the limit specified in Rule 1200-13-01-.03(7)(a)5.~~

~~9. Once a per-diem rate is determined from a clean cost report, the rate shall not be changed until the next ceiling redetermination except for audit adjustments, correction of errors, or termination of a budgeted rate, or as necessary to comply with Rule 1200-13-01-.03(7)(a)5.~~

~~10. If the resident has no available resources to apply toward payment, the Medicaid payment is the lower of per-diem cost, charges, or the sixty-fifth (65th) percentile of beds or NFs, whichever is lower, participating in the Medicaid Program. Cost is determined on a facility by facility basis.~~

(b) Medicare Part B charges, including any facility staff required to deliver the service, are non-allowable in calculating Medicaid Level 2 NF reimbursement.

(8) Enhanced Respiratory Care Reimbursement in a dual certified and licensed NF/SNF shall be made only by TennCare MCOs in accordance with this Chapter and rates established by the Bureau. Effective July 1, 2016, each level of Enhanced Respiratory Care Reimbursement shall be an add-on payment to the NF's established Level 2 per diem rate or the NF's blended per diem rate, when established. The amount of the NF's add-on payment for each of the specified levels of reimbursement shall be based on the facility's performance on quality outcome and technology measures pursuant to a methodology established by TennCare. Quality outcome and technology measures, performance benchmarks, and the methodology to apply such measures and benchmarks to each of the specified levels of Enhanced Respiratory Care Reimbursement may be adjusted during FY 2016-2017 to ensure compliance with the Appropriations Act, Public Chapter 758, and no more frequently than annually thereafter in order to continuously improve the quality of care and quality of life outcomes experienced by individuals receiving Enhanced Respiratory Care in a NF.

(9) Bed holds. A Level 1 NF shall be reimbursed for a resident's bed in the NF during the resident's temporary absence from the NF as follows:

(a) Reimbursement shall be made for up to a total of ten (10) days per State fiscal year while the resident is hospitalized or absent from the NF on therapeutic leave. The following conditions must be met in order for a bed hold reimbursement to be made:

1. The resident intends to return to the NF.

2. For hospital leave days:

(i) Each period of hospitalization is physician ordered and so documented in the resident's medical record in the NF; and

(ii) The hospital provides a discharge plan for the resident.

3. Therapeutic leave days, when the resident is absent from the NF on a therapeutic home visit or other therapeutic absence, are provided pursuant to a physician's order.

4. At least eighty-five percent (85%) of all other beds in the NF are occupied at the time of the hospital admission or therapeutic absence. An occupied bed is one that is actually being used by a resident. Beds being held for other residents while they are hospitalized or otherwise absent from the facility are not considered to be occupied beds for purposes of this calculation. Computations of occupancy percentages will be rounded to the nearest percentage point.

(b) NFs shall not be reimbursed for holding a bed for a person receiving Level 2 NF or Enhanced Respiratory Care reimbursement during his temporary absence from the NF.

(10) Other Reimbursement Issues.

(a) No change of ownership or controlling interest of an existing Medicaid provider, including NFs, can occur until monies as may be owed to the Bureau or its contractors are provided for. The purchaser shall notify the Bureau of the purchase at the time of ownership change and is financially liable for the outstanding liabilities to the Bureau or its contractors for one (1) year from the date of purchase or for one (1) year following the Bureau's receipt of the provider's Medicare final notice of program reimbursement, whichever is later. The purchaser shall be entitled to use any means available to it by

~~law to secure and recoup these funds from the selling entity. In addition, purchasers of NFs are responsible for obtaining an accurate accounting and transfer of funds held in trust for Medicaid residents at the time of the change of ownership or controlling interest.~~

~~(b) If the Bureau or an MCO has not reimbursed a business for TennCare services provided under the TennCare Program at the time the business is sold, when such an amount is determined, the Bureau or the MCO shall be required to reimburse the person owning the business provided such sale included the sale of such assets.~~

~~(c) When a provider was originally paid within a retrospective payment system that is subject to regular adjustments and the provider disputes the proposed adjustment action, the provider must file with the State not later than thirty (30) days after receipt of the notice informing the provider of the proposed adjustment action, a request for hearing. The provider's right to a hearing shall be deemed waived if a hearing is not requested within thirty (30) days after receipt of the notice.~~

GW10118075redline

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 03/28/2018 (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: 12/2917

Rulemaking Hearing(s) Conducted on: (add more dates). 2/23/18

Date: 3/28/18

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

Subscribed and sworn to before me on: 3/28/18

Notary Public Signature: Patricia Ryan

My commission expires on: 8/17/19

PATRICIA RYAN NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-01 and 1200-13-02

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

4/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 5/1/18

Effective on: 7/30/18

Tre Hargett
Secretary of State

SECRETARY OF STATE
2018 MAY -1 AM 11:16
RECEIVED

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Bureau of Workers' Compensation
SUBJECT:	Claims Handling Standards
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-6-419
EFFECTIVE DATES:	August 2, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules are amendments to existing claims handling standards of the Bureau of Workers' Compensation concerning procedures for handling workers' compensation claims in Tennessee.

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:

Comment: While we are aware of the statutory requirement that adjusting entities maintain an in-state claims office or contract with an in-state adjuster, this is an antiquated requirement that should not be the focus of limited enforcement resources. In-state claims handling is unnecessary and does not benefit injured workers.

Response: Legislation has been proposed to delete this statutory requirement, so the rule has been amended.

Comment: The time frames for filing the First Report of Payment of Compensation (within five business days of the initial payment of benefits) and the Notice of Change or Termination of Compensation Benefits (within one business day of a change or termination of the payment of compensation benefits) are far too short, and more stringent than in any other state.

Response: The bureau agrees in part and, upon review of research of the filing deadlines in other states, the time frame for filing the Notice of Change was changed to five business days.

Comment: TAA has a Worker's Compensation Pool, TENNESSEE AUTOMOTIVE ASSOCIATION SELF-INSURED TRUST (TAASIT) which provides primarily franchised motor vehicle dealers with worker's compensation insurance. TAASIT requests that you exempt their type of pools from the rules proposed by TDLWFD. It is a duplication of regulation and effort in many instances and is unnecessary in this instance.

Response: Self-insured employers and pools are subject to the workers' compensation law and rules. However, under Rule 0800-02-01-.04(3), self-insured employers and pools are exempt from this section, but must file proof of coverage with the Department of Commerce and Insurance in accordance with T.C.A. § 50-6-405 with a copy to the bureau.

Comment: Definition of Adjusting Entity should be modified to avoid conflation of TPA and payor concepts. Definition of Adjuster is too broad and may capture those who do not adjust claims but provide assistance or clerical services to adjusters.

Response: The bureau agrees in part, and the definitions have been amended.

Comment: In 14-.03(4), the filing of the Trading Partner Agreement form is unduly burdensome.

Response: The bureau disagrees that the filing is unduly burdensome.

Comment: In 14-.04 the EDI requirement should apply to the Adjusting Entity and not Adjuster.

Response: The bureau agrees and has made the change.

Comment: In 14-.04(3) this is a hard and fast rule acceptance percentage without taking into consideration the good or bad faith of the entity providing the information. 85% is too high and is dependent entirely on bureau's unilateral evaluation.

Response: The bureau disagrees. The 85% standard is in keeping with what other states do and was based upon a recommendation from the External Committee of representatives from carriers, employers and TPAs that was organized by the bureau prior to the drafting of these amended rules. Utah has an 85% standard. NY has a 90% standard. Virginia has a 90% goal.

Comment: In 14-.04(5), the Notice of Reported Injury and Beginner's Guide by mail introduces significant costs.

Response: The bureau agrees. A link will be provided for electronic access.

Comment: In 14-.04 (6) and (7), one business day to provide notice of denial, 5 business days to provide notice of first report of compensation to bureau, one business day to provide notice of change or termination is unreasonable. Also, sending non-EDI version of denial within time period is unreasonable.

Response: The bureau disagrees. Form filings with the Bureau must be done electronically. Time should not be an issue. Carriers must file the First Report of Injury within one day, so it should not create a problem to file a notice of denial within five days. There are 15 days to investigate. This rule only requires a carrier to electronically notify the bureau a day after they have completed their investigation and made their decision. Payments are not due until 15 days after disability begins. It should not be difficult to electronically notify within five days of ordering a check to be issued. Requiring carriers to notify injured employees at the same time that they notify the bureau is logical.

Comment: In 14-.05(1) sometimes it is not necessary to contact EE on minor, med only claims.

Response: The bureau agrees and the rule has been amended.

Comment: In 14-.05(3), delete as unnecessary. Many times the EE doesn't care who adjusts the claim and it has no impact on the ability to receive benefits, so long as phone number and mailing address do not change.

Response: The bureau disagrees. There have been many complaints from employees and from the general assembly about changes in the adjuster, not knowing who to contact, unable to reach anyone, etc.

Comment: In 14-.05(4), this introduces unnecessary costs into the system. Adjusting entities should be able to make a good faith determination as to compensability.

Response: The bureau disagrees with the comment regarding unnecessary costs being introduced into the system.

Comment: In 14-.05(5) a general provision like this regarding responding to bureau requests with penalty for non-responses may be denial of due process.

Response: The bureau disagrees and follows the procedures set forth in TCA § 50-6-118 and the bureau's rules for penalty assessments and hearing contested cases.

Comment: In 14-.06(4): No definition of reasonable has been provided for funeral expenses. Suggestion is 30 days of submission of acceptable invoice.

Response: The bureau agrees that 30 days from receipt of invoice is acceptable, and the change has been made.

Comment: In 14-.06(5), suggest the last sentence be deleted.

Response: The bureau agrees and the change has been made.

Comment: In 14-.08(1), fifteen days is too tight, suggestion is 30 days for Final Medical Report.

Response: The bureau agrees and the change has been made.

Comment: In 14-.08(2), 30 days is too tight for adjuster to make offer of settlement. Suggestion is 45 days. Also remove written requirement, as sometimes negotiations are verbal.

Response: The bureau disagrees. Thirty days is sufficient and the written requirement is valid.

Comment: In 14-.09(2), Clarify that SD1/SD2 form is only for settlements, otherwise it's too time consuming and too much paperwork.

Response: The SD1/SD2 is only for settlements.

Comment: In 14-.10, this broad enforcement/monitoring by bureau is inappropriate, especially for adjusting entities that are regulated by the Dept. of Commerce and Insurance.

Response: The bureau disagrees. We consulted with the Dept. of Commerce and Insurance. That department does not regulate the handling of individual claims by insurance adjusters and adjusting entities.

Comment: The proposed rule will significantly increase costs for insurers and TPAs currently maintaining out-of-state claims offices, as they would have to either create a claims office or contract with another adjuster in Tennessee. Increased costs will arise from maintaining multiple claims offices and/or contracting with an adjuster in Tennessee. The proposed rule will also limit a self-insured employer's ability to control which claims office handles its claims, as it may be forced to use a Tennessee claims office. Additionally, the rule does not foster increased efficiency or quality of claims administration. The quality and efficiency of claims administration is not dependent on the geographic location of adjusters and claims managers, considering the immediate and instant access to resources, submission of information, and exchange of written communication. The rule may actually eliminate highly competent claims professions from handling Tennessee claims. The in-state requirement is the biggest concern of her clients, due to excessive costs. Technology has progressed, so being physically present in TN should not be necessary to do a good job. Mediations and hearings could be attended via electronic means.

Response: The in-state claims office requirement is no longer required (PC 709 2018)). The rule has been amended.

Comment: In .06(5) there is concern that the last sentence is intended to address settlements via annuities or not.

Response: The bureau agrees and the sentence has been deleted.

Comment: T.C.A. §50-6-413 requires the workers' compensation insurer or self-insured employer to "maintain a workers' compensation claims office or to contract with a claims adjuster located within the borders of this state." The statute further requires that the claims office or adjuster has authority to commence benefits if so ordered by the Bureau or a court. The statute does not define "claims office" or specify personnel or claims functions to be carried out in the "claims office." The statute does not require that any claims be adjusted from the "claims office" and does not prohibit the adjustment of claims from outside the borders of Tennessee. Likewise, the statute does not require the in-state adjuster to perform any claims functions. There is no requirement for any claims functions to be performed in-state. The only requirement is that the claims office or adjuster has authority to commence temporary total disability benefits and medical benefits if so ordered by the claims coordinator or by a court at a show cause hearing. Importantly, T.C.A. §50-6-413 does not expressly give the Bureau any rulemaking authority to expand or reduce these statutory requirements. T.C.A. §50-6-419 expressly gives the Bureau limited rulemaking authority to set standards governing the adjustment and settlement of claims. Those standards may include, but not limited to, standards governing (1) contact with a employee, (2) processing of claims, and (3) procedures for making an offer of settlement. The agency authority is limited to setting standards governing adjustment and settlement of claims and does not extend to specifying where the claims processing takes place. These rules attempt to create an in-state adjusting requirement for Tennessee workers' compensation claims. This is beyond the scope of T.C.A. §§50-6-413 and 50-6-419. In addition, this is not in the best interests of system stakeholders. The competitive insurance market may be disrupted and policyholders hurt if foreign insurers leave or refuse to enter the Tennessee market because of this unnecessary administrative expense. Domestic insurers are hurt by this requirement if they can no longer use their Tennessee claims office to adjust claims in other jurisdictions due to state reciprocity requirements. Independent in-state adjusters are similarly hurt if they are no longer able to adjust claims in other jurisdictions because of state reciprocity requirements. The proposed in-state adjusting requirement serves no purpose. In general, claims processing takes place in offices with telephones and computers. There is no credible argument that a Nashville injured worker will receive superior claims handling from a claims office 212 miles away in Memphis, TN compared to a claims office 65 miles away in Bowling Green, KY. State borders and location are irrelevant to the quality of the claims handling process. Face-to-face contact with the injured worker is rarely needed in workers' compensation or other lines of property-casualty insurance. To the extent that face-to-face contact is needed, local claims professionals can be retained to perform the in-person services.

Response: The bureau agrees in part as to the lack of requirement for all TN claims to be adjusted from a TN claims office. The bureau does not agree that it is attempting to create an in-state adjusting requirement. That requirement is already in T.C.A. § 50-6-413 and a legislative change would be needed to amend or delete this statutory requirement. Note: The rule has been amended accordingly due to legislation passed (PC 709 (2018)).

Comment: The proposed rule does not provide for a phasing in or grace period from which the adjusting entity would be in compliance. The constitutionality of §50-6-413 is questioned in that it violates Article 1, Section 8, Clause 3 of the U.S. Constitution which gives Congress exclusive powers over interstate commerce. The enforcement of §50-6-413 would directly impact the ability to write business in the State of Tennessee. Carriers may not write enough business in Tennessee to afford an office in this state. Thus, some may be forced to withdraw from writing business in Tennessee altogether. The rules as written provide no mechanism for defining what type of contract would be necessary with an adjuster located within the borders of Tennessee. There is

similarly no definition of what constitutes being within the borders of Tennessee.

Response: The bureau disagrees regarding the constitutionality of T.C.A. 50-6-413, but the rule has been amended due to legislation (PC 709 2018)).

Comment: Proposed 0800-2-14-.02 Definitions... (8) "Claims Office" means a room, set of rooms, or building occupied by an adjuster where the commencement of workers' compensation benefits occurs.
The bureau does not have authority to set standards for a claims office or require that benefits be commenced from a claims office within the state. This definition should be deleted.

Response: The bureau agrees and has deleted this definition.

Comment: Proposed 0800-2-14-.03 General Requirements... (2) Pursuant to T.C.A. §50-6-413, every adjusting entity shall maintain a claims office within the borders of Tennessee or shall be required to contract with an adjuster within the borders of Tennessee....This requirement is not met by an adjusting entity having merely a Tennessee mailing address, post office box or similar receptacle to receive mail that is located within the borders.
The bureau does not have authority to set standards for a claims office or require that benefits be commenced from a claims office within the state. This subsection should be deleted.

Response: The bureau agrees.

Comment: Proposed 0800-2-14-.02 Definitions... (8) "Claims Office" means a room, set of rooms, or building occupied by an adjuster where the commencement of workers' compensation benefits occurs.

Response: The bureau has deleted this definition.

Comment: The bureau does not have authority to set standards for a claims office or require that benefits be commenced from a claims office within the state. This definition should be deleted.

Response: The bureau has deleted this definition.

Comment: The proposed rules include very rigid claims handling deadlines that shift the focus of claims handling to compliance with Bureau deadlines and away from timely return to work and claim resolution. According to Bureau data, (1) the median number of weeks from injury to conclusion has dropped from 85 weeks to 38 weeks, (2) the median number of weeks from date of maximum medical improvement to conclusion has dropped from 29 weeks to 13 weeks, and (3) the median number of weeks of temporary total disability benefits has dropped from 21 weeks to 10 weeks. This is very strong evidence of the effectiveness of the Bureau in implementing the 2013 Reform Act. It is also evidence of the effectiveness of adjusting entities in processing claims under the reforms. As outlined below, the proposed micro-management of the claims process will increase administrative expenses in the workers' compensation system and create inefficiencies and new frictions in the claims handling process. There is no apparent systemic problem in the Tennessee workers' compensation system that these proposals cure.

Response: The bureau agrees in part. While the data shows improvement, there are frequent criticisms communicated to the Governor's office and to the TN General Assembly from injured workers of effects on injured workers affected by the 2013 Reform Act. Public Chapter 803 (2016) which passed the House and Senate in a unanimous vote, was the result of the criticism of the adjusting and case management of workers' compensation claims. The intent of this law, codified in T.C.A. § 50-6-419, was to improve case management and adjustment of workers' compensation claims in Tennessee.

Comment: Proposed 0800-2-14-.05 Claims Handling and Investigation... (1) The adjuster shall make verbal or written contact with the employee within two (2) business days of receiving verbal or written notice of any injury, including those considered to be "medical only".
According to NCCI data, approximately 77.5% of Tennessee workers' compensation claims are "medical only". Insurers typically do not receive notice of "medical only" claims until after the injured worker has received medical care and returned to work. This claims handling requirement will increase the cost of adjusting "medical only" claims and unwisely divert claims resources away from the more serious lost time claims. In addition, the 2-day requirement is arbitrary and impractical. Insurers have no control over the delivery of written communications.

Response: The bureau agrees and has amended this rule.

Comment: Proposed 0800-2-14-.05 Claims Handling and Investigation... (2) Adjusters shall make personal or

telephone contact with the employer within two (2) business days of the notice of the injury to verify details regarding the claim. Most claims are reported to insurers by the employer who provides details regarding the claim at the time of reporting. This subsection potentially requires the insurer to duplicate investigation that took place at the time of reporting. For claims not initially reported by the employer, it frequently takes more than two days to identify and contact the appropriate person with the employer to verify claim details.

Response: The bureau disagrees. This is not a duplication of the investigation. It is to verify important facts. And, identifying the appropriate person with the employer should occur when the claim is reported

Comment: Proposed 0800-2-14-.05 Claims Handling and Investigation... (4) In claims when compensability is questioned, adjusters shall contact all authorized medical providers, or their staff members, who have rendered medical services to an employee within three (3) business days of an initial office visit to investigate details concerning the injury and treatment and make a preliminary compensability determination.

This requirement would be arbitrary and impractical in many claims. Compensability may not be questioned by the insurer until more than three days after an initial office visit. In particular, the insurer may not question compensability of the claim or compensability of part of the claim until receipt and review of the medical report from the medical provider which is typically more than three days after the initial visit. To the extent that the medical narrative adequately addresses the compensability issue, additional contact with the medical provider would be unnecessary and not well-received by the medical provider. The insurer may not know the identity of the medical provider selected by the employer until more than three days after the initial office visit. This mandated level of unnecessary contact with medical providers is likely to have an adverse impact on availability of medical providers to handle Tennessee workers' compensation claims because of the unnecessary friction created by the rule.

Response: The bureau disagrees. The rule is regarding "preliminary compensability determination" meaning that it could change during the course of treatment. Three days on an initial determination is not overly burdensome.

Comment: It is suggested that Workers' Compensation Act be changed to Workers' Compensation Law for consistency with T.C.A. §50-6-101, which specifically states, "This chapter shall be cited to as the 'Workers' Compensation Law'..."

Response: The bureau agrees and has deleted references to the "Act".

Comment: In general, suggested consistency between the use of either T.C.A. or T.C.A. as well as if there is a space after the section symbol or not.

Response: The bureau agrees and the changes have been made to T.C.A. and the spacing has been corrected.

Comment: In definitions, (2) "Adjusting entity" means a trade or professional association, managing general agency, pool, third party administrator and/or insurance company licensed to write workers' compensation insurance in Tennessee and shall also mean a self-insured employer or group self-insured employers possessing a valid certificate of authority from the commissioner of commerce and insurance pursuant to T.C.A § 50-6-405. Suggested to add "and for which adjusters and claims handlers act as their representatives in handling workers' compensation claims" to the end of this definition.

Response: The bureau disagrees that the suggestion would add clarity. The term "claims handlers" is not defined by these rules.

Comment: Rule 0800-02-14-.03. General Requirements.
(3) Each adjusting entity shall designate at least one contact person to serve as a liaison between the entity and the Bureau. The designee must have the ability to provide information about claims assignments, status of payments and contact information for the adjusting entity's adjusters as well as the entity's primary EDI contact. The designee's name, title, direct phone number, email address, and mailing address shall be provided to the Bureau, on a form prescribed by the Bureau, in January of each year and within fifteen (15) calendar days of any change regarding the designee for that entity. Each January and July, the designee shall provide the Bureau, on a form prescribed by the Bureau, with the name(s), direct phone number(s), email address(es), and mailing address(es) for each individual adjuster that is performing duties covered by these Rules. Each separate act of not timely notifying the Bureau of a change in the designee or not timely providing the information required in this subsection regarding adjusters shall constitute a separate violation and may subject the entity to assessment of a civil penalty, per Rule 0800-02- 01-.10, for each separate act.
Suggestion the designee and adjuster information be provided once a year in January, instead of providing

adjuster information twice a year, which is burdensome.

Response: The bureau disagrees that twice per year is unduly burdensome. Once per year in January is not sufficient, given the industry's frequent personnel turnover.

Comment: (4) If an adjusting entity contracts with a trading partner to electronically file transactions with the Bureau on the entity's behalf, or uses a trading partner's software product for electronically sending transactions to the Bureau, a Trading Partner Agreement form, provided by the Bureau, must be fully completed and submitted to the Bureau. The adjusting entity shall remain responsible for the timely filing of transactions required by this rule, processing of acknowledgements, and any penalties and fines that may result from untimely electronic filings. Under the proposed Rules, is an Adjusting Entity going to be required to either contract with or use a Trading Partner's software to electronically file transactions with Bureau?

Response: No, there is no such requirement. This rule begins with "If".

Comment: Rule 0800-02-14-.04. Claims Reporting Requirements. (1) All forms required by these rules must be filed with the Bureau via EDI, unless an electronic form equivalent is specifically allowed or required by the Bureau. Requirements for EDI reporting are posted on the Bureau's website.
In terms of a majority of the claims in our office, we handle claims on behalf of clients through an Adjusting Entity representing self-insurance funds created pursuant to Tennessee Law which only write policies in the State of Tennessee. As such, any requirement the Adjusting Entities with whom we work incur the cost associated with the same is unduly burdensome and costly and such costs may be passed down to the insureds, which is far from ideal.
Suggestion that insureds in self-insurance pools created pursuant to Tennessee Law be exempt from this requirement.

Response: Insureds in self-insurance pools are required to file via EDI today, so this is not a new requirement. Trading Partner Agreements may be of assistance and are authorized in the rules.

Comment: (3)(b) An adjusting entity will be subject to a penalty for any calendar month in which it fails to successfully transmit its documents with at least an 85% acceptance by the Bureau success rate for its filings. The assessment of this penalty will not preclude the assessment of additional penalties outlined in Rules 0800-02-13. How will the Bureau's success rate be calculated?

Response: The rate will be the calculation of rejected submissions as a percentage of total EDI submissions.

Comment: (4)(b) Injuries that result in death or a personal injury of a nature that the injured person did not return to the person's employment within seven (7) calendar days after the occurrence of the injury must be reported no later than fourteen (14) calendar days after the report by an employer of the occurrence of the injury.
Person is not a defined term so should read "employee" or "employee."

Response: The bureau agrees and the change has been made.

Comment: (c) Minor injuries such as scratches, scrapes, paper cuts and/or other injuries treated solely by minor first aid are not required to be reported to the Bureau. More serious injuries such as sprains, strains or bruising must be reported. The current Rules 0800-02-01-.06(1) and (2) requires filing a First Report of Work Injury with the Bureau in the event of any injury or illness. Under the proposed Rule, are we correct in reading this will no longer be required if the injury is minor, even if the employee receives medical treatment? Is "minor first aid" the same as minor medical treatment?

Response: The rule attempts to clarify what minor injuries do not require the filing of a First Report of Injury.

Comment: Within two (2) business days of receiving a verbal or written notice of any injury from an employer, the adjusting entity shall send a Notice of a Reported Injury on a form prescribed by the Administrator to each employee's last known address via first class US Mail. The adjusting entity shall also advise the employer of its requirement to provide the employee with a copy of the Beginner's Guide to Tennessee Workers' Compensation. Is the Notice of a Reported Injury a new form or is this the First Report of Work Injury?

Response: The Notice of a Reported Injury is a new form that the Bureau will create that will be mailed to the injured employee by the adjusting entity.

Comment: When does the employer have to provide the Beginner's Guide to Tennessee Workers'

Compensation? Under the proposed Rule 0800-02-01-.05, it is unclear whether the employer is required to provide a employee a Beginner's Guide to Tennessee Workers' Compensation when an injury is reported and/or when an employee is provided a Panel of Physicians? This proposed Rule suggests the employee is to be provided the same when an injury is reported. Suggested that emailing an employee a link to this form from the Bureau's website would also be deemed sufficient as providing the same in paper copy would be time consuming and costly.

Response: The bureau agrees. The claims adjuster may provide the Beginner's Guide. A link to the bureau website will be sufficient.

Comment: Decisions on compensability shall be made by the adjusting entity within fifteen (15) calendar days of the verbal or written notice to employer of injury. If after conducting a reasonable investigation as required by Rule 0800-02-21-.18 a claim is denied, the adjusting entity must notify the Bureau within one (1) business day of reaching that decision by filing the Notice of Denial of Claim for Compensation and must provide the employee or their representative, the treating physician and the insured a non-EDI version of the Notice of Denial, available on the Bureau's website, simultaneously with the notification to the Bureau. The notice must include the basis for the denial. Notice of injury to whom? Employer or Adjusting Entity? Reduces the time for filing of a Notice of Denial and notification to all of the same from 10 days to 1 business day. Perhaps 7 days is more reasonable, especially considering Notice may have to be provided to up to three other persons?

Response: Decisions on compensability are made by the adjuster, so the 15 days starts upon the adjuster's receiving notice. The current requirement is not 10 days, but is "immediately". This rule clarifies when it must be filed.

Comment: Rule 0800-02-14-.05. Claims Handling and Investigation. (2) Adjusters shall make personal or telephone contact with the employer within two (2) business days of the notice of injury to verify details regarding the claim. Insurers and employers shall obtain a description of the job and prior claim information of the employee within five (5) working days. All pertinent witnesses shall be contacted by the insurer as they become known. Notice of injury to whom? Employer or Adjuster? Insurer is not a defined term so what entity besides the employer is to obtain the job description?

Response: The bureau neither agrees nor disagrees with the comment. There is no mention in the rules of obtaining a job description.

Comment: Rule 0800-02-14-.06. Payments of Benefits. (1) Benefits are deemed paid when addressed to the last known address of the worker or beneficiary and deposited in the U.S. Mail or when funds are transferred to a financial institution for deposit in the worker's or beneficiary's account by approved electronic equivalent. Worker is not a defined term so should be employee or employee. Further, in regards to death benefits, suggested it is more appropriate to use the term "dependent" instead of beneficiary as "dependent" is the term used in T.C.A.§ 50-6-210.

Response: The bureau agrees and has made the change.

Comment: All workers' temporary total disability benefits shall be issued accurately and timely to assure the injured employee receives the benefits on or before the date they are due. To help ensure accuracy, Adjusters shall verify the average weekly wage of the employee with the employer consistent with the Bureau's requirements and the requirements of the Act. A Wage Statement, available on the Bureau's website, shall be filed with the Bureau upon request pursuant to Rule 0800-02-21-.10(3).
Worker is not a defined term so should be employee or employee. Suggested consistency in using either employee or employee.

Response: The bureau agrees and the changes have been made.

Comment: All disability and death benefits shall be paid by check or direct deposit unless prior written permission for an alternative means of payment is given by the Administrator and the employee or employee's dependents have signed a written agreement allowing an alternative means. Any instrument of payment must be negotiable and payable to the employee or the employee's dependents for the full amount of the benefit due, without cost to the employee. The employee or employee's estate must be able to make an initial withdrawal of the entire amount of the benefit due, less any appropriate attorney fees, without delay or cost to the worker. The use of the term "estate" is ill advised since the Law requires payments be made to a statutory "dependent(s)" and an estate is only paid death benefits in the event a employee has no dependents. Additionally, it is usually months following a death that an estate is created in the appropriate court.

Response: The bureau agrees and the changes have been made.

Comment: Rule 0800-02-14-.08. Resolution Process. (1) The permanent impairment rating and date of maximum medical improvement determined by the treating physician, and other information needed to settle a claim shall be documented in writing on a form prescribed by the Administrator and provided, at no cost, to the employee within fifteen (15) calendar days of its receipt by the adjuster.
Now requires the employee be provided the authorized treating physician's opinion on maximum medical improvement and medical impairment "on a form prescribed by the Administrator." Does this mean if this information comes in the form of a medical note it does not have to be provided to the employee? If so, can we assume we are only required to provide the employee with a Final Medical Report? Also, what if there is a problem with the medical impairment rating and the adjuster is seeking clarification from the physician? In this case, it would seem inappropriate to be required to send the employee a possibly incorrect medical impairment rating. Please also note it can be weeks or months after an adjuster receives an opinion on maximum medical improvement before the adjuster receives the opinion on medical impairment and/or a Final Medical Report.
(2) Adjusters shall make an offer of settlement in writing within thirty (30) calendar days of receipt of information specified above. If settlement is not agreed upon, a Benefit Review Conference or an Alternative Dispute Resolution, whichever is appropriate, may be requested by either party in accordance with the Bureau's rules.
Again, is the "information specified above" a Final Medical Report since it would be a "form prescribed by the Administrator?"

Response: Injured employees are entitled to copies of all of their personal medical records—currently and under the proposed rules. The appropriate form is the current C-30A Final Medical Report.

Comment: Regarding the liaison requirement, there should be some limitation. What triggers it? A PBD? And what ends it? Once the matter goes to court, there could be some overlap in adjudicatory functions and investigative functions.

Response: The liaison requirement is a simple designation of one contact person for an employee, and is not triggered by the filing of a PBD with the bureau.

Comment: Is in-state requirement mandatory? Should there be a grandfathering in mechanism?
As to timelines, they are too stringent. Due to the number of phone calls by adjuster to physicians, there is a lot of additional work for adjusters who are handling 120 claims each.

Response: The in-state claims office requirement is no longer mandatory, per PC 709 (2018). The bureau agrees with the timelines for form filing, and those timelines have been relaxed to be consistent with other states.

Comment: EDI success rate must be 85% or better or be hit with penalty – Not a fan. Too many technical problems could go wrong and shouldn't be made to pay a penalty for it if acting in good faith to fix the problem.

Response: The bureau disagrees. The 85% standard is in keeping with what other states do and was based upon a recommendation from the External Committee of representatives from carriers, employers and TPAs that was organized by the bureau prior to the drafting of these amended rules. Utah has an 85% standard. NY has a 90% standard. Virginia has a 90% goal.

Comment: Pg 4 (5) - 2 Business days to provide notice of 1st report and a copy of the "Beginners Guide to Work Comp". – Not a fan of this. Too little time and too much added paperwork to administer on our end.

Response: The bureau disagrees that two business days is too short a time period to provide this important information.

Comment: Pg 4(6) EDI Denial – we must send a copy of denial to state and another copy to employee within 1 business day or penalty. --- Too little time. Should be no penalty for good faith efforts.

Response: Penalties will be issued on a case-by-case basis, and reasonable, good faith action will be taken into consideration.

Comment: Pg 5(3) We must make written contact with all employees LT to Med Only. – I understand LT but not all Medical only claims should have this requirement. Too burdensome and not necessary.

Response: The bureau agrees in part and the rule has been amended.

Comment: Pg 6 (1) We must provide a C-30A related information to the employee within 15 days or penalty. – Too little time and there should be no penalty for good faith efforts.

Response: Thirty days is the requirement by rule, and this time frame is appropriate.

Comment: Pg 7(2) In all settlement matters regardless of indemnity we must submit and SDF within 30 days. Not a fan. I believe too much burden on claim department to submit overabundance of forms and data to multiple parties.

Response: The bureau disagrees that the form filing requirements are unduly burdensome.

Comment: Notice Rulemaking Hearing Claims Handling Standards 0800-02-14-.04 Paragraph (5) – The two (2) business days requirement is especially onerous. We may not even have been able to make enough contacts to establish compensability by that time. The timeframe requirement should be extended or removed.

Response: The bureau disagrees. It is not required to determine compensability within two days. This contact helps determine compensability.

Comment: Notice Rulemaking Hearing Claims Handling Standards 0800-02-15-.05 Paragraph (1) – The requirement to make contact with the employee should be limited to indemnity claims. It makes very little sense for this to apply to medical-only claims, as doing so would add needless costs to the claims handling process, in addition to lost production if an employee is at work and must stop to take a call from a claims adjuster.

Response: The bureau agrees in part, and the rule has been amended.

Comment: While we understand the intent of regulatory language to provide prompt and appropriate attention to an injured worker, a goal that the industry shares. There are holds concerns that the regulatory language may not be consistent with the best way to make contact between an insured and the worker. As an example, under 0800-2-14-.05 regarding contact within two business days including medical only claims: Would a notice letter outside of the notice of reported injury meet this objective? There is concern that it may be difficult to contact the injured worker to meet the requirement as written. Similar concerns exist for adjusters needing to make personal or telephone contact. Given the context of the situation, the prescribed version of contact may be untenable. It is suggested that the regulation be redrafted to consider a letter as substantial contact in all claims scenarios.

Secondly, we also purport that the regulation may need to contemplate when a case is being litigated, and the impact of that situation on the claims handling and notification procedures. Suggestion that the Bureau mirror the regulatory procedures of claims handling for other P&C lines as it pertains to active litigation.

Response: The rule regarding contact in med only claims has been amended. Regarding cases in litigation, no suggested language was provided as to specific rules to be amended.

Comment: In 0800-02-14-.03(2), please confirm that all TN adjusters do not have to be housed in TN. We have some of our TN staff located in Nashville but we also have a few located in other offices.

Response: All adjusters who adjust TN claims do not have to be in TN. There is no longer a requirement for an in-state claims office. See P.C.0709 (2018)

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 are amendments to existing claims handling standards of the Bureau of Workers' Compensation concerning procedures for handling 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.§ 50-6-419:The bureau's administrator shall set standards by rule governing the adjustment and settlement of workers' compensation claims by any entity acting on behalf of insurance carriers/employers.

(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;

Workers' compensation insurance carriers and employers, including self-insured employers, will 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, Legislative Liaison and 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, Legislative Liaison and 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
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (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
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(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):
X Amendment
___ 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**
0800-02-14	Claims Handling Standards
Rule Number	**Rule Title**
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0800-02-14-.02	Definitions
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RULES
OF THE DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION

CHAPTER 0800-2-14
CLAIMS HANDLING STANDARDS

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0800-2-14-.01 ~~PURPOSE AND~~ SCOPE OF RULES.

~~(1) Purpose: To assure that employees sustaining an injury arising out of and in the scope of employment are treated fairly and to assure that workers' compensation claims are handled in an appropriate and uniform manner.~~

~~(2) Scope: The provisions of this chapter shall apply to all employers in the State of Tennessee subject to provisions of the Workers' Compensation Law.~~
The provisions of this chapter shall apply to all employers, adjusting entities and providers of services related to workers' compensation claims in the State of Tennessee subject to ~~the~~ provisions of the Workers' Compensation Law~~Act~~.

Authority: *TCA §50-6-419.* ***Administrative History:*** *Original rule filed on December 15, 1997; effective February 28, 1998.*

0800-2-14.02 DEFINITIONS.

~~(1)"Act" means Tennessee Code Annotated, Title 50, Chapter 6the applicable Workers' Compensation Law in effect.~~

(1) ~~"Insurer" or claims handler means self-insured employer, trade or professional association, third party administrator and/or insurance company.~~ "Adjusting entity" means a trade or professional association, managing general agency, pool, third party administrator and/or insurance company licensed to write workers' compensation insurance in Tennessee and shall also mean a self-insured employer or group self-insured employers possessing a valid certificate of authority from the commissioner of commerce and insurance pursuant to T.C.A §50-6-405.

(2) ~~(3)~~"Adjuster", "claims adjuster", "med-only adjuster", or "claims handler" means a representative of an adjusting entity who investigates workers' compensation claims for the purposes of making compensability determinations, files or causes claims forms to be filed with the Bureau, commences benefits, and/or makes settlement recommendations based on the insured's liability on behalf of a self-insured employer, trade or professional association, third party administrator, and/or insurance company.

(3) ~~"Insured" or employer means any individual, firm, association or corporation, or the receiver, or trustee of the same, or the legal representative of a deceased employer, using the services of not less than five (5) persons for pay, except as provided in TCA §50-6-113 dealing with subcontractors and those engaged in the construction industry, and in the case of an employer engaged in the mining and production of coal, one (a) employee for pay. If the employer is insured, it shall include the employer's insurer, unless otherwise herein provided.~~ "Administrator" shall have the same definition of "Administrator" as in T.C.A §50-6-102.

~~(4) "Employee" includes every person, including a minor, whether lawfully or unlawfully employed, the president, any vice-president, secretary, treasurer or other executive officer of a corporate employer without regard to the nature of the duties of such corporate officials, in the service of an employer, as employer is defined in (3) above, under any contract of hire or apprenticeship, written or implied. Any~~

~~reference herein to an employee who has been injured shall, where the employee is dead, also include such employee's legal representatives, dependents and other persons to whom compensation may be payable under the Workers' Compensation Law;~~

~~"Employee" also includes a sole proprietor or a partner, who devotes full time to the proprietorship or partnership and elects to be included in the definition of employee by filing written notice thereof with the Division of Workers' Compensation at least thirty (30) days before the occurrence of any injury or death, and may at any time withdraw the acceptance by giving notice of the withdrawal to the division.~~

~~(5) "Claimant" means an employee who alleges an injury or occupational disease sustained in the course and scope of employment.~~

(4) "Bureau" means the Tennessee Bureau of Workers' Compensation as defined in Tenn. C.ode Ann. § 50-6-102, an autonomous unit attached to the Department of Labor and Workforce Development for administrative matters only, pursuant to Tenn. C.ode Ann. § 4-3-1409.

(Rules 0800-2-14-.02, continued)

(5) ~~"Director" means the Director of the Division of Workers' Compensation or the appointed agent of such Director.~~ "Claim" means a demand for something as due; an assertion of a right or an alleged right.

~~(6)~~

~~"Division" means the Workers' Compensation Division of the Tennessee Department of Labor.~~ ~~"Claimant" means an individual who is claiming benefits under the Act.~~

(6) "Electronic Data Interchange" or "EDI" means the electronic communication method that provides standards for exchanging data via electronic means. The term "EDI" encompasses the entire electronic data interchange process, including the transmission, message flow, document format, and software used to interpret the documents using the standards established by the IAIABC and the Release Version accepted by the Bureau at the time of the filing.

(7) "Electronic Form Equivalent" means the original document, provided on the Bureau's website, which is to be used when a sender reports required data via a paper document. When forms are reproduced, they shall be reproduced in their entirety, including instructions and shall not be modified without written consent of the Administrator. A form may be revised at any time at the discretion of the Administrator and will be available at no cost.

(8) "Employee" shall have the same definition of "Employee" as in T.C.A §50-6-102;

(9) "Employer" shall have the same definition of "Employer" as in T.C.A §50-6-102.

(10) "First Report of Work Injury" means the EDI equivalent of the form available on the Bureau's website and designated by the Bureau as the appropriate document to initially report a claim of injury.

(11) "Form" means the document as is available on the Bureau's website on the date of the filing.

(12) "IAIABC" means the International Association of Industrial Accident Boards and Commissions.

(13) "Injury" and "personal injury" shall have the same definition of "injury" as in T.C.A §50-6-102.

(14) "Insured" shall have the same definition of "Employer" as in T.C.A §50-6-102.

(15) "Medical-only" claim or "med-only" claim means a claim requiring medical attention, but which has no indemnity benefits due or paid. Any claim in which no indemnity benefits are due or paid, but which has medical treatment provided by any medical personnel qualifies the claim for medical only status, regardless of whether or not a bill is generated and regardless of whom pays for the medical care.

(16) "Trading partner" means an entity approved by the Bureau to exchange data electronically with the Bureau on behalf of an adjusting entity.

~~(7)~~

~~(8) "Injury" means an injury by accident arising out of and in the course of employment which causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment which cause either disablement or death of the employee.~~

Authority: *TCA §§50-6-102 and 50-6-113.* ***Administrative History:*** *Original rule filed on December 15, 1997; effective February 28, 1998.*

0800-2-14-.03 GENERAL~~REPORTING~~ REQUIREMENTS.

~~(1) In order to ensure that Workers' Compensation claims are acted on promptly, employers shall report verbally or in writing all known or reported accidents to their insurer within one working day of knowledge of injury.~~

~~(2) Every insurer shall file with the Division a report of accident on Form C-20 (Tennessee Employer's First Report of Work Injury) pursuant to Rule 0800-2-1-.06. Effective January 1, 1998, Form C-20 shall require the signature of the injured employee. If the injured employee is unable to sign the form or refuses to sign the form, an explanation shall be required.~~

(1) ~~A wage statement to insure the correct rate of compensation shall be filed with the Division and shall accompany the Form C-22 (Notice of First Payment of Compensation) or Form C-23 (Notice of Denial of Benefits). Filings shall be made pursuant to Rule 0800-2-1-.07.~~ Any employer or adjusting entity that knowingly, willfully and intentionally causes a claim to be paid under any health or sickness and accident insurance or that fails to provide reasonable and necessary medical treatment, including a failure to reimburse when the employer or adjusting entity knew that the claim arose out of a compensable work-related injury shall be assessed a civil penalty of $500.00. The employer or adjusting entity shall not offset any benefit paid by that insurance against its temporary total disability benefit liability.

(2) Each adjusting entity shall designate at least one contact person to serve as a liaison between the entity

and the Bureau. The designee must have the ability to provide information about claims assignments, status of payments and contact information for the adjusting entity's adjusters as well as the entity's primary EDI contact. The designee's name, title, direct phone number, email address, and mailing address shall be provided to the Bureau, on a form prescribed by the Bureau, in January of each year and within fifteen (15) calendar days of any change regarding the designee for that entity. Each January and July, the designee shall provide the Bureau, on a form prescribed by the Bureau, with the name(s), direct phone number(s), email address(es), and mailing address(es) for each individual adjuster that is performing duties covered by these Rules. Each separate act of not timely notifying the Bureau of a change in the designee or not timely providing the information required in this subsection regarding adjusters shall constitute a separate violation and may subject the entity to assessment of a civil penalty, per Rule 0800-02-01-.10, for each separate act.

(3) If an adjusting entity contracts with a trading partner to electronically file transactions with the Bureau on the entity's behalf, or uses a trading partner's software product for electronically sending transactions to the Bureau, a Trading Partner Agreement form, provided by the Bureau, must be fully completed and submitted to the Bureau. The adjusting entity shall remain responsible for the timely filing of transactions required by this rule, processing of acknowledgements, and any penalties and fines that may result from untimely electronic filings.

(4) All adjusting entities or trading partners shall utilize anti-virus software to remove any viruses on all electronic transmissions prior to sending electronic transmissions to the Bureau. The adjusting entity or trading partner shall maintain the anti-virus software with the most recent anti-virus update files from the software provider. If the adjusting entity or trading partner sends a transmission that contains a virus which prevents the Bureau from processing the transmission, the transmission will not be considered as having been received.

Authority: *TCA §50-6-419 and 50-3-702.* ***Administrative History:*** *Original rule filed on December 15, 1997; effective February 28, 1998.*

0800-2-14-.04 ~~INVESTIGATION.~~Claims Reporting Requirements

~~(1) Upon verbal or written notice of any injury from an employer, the insurer shall make verbal or written contact with the claimant within two (2) working days to confirm facts of the claim, history of prior claims, work history, wages, and job duties. This may include a recorded statement.~~

~~(2) Insurers shall make personal or telephone contact with the employer within two (2) working days of notice of accident to verify accident details. Insurers and employers shall obtain a description of the job and prior claim information of the claimant within five (5) working days. All pertinent witnesses shall be contacted by the insurer as they become known.~~

~~(3) Insurers shall verify the average weekly wage of the claimant consistent with the Division's requirements and the requirements of TCA §50-6-205.~~

~~(4) Insurers shall contact physicians who have rendered medical services to a claimant within seventy-two (72) hours of verbal or written notice to confirm injury and treatment and make preliminary compensatory determination.~~

~~(5) All aspects of contacting and attempts to contact insureds, the claimant and physicians shall be documented within the insurer's file.~~

~~(6) When third party subrogation recovery is appropriate, insurers shall develop a strategy to promptly obtain needed evidence.~~

~~(7) Decisions on workers' compensation insurance coverage and compensability shall be made within fifteen (15) days of verbal or written notice of accident. All pertinent documents of the Division of~~

(Rules 0800-2-14-.04, continued)

~~Workers' Compensation shall be filed within fifteen (15) days of verbal or written notice of accident. Claimants and employers shall be notified of the decision of compensability within fifteen (15) days of verbal or written notice of accident.~~

~~(8) Denial of a claim shall be supported with documented results of the investigation. Form C-23 (Notice of Denial) shall be filed with the Division within ten (10) days of denial and a copy of Form C-23 shall be provided to the claimant within the same time frame.~~

~~(9)If an insurer denies a claim, the insurer shall provide documentation which meets the statutory criteria for denial on Form C-23 upon request by the Division, employer, claimant, and/or their legal representatives.~~

(1) All forms required by these rules must be filed with the Bureau via EDI, unless an electronic form equivalent is specifically allowed or required by the Bureau. Requirements for EDI reporting are posted on the Bureau's website.

(2) The adjuster, when required, shall include the following information on every form it submits to the Bureau:

a. The employee's name.
b. The employee's date of birth.
c. The month, day, and year of the employee's injury or illness, in the following order: mm-dd-yy or mm-dd-yyyy.
d. The employee's social security number (SSN) as assigned by the Social Security Administration.
   i. If the employee does not have a SSN, the adjusting entity shall assign an identification number that begins with the number "9" and is followed by the employee's date of birth, in the following format 9MMDDYYYY.
   ii. If the adjusting entity later learns the correct SSN, the adjusting entity shall immediately notify the Bureau via EDI by filing the appropriate FROI Change of SSN notice.

(3) The adjusting entity shall ensure that all documents filed with the Bureau pursuant to this chapter, either by EDI or electronic form ~~paper~~ equivalent, are complete and legible.

a. If a filing is not complete and error free, the filing shall be rejected. The adjusting entity shall make the correction, and resubmit the filing to the Bureau. The filing will be considered "accepted" and in compliance with this section only when a complete and error free filing is received and not rejected by the Bureau.
b. An adjusting entity will be subject to a penalty for any calendar month in which it fails to successfully transmit its documents with at least an 85% acceptance by the Bureau success rate for its filings. The assessment of this penalty will not preclude the assessment of additional penalties outlined in Rules 0800-02-13.

(4) Every adjusting entity shall submit Tennessee's First Report of Work Injury form to the Bureau as soon as possible in all cases where the reported injury results in the need for medical treatment, restricted work, the inability to work, or death, but no later than the time frames listed below.

a. Reports of all injuries causing seven (7) calendar days of disability or fewer shall be submitted on or before the fifteenth (15th) day of the month following the month in which the injury occurred.
b. Injuries that result in death or a personal injury of a nature that the injured employee ~~person~~ did not return to the ~~person~~employee's employment within seven (7) calendar days after the occurrence of the injury must be reported no later than fourteen (14) calendar days after the report by an employer of the occurrence of the injury.
c. Minor injuries such as scratches, scrapes, paper cuts and/or other injuries treated solely by minor first aid are not required to be reported to the Bureau. More serious injuries such as sprains, strains or bruising must be reported.

(5) Within two (2) business days of receiving a verbal or written notice of any injury from an employer, the adjusting entity shall send a Notice of a Reported Injury and a copy of the Beginner's Guide to Tennessee Workers' Compensation ~~on a~~the ~~forms~~ prescribed by the Administrator to each

(Rules 0800-2-14-.04, continued)

~~claimant~~employee's last known address via first class US Mail. ~~The adjusting entity shall also advise the employer of its requirement to provide the employee with a copy of the Beginner's Guide to Tennessee Workers' Compensation.~~

(6) Decisions on compensability shall be made by the adjusting entity within fifteen (15) calendar days of the verbal or written notice of injury. If after conducting a reasonable investigation as required by these rules ~~Rule 0800-02-21-.18~~ a claim is denied, the adjusting entity must notify the Bureau within five (5) ~~one (1)~~ business days of reaching that decision by filing the Notice of Denial of Claim for Compensation and must provide the ~~claimant~~employee or their representative, the treating physician and the insured a non-EDI version of the Notice of Denial, available on the Bureau's website, simultaneously with the notification to the Bureau. The notice must include the basis for the denial.

(7) Adjusting entities must file the First Report of Payment of Compensation with the Bureau within five (5) business days of the initial payment of benefits and shall submit the Notice of Change or Termination of Compensation Benefits within five (5) ~~one (1)~~ business days of a change or termination of the payment of compensation benefits. The adjusting entity must also provide the ~~claimant~~ employee or their representative and the insured a non-EDI version of the Notice of Change or Termination of Compensation Benefits simultaneously with the notification to the Bureau and must provide the explanation of the rationale upon which the changes were based.

(8) An adjusting entity electing to controvert its liability and terminate the payment of compensation benefits after temporary disability and/or medical benefits have been paid in a claim, shall submit a Notice of Controversy to the Bureau within fifteen (15) calendar days of the due date of the first omitted payment.

Authority: *TCA §§50-6-205 and 50-6-419.* ***Administrative History:*** *Original rule filed on December 15, 1997; effective February 28, 1998.*

0800-2-14-.05 ~~PAYMENTS OF BENEFITS.~~Claims Handling and Investigation

~~(1) Compensation payments for an injury shall be received by the claimant no later than fifteen (15) days after notice of injury.~~

~~(2)~~(1) ~~All workers' compensation benefits shall be issued timely to assure the injured employee receives~~the ~~benefits on or before the date they are due.~~

(1) The adjuster shall make verbal or written contact with the employee ~~claimant~~ within two (2) business days of receiving a verbal or written notice of any injury, including those considered to be "medical-only". For "medical-only" claims, ~~T~~this contact is ~~not~~ satisfied by the mailing of the Notice of a Reported Injury referenced herein. In claims that involve lost time from work, this contact is not satisfied by the mailing of the Notice of a Reported Injury referenced herein. The purpose of this contact is to:

a. Provide each employee ~~claimant~~ with the adjuster's name and contact information, which shall include the adjuster's direct phone number, fax number, email address, and mailing address; and,

b. ~~In claims that involve time lost from work, i~~Investigate the facts of the claim and obtain a history of prior claims, including work history, wages, and job duties.

(2) Adjusters shall make personal or telephone contact with the employer within two (2) business days of the notice of the injury to verify details regarding the claim.

(3) An adjuster assigned to a claim which had previously been assigned to a different adjuster shall make verbal or written contact with the employee ~~claimant~~ within two (2) business days of the assignment and shall provide the employee ~~claimant~~ with the newly assigned adjuster's name and contact information, which shall include that adjuster's direct phone number, fax number, email address, and mailing address. In instances involving a mass transfer of files, such as might occur if an adjusting entity purchased or merged with another adjusting entity, the time required to provide this notice will be extended to seven (7) business days.

(4) In claims when compensability is questioned, adjusters shall contact all authorized medical providers, or their staff members, who have rendered medical services to an employee ~~claimant~~ within three (3) business days of an initial office

(Rules 0800-2-14-.04, continued)
visit to investigate details concerning the injury and treatment and make a preliminary compensability determination.

(5) All employers, adjusting entities and providers of services related to workers compensation claims in the State of Tennessee subject to provisions of the Workers' Compensation ~~Act~~Law shall provide the Bureau all information and documentation that is requested, and only that information that is requested, for the purposes of monitoring, examining, or investigating the entity's operations and processes within ten (10) calendar days unless the Bureau allows an extension of time.

Authority: *TCA §50-6-419.* ***Administrative History:*** *Original rule filed on December 15, 1997; effective February 28, 1998.*

0800-2-14-.06 Payment of Benefits~~RESOLUTION PROCESS.~~

~~(1) A medical impairment rating and date of maximum medical improvement by the treating physician, and information needed to settle a claim shall be documented in writing.~~

~~(2) Insurers shall make an offer of settlement in writing within thirty (30) days of receipt of information specified above,Rule 0800-2-14-.06(a). The claimant shall sign the offer of settlement indicating approval or rejection of the offer.~~

~~(3) An agreed settlement shall be finalized by order of a court or approval by the Division as required by TCA §50-6-206. A copy of the court order or division approval shall be filed with the Commissioner of Tennessee Department ofLabor.~~

~~(4)~~(1) ~~If settlement is not agreed upon, a Benefit Review Conference may be requested pursuant to TCA §50-6-237.~~

(1) Benefits are deemed paid when addressed to the last known address of the ~~employee~~worker or dependent ~~beneficiary~~ and deposited in the U.S. Mail or when funds are transferred to a financial institution for deposit in the ~~worker~~employee's or ~~beneficiary~~dependent's account by approved electronic equivalent.

(2) All workers' temporary total disability benefits shall be issued accurately and timely to assure the injured employee receives the benefits on or before the date they are due. To help ensure accuracy, Adjusters shall verify the average weekly wage of the employee ~~claimant~~ with the employer consistent with the Bureau's requirements and the requirements of the Workers' Compensation Law~~Act~~. A Wage Statement, available on the Bureau's website, shall be filed with the Bureau upon request pursuant to Rule 0800-02-21-.10(3).

a. To be considered timely, initial temporary total disability payments must be paid to the ~~claimant~~employee no later than fifteen (15) calendar days after the date the disability begins and every subsequent payment is made within consecutive fifteen (15) calendar day increments, until all temporary total benefits have been paid. Each payment must indicate the time period covered by the payment.

(3) All temporary partial disability benefits shall be issued timely, as per T.C.A §50-6-207(2).

(4) Funeral expenses, including burial or cremation expenses, must be paid within a reasonable period of time, not to exceed thirty (30) days from the date of submission of invoice.

(5) All disability and death benefits shall be paid by check or direct deposit unless prior written permission for an alternative means of payment is given by the Administrator and the employee or employee's dependents ~~claimant or claimant's estate~~ haves signed a written agreement allowing an alternative means. ~~Any instrument of payment must be negotiable and payable to the claimant or the claimant's estate for the full amount of the benefit due, without cost to the claimant. The claimant or claimant's estate must be able to make an initial withdrawal of the entire amount of the benefit due, less any appropriate attorney fees, without delay or cost to the worker.~~

Authority: *TCA §§50-6-237, and 50-6-419.* ***Administrative History:*** *Original rule filed on December*

(Rules 0800-2-14-.04, continued)
15, 1997; effective February 28, 1998.

0800-2-14.07 MEDICAL COSTS.

(1) All medical costs owed under the Tennessee Workers' Compensation Law shall be paid ~~within forty-five (45) days of receipt of bill or invoice. Also within forty-five (45) days, if additional documentation is required for payment, the party requesting payment shall be informed of the needed information. There is no obligation to make payment until adequate documentation is received.~~ pursuant to the Medical Fee Schedule contained in Rules 0800-2-17, 0800-2-18 and 0800-2-19.

~~(2) Medical invoices shall contain the following characteristics:~~

~~(a) CPT (Procedure) Code~~

~~(b) ICD 9 (Diagnostic) Code~~

(Rules 0800-2-14-.07, continued)

~~(3) Remuneration inquiries shall be made directly to the insurer.~~

Authority: *TCA §50-6-419.* ***Administrative History:*** *Original rule filed on December 15, 1997; effective February 28, 1998.*

0800-2-14-.08 ~~ENFORCEMENT.~~Resolution Process

(1) ~~In addition to other penalties provided by applicable law and regulation, violations of any of the above rules shall be subject to enforcement by Commissioner of the Tennessee Department of Labor pursuant to TCA §50-6-419(e).~~ The permanent impairment rating and date of maximum medical improvement determined by the treating physician, and other information needed to settle a claim shall be documented in writing on a form prescribed by the Administrator and provided, at no cost, to the employee~~claimant~~ within thirty (30) ~~fifteen (15)~~ calendar days of its receipt by the adjuster.

(2) Adjusters shall make an offer of settlement in writing within thirty (30) calendar days of receipt of information specified above. If settlement is not agreed upon, a Benefit Review Conference or an Alternative Dispute Resolution, whichever is appropriate, may be requested by either party in accordance with the Bureau's rules.

(3) All settlements shall be reduced to writing and shall be finalized by order or approval of an appropriate court, as required by the Workers' Compensation Law~~Act~~. A copy of the court order or Bureau approval and appropriate Statistical Data Form shall be filed timely with the Bureau.

Authority: *TCA §50-6-419.* ***Administrative History:*** *Original rule filed on December 15, 1997; effective February 28, 1998.*

0800-2-14-.09 ~~FRAUD.~~Claims Resolution Filing Requirements

(1) ~~All provisions regarding the detecting, prosecuting, and/or preventing of workers' compensation fraud shall be governed by TCA §50-6-127 and Title 56, Chapter 47.~~ The appropriate resolution form must be submitted to the Bureau in all claims when they are resolved.

a. In matters concluded by settlement or resolved by trial, the employer or the employer's agent must file a fully-completed appropriate version of the Statistical Data Form contemporaneously with the filing of the final order or settlement.

i. To be considered fully complete, the form must contain all required data, as determined by the Bureau, and reflect information that is current as of the date the information is submitted to the court for approval, whether or not an appeal of the matter is anticipated or filed.

ii. The employee~~claimant~~ and any agent of the employee~~claimant~~ must cooperate with the adjusting entities in completing the statistical data form.

b. In matters not concluded by settlement or resolved by trial, adjusting entities must submit a fully-completed Final Report of Payment and Receipt of Compensation via EDI within thirty (30) days following the final payment of compensation. The form must report all compensation benefits paid on a claim, including all medical expenses (including in-patient, out-patient, pharmacy, case management, therapy, etc.), death benefits and funeral expenses, and legal costs.

(2) A fully-completed Statistical Data Form is also required for every workers' compensation matter even if the only issue resolved is the closing of future medical benefits that had remained open pursuant to a prior order. This requirement applies even if a statistical data form was filed at the time of submission of the prior order.

(3) Pursuant to T.C.A. §50-6-244, an order of the court is not final until the Statistical Data Form has been completed and filed with the appropriate clerk of the court or Bureau office.

(4) If the Administrator or the Administrator's designee determines that an employer or the employer's agent fails to fully complete or timely file the statistical data form, the bureau may assess a civil penalty against

(Rules 0800-2-14-.07, continued)

the offending party not to exceed one hundred dollars ($100) per violation. A party assessed a penalty by the Administrator pursuant to this subsection may appeal the penalty by requesting a contested case hearing pursuant to Rule 0800-02-.13.

Authority: *TCA §50-6-419.* ***Administrative History:*** *Original rule filed on December 15, 1997; effective February 28, 1998.*

0800-2-14-.10 Enforcement

(1) The Bureau has the authority to monitor and audit the performance of adjusters and adjusting entities to ensure compliance with the Workers' Compensation Law~~Act~~ and Bureau Rules as often as it deems necessary which includes, but is not limited to, the review of the following:

a. Ongoing review of data provided to the Bureau by adjusting entities;

b. Timeliness, completeness and accuracy of all filings with the Bureau in any format;

c. Timeliness and accuracy of indemnity and/or payments to medical providers;

d. Denied claims;

e. Timeliness and accuracy of the provision of a panel of physicians;

f. The alleged or suspected harassment, coercion or intimidation of any party;

g. Timeliness of the response to a Request for Assistance, Petition for Benefits Determination or any equivalent form;

h. Timeliness of the compliance with an Order from a Judge of the Court of Workers' Compensation Claims or Workers' Compensation Appeals Board, a Workers' Compensation Specialist, Administrative Law Judge, or an Administrator's Designee;

i. Claims-handling practices;

j. Timeliness of authorizing medical treatment and medications;

k. Mailing of the Notice of a Reported Injury;

l. Mailing of the Notice of Employer Rights and Responsibilities in a Workers' Compensation Claim required by Rule 0800-02-01 to the employer.

(2) Reports resulting from the Bureau's monitoring, examination or investigation conducted under this Chapter are considered public records and may be shared in any means deemed appropriate by the Bureau and may include publicizing those adjusting entities that exceed or fail to meet the Bureau's established thresholds for claims handling excellence.

(3) In addition to other penalties provided by applicable law and regulation, violations of any of the above rules shall be subject to enforcement by the Administrator pursuant to TCA §50-6-419(c).

Authority: TCA §50-6-233, 50-6-415 and 50-6-419. Administrative History: Original rule filed on December 15, 1997; effective February 28, 1998.

0800-2-14-.11 Fraud

All provisions regarding the detecting, prosecuting, and/or preventing of workers' compensation fraud shall be governed by TCA §50-6-127 and Title 56, Chapter 47.

(Rules 0800-2-14-.07, continued)

Authority: TCA §50-6-127, 50-6-419 and 56-47-103. Administrative History: Original rule filed on December 15, 1997; effective February28, 1998.

* 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 12-22-17 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 June 30, 2017.

Rulemaking Hearing Conducted on August 29, 2017.

Date: December 22, 2017

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

SHARA HAMLETT STATE OF TENNESSEE NOTARY PUBLIC WILLIAMSON COUNTY

Subscribed and sworn to before me on: December 22, 2017

Notary Public Signature: Shara Hamlett

My commission expires on: 2/19/20

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

4/30/2018
Date

RECEIVED 2018 MAY -4 AM 10:30 SECRETARY OF STATE

Department of State Use Only

Filed with the Department of State on: 5/4/18

Effective on: 8/2/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Occupational Safety and Health
SUBJECT:	Occupational Safety and Health Standards for General Industry
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-3-201; 29 U.S.C. § 655; 29 U.S.C. § 667
EFFECTIVE DATES:	August 5, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rule 0800-01-01-.07 is amended in order to reference the latest occupational safety and health standard in the applicable part of Title 29, Code of Federal Regulations when published in the Federal Register.

Regulatory Flexibility Addendum
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or pubic necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

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;

Rules 0800-01-01-.07 is amended in order to reference the latest occupational safety and health standard in the applicable part of Title 29, Code of Federal Regulations when published in the Federal Register.

(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;

Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.

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

All persons subject to T.C.A. §§ 50-3-101 et seq. are directly affected by the rules in Chapter 0800-01-01. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

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

There have been no Attorney General opinions or judicial rulings relevant to these rules.

(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 are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

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

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

Larry Hunt, Manager, Standards & Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

(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

Tennessee Department of Labor and Workforce Development
Division of Occupational Safety and Health
220 French Landing Drive
Nashville, TN 37243-1002
(615) 741-7036
email: larry.hunt@tn.gov

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

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
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For Department of State Use Only

Sequence Number: 05-09-18
Rule ID(s): 6762
File Date: 5/7/18
Effective Date: 8/5/18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to 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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

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

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

Chapter Number	**Chapter Title**
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	**Rule Title**
0800-01-01-.07	Exceptions to Adoption of Federal Standards in 29 CFR PART 1910

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

Chapter 0800-01-01

Rule 0800-01-01-.07 Amended

Paragraph (3), Table Z-1-A Limits for Air Contaminants of Rule 0800-01-01-.07 Exceptions to Adoption of Federal Standards in 29 CFR PART 1910, is amended by removing the specified silica limits and adding the text ", see 29 CFR 1910.1053" so that as amended, the table reads as follows:

Existing Rule:

Substance	CAS No.	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m3	ppm	mg/m3	ppm	mg/m3	
Acetaldehyde	75-07-0	100	180	150	270	—	—	—
Acetic acid	64-19-7	10	25	—	—	—	—	—
Acetic anhydride	108-24-7	—	—	—	—	5	20	—
Acetone	67-64-1	750	1800	1000	2400	—	—	—
Acetonitrile	75-05-8	40	70	60	105	—	—	—
2-Acetylaminofluorine; see 29 CFR 1910.1003	53-96-3	—	—	—	—	—	—	—
Acetylene dichloride; see 1,2-Dichloroethylene								
Acetylene tetrabromide	79-27-6	1	14	—	—	—	—	—
Acetylsalicylic acid (Asprin)	50-78-2	—	5	—	—	—	—	—
Acrolein	107-02-8	0.1	0.25	0.3	0.8	—	—	—
Acrylamide	79-06-1	—	0.03	—	—	—	—	X
Acrylic acid	79-10-7	10	30	—	—	—	—	X
Acrylonitrile; see 29 CFR 1910.1045	107-13-1	—	—	—	—	—	—	—
Aldrin	309-00-2	—	0.25	—	—	—	—	X
Allyl alcohol	107-18-6	2	5	4	10	—	—	X
Allyl chloride	107-05-1	1	3	2	6	—	—	—
Allyd glycidl either (AGE)	106-92-3	5	22	10	44	—	—	—
Allyl propyl disulfide	2179-59-1	2	12	3	18	—	—	—
alpha-Alumina	1344-28-1	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Aluminum (As al) Metal	7429-90-5							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Pyro powders	—	—	5	—	—	—	—	—
Welding fumes	—	—	5	—	—	—	—	—
Soluble salts	—	—	2	—	—	—	—	—
Alkyls	—	—	2	—	—	—	—	—
4-Aminodiphenyl; see 29 CFR 1910.1003	92-67-1							
2-Aminoethanol; see Ethanolamine								
2-Aminopyridine	504-29-0	0.5	2	—	—	—	—	—
Amitrole	61-82-5	—	0.2	—	—	—	—	—

Ammonia	7664-41-7	—	—	35	27	—	—	—
Ammonium chloride fume	12125-02-9	—	10	—	20	—	—	—
Ammonium sulfamate	7773-06-0							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
n-Amyl acetate	628-63-7	100	525	—	—	—	—	—
Sec-Amyl acetate	626-38-0	125	650	—	—	—	—	—
Aniline and homologs	62-53-3	2	8	—	—	—	—	X
Anisidine (o-,p-isomers)	29191-52-4	—	0.5	—	—	—	—	X
Antimony and compounds (as Sb)	7440-36-0	—	0.5	—	—	—	—	—
ANTU (alpha Naphthylthiourea)	86-88-4	—	0.3	—	—	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	—	0.5	—	—	—	—	—
Arsenic, inorganic compounds (as As); see 29 CFR 1910.1018	7440-38-2							
Arsine	7784-42-1	0.05	0.2	—	—	—	—	—
Asbestos; see 29 CFR 1910.1001 and 29 CFR 1926.1101	Varies							
Atrizine	1912-24-9	—	5	—	—	—	—	—
Azinphos-methyl	86-50-0	—	0.2	—	—	—	—	X
Barium, soluble compounds (as Ba)	7440-39-3	—	0.5	—	—	—	—	—
Barium sulfate	7727-43-7							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Benomyl	17804-35-2							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Benzene; see 29 CFR 1910.1028	71-43-2							
Industries excluded from 29 CFR 1910.1028 (STEL – 10 minutes)		10	—	25	—	50	—	—
Benzidine; see 29 CFR 1910.1003	92-87-5							
p-Benzoquinone; see Quinone								
Benzo(a)pyrene; see Coal tar pitch volatiles								
Benzoyl peroxide	94-36-0	—	5	—	—	—	—	—
Benzyl chloride	100-44-7	1	5	—	—	—	—	—
Beryllium and beryllium Compounds (as Be) (STEL – 30 minutes)	7440-41-7	—	0.002	—	0.005	—	0.025	—
Biphenyl; see Diphenyl								
Bismuth telluride, Undoped	1304-82-1							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Bismuth telluride, Se-doped	—	—	5	—	—	—	—	—
Borates, tetra, sodium salts								
Anhydrous	1330-43-4	—	10	—	—	—	—	—
Decahydrate	1303-96-4	—	10	—	—	—	—	—
Pentahydrate	12179-04-3	—	10	—	—	—	—	—
Boron oxide	1303-86-2							
Total dust	—	—	10	—	—	—	—	—
Boron tribromide	10294-33-4	—	—	—	—	1	10	—
Boron trifluoride	7637-07-2	—	—	—	—	1	3	—
Bromacil	314-40-9	1	10	—	—	—	—	—
Bromine	7726-95-6	0.1	0.7	0.3	2	—	—	—
Bromine pentafluoride	7789-30-2	0.1	0.7	—	—	—	—	—
Bromoform	75-25-2	0.5	5	—	—	—	—	X

Butadiene (1,3-Butadiene) see 29 CFR 1910.1051	106-99-8							
Butane	106-97-8	800	1900	—	—	—	—	—
Butanethiol; see Butyl mercaptan								
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	300	885	—	—	—
2-Butoxyethanol	111-76-2	25	120	—	—	—	—	X
n-butyl-acetate	123-86-4	150	710	200	950	—	—	—
Sec-Butyl acetate	105-46-4	200	950	—	—	—	—	—
Tert-Butyl acetate	540-88-5	200	950	—	—	—	—	—
Butyl acrylate	141-32-2	10	55	—	—	—	—	—
n-Butyl alcohol	71-36-3	—	—	—	—	50	150	X
Sec-Butyl alcohol	78-92-2	100	305	—	—	—	—	—
Tert-Butyl alcohol	75-65-0	100	300	150	450	—	—	—
Butylamine	109-73-9	—	—	—	—	5	15	X
Tert-Butyl chromate (as CrO3)	1189-85-1	—	—	—	—	—	0.1	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25	135	—	—	—	—	—
n-Butyl lactate	138-22-7	5	25	—	—	—	—	—
Butyl mercaptan	109-79-5	0.5	1.5	—	—	—	—	—
o-sec-Butylphenol	89-72-5	5	30	—	—	—	—	X
p-tert-Butyltoluene	98-51-1	10	60	20	120	—	—	—
Cadmium fume and dust (as Cd); see 29 CFR 1910.1027	7440-43-9							
Calcium carbonate	1317-65-3							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Calcium cyanamide	156-62-7	—	0.5	—	—	—	—	—
Calcuim hydroxide	1305-62-0			—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Calcium oxide	1305-78-8		5	—	—	—	—	—
Calcium silicate	1344-95-2							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Calcium sulfate	7778-18-9							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Camphor, synthetic	76-22-2	—	2	—	—	—	—	—
Caprolactam	105-60-2							
Dust	—	—	1	—	3	—	—	—
Vapor	—	5	20	10	40	—	—	—
Captafol (Difolatan®)	2425-06-1	—	0.1	—	—	—	—	—
Captan	133-06-2	—	5	—	—	—	—	—
Carbaryl (Sevin®)	63-25-2	—	5	—	—	—	—	—
Carbofluran (Furadan®)	1563-66-2	—	0.1	—	—	—	—	—
Carbon black	1333-86-4	—	3.5	—	—	—	—	—
Carbon dioxide	124-38-9	10,000	18,000	30,000	54,000	—	—	—
Carbon disulfide	75-15-0	4	12	12	36	—	—	X
Carbon monoxide (STEL – 5 minutes)	630-08-0	35	40	200	229	1500	—	—
Carbon tetrabromide	558-13-4	0.1	1.4	0.3	4	—	—	—
Carbon tetrachloride	56-23-5	2	12.6	—	—	—	—	—
Carbonyl fluoride	353-50-4	2	5	5	15	—	—	—
Catechol (Pyrocatechol)	120-80-9	5	20	—	—	—	—	X
Cellulose	9004-34-6							

Total Dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Cesium hydroxide	21351-79-1	—	2	—	—	—	—	—
Chlordane	57-74-9	—	0.5	—	—	—	—	X
Chlorinated camphene	8001-35-2	—	0.5	—	1	—	—	X
Chlorinated diphenyl oxide	55720-99-5	—	0.5	—	—	—	—	—
Chlorine	7782-50-5	0.5	1.5	1	3	—	—	—
Chlorine dioxide	10049-04-4	0.1	0.3	0.3	0.9	—	—	—
Chlorine trifluoride	7790-91-2	—	—	—	—	0.1	0.4	—
Chloroacetaldehyde	107-20-0	—	—	—	—	1	3	—
a-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	—	—	—	—	—
Chloroacetyl chloride	79-04-9	0.05	0.2	—	—	—	—	—
Chlorobenzene	108-90-7	75	350	—	—	—	—	—
o-Chlorobenzylidene malononitrile	2698-41-1	—	—	—	—	0.05	0.4	X
Chlorobromomethane	74-97-5	200	1050	—	—	—	—	—
2-Chloro-1,3-butadiene; see b-Chloroprene								
Chlorodifluoromethane	75-45-6	1000	3500	—	—	—	—	—
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9	—	1	—	—	—	—	X
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1	—	0.5	—	—	—	—	X
1-Chloro,2,3-epoxypropane; see Epichlorohydrin								
2-Chloroethanol; see Ethylene chlorohydrin								
Chloroethylene; see Vinyl chloride								
Chloroform (Trichloromethane)	67-66-3	2	9.78	—	—	—	—	—
Bis(Chloromethyl) ether see 29 CFR 1910.1003	542-88-1							
Chloromethyl methyl ether; see 29 CFR 1910.1003	107-30-2							
1-Chloro-1-nitropropane	600-25-9	2	10	—	—	—	—	—
Chloropentafluoroethane	76-15-3	1000	6320	—	—	—	—	—
Chloropicrin	76-06-2	0.1	0.7	—	—	—	—	—
Beta-Chloroprene	126-99-8	10	35	—	—	—	—	X
o-Chlorostyrene	2039-87-4	50	285	75	428	—	—	—
o-Chlorotoluene	95-49-8	50	250	—	—	—	—	—
2-Chloro-6-trichloro-methpyridine	1929-82-4							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Chlorpyrifos	2921-88-2	—	0.2	—	—	—	—	X
Chromic acid and chromates (as CrO3)	Varies with compound	—	—	—	—	—	0.1	—
Chromium, sol chromic, chromous salts (as Cr)	7440-47-3	—	0.5	—	—	—	—	—
Chromium, metal and insoluble Salts	7440-47-3	—	1	—	—	—	—	—
Chrysene; see Coal tar pitch volatiles								
Clopidol	2971-90-6							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—

Coal dust (less than 5% SiO2) Respirable fraction	—	—	0.2	—	—	—	—	—
Coal dust (greater than or equal to 5% SiO2), Respirable quartz fraction	—	—	0.1	—	—	—	—	—
Coal tar pitch volatiles (benzene soluble fraction), anthrancene, BaP, phenanthrene, acidine, chrysene, pyrene	65966-93-2	—	0.2	—	—	—	—	—
Cobalt metal, dust, and fume (as Co)	7440-48-4	—	0.05	—	—	—	—	—
Cobalt carbonyl (as Co)	10210-68-1	—	0.1	—	—	—	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	—	0.1	—	—	—	—	—
Coke oven emissions; see 29 CFR 1910.1029	—							
Copper	7440-50-8	—	—	—	—	—	—	—
Fume (as Cu)	—	—	0.1	—	—	—	—	—
Dusts and mists (as Cu)	—	—	1	—	—	—	—	—
Cotton dust (raw)	—	—	1	—	—	—	—	—
This 8-hour TWA applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instruction. The time-weighted average applies to the cotton waste processing operations of waste recycling (sorting, blending, cleaning and willowing) and garnetting. See also 29 CFR 1910.1043 for cotton dust limits applicable to other sectors.								
Crag herbicide (Sesone)	136-78-7	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Cresol, all isomers	1319-77-3	5	22	—	—	—	—	X
Crotonaldehyde	123-73-9; 4170-30-3	2	6	—	—	—	—	—
Crufomate	299-86-5	—	5	—	—	—	—	—
Cumene	98-82-8	50	245	—	—	—	—	X
Cyanamide	420-04-2	—	2	—	—	—	—	—
Cyanides (as CN)	Varies with compound	—	5	—	—	—	—	—
Cyanogen	460-19-5	10	20	—	—	—	—	—
Cyanogen chloride	506-77-4	—	—	—	—	0.3	0.6	—
Cyclohexane	110-82-7	300	1050	—	—	—	—	—
Cyclohexanol	108-93-0	50	200	—	—	—	—	X
Cyclohexanone	108-94-1	25	100	—	—	—	—	X
Cyclohexene	110-83-8	300	1015	—	—	—	—	—
Cyclohexylamine	108-91-8	10	40	—	—	—	—	—
Cyclonite	121-82-4	—	1.5	—	—	—	—	X
Cyclopentadiene	542-92-7	75	200	—	—	—	—	—
Cyclopentane	287-92-3	600	1720	—	—	—	—	—
Cyhexatin	13121-70-5	—	5	—	—	—	—	—
2,4-D (Dichlorophenoxyacetic acid)	94-75-7	—	10	—	—	—	—	—
Decaborane	17702-41-9	0.05	0.3	0.15	0.9	—	—	X
Demeton (Systox®)	8065-48-3	—	0.1	—	—	—	—	X
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	—	1	—	—	—	—	X
Dichlorvos (DDVP)	62-73-7	—	1	—	—	—	—	X
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2	50	240	—	—	—	—	—
1,2-Diaminoethane; see								

Ethylenediamine								
Diazinon	333-41-5	—	0.1	—	—	—	—	X
Diazomethane	334-88-3	0.2	0.4	—	—	—	—	—
Diborane	19287-45-7	0.1	0.1	—	—	—	—	—
1,2-Dibromo-3-chloropropane; see 29 CFR 1910.1044	96-12-8							
2-N-Dibutylaminoethanol	102-81-8	2	14	—	—	—	—	—
Dibutyl phosphate	107-66-4	1	5	2	10	—	—	—
Dibutyl phthalate	84-74-2	—	5	—	—	—	—	—
Dichloroacetylene	7572-29-4	—	—	—	—	0.1	0.4	—
o-Dichlorobenzene	95-50-1	—	—	—	—	50	300	—
p-Dichlorobenzene	106-46-7	75	450	110	675	—	—	—
3,3'-Dichlorobenzidine see 29 CFR 1910.1003	91-94-1							
Dichlorodifluoromethane	75-71-8	1000	4950	—	—	—	—	—
1,3-Dichloro-5,5-dimethyl hydantion	118-52-5	—	0.2	—	0.4	—	—	—
1,1-Dichlorothane	75-34-3	100	400	—	—	—	—	—
1,2-Dichloroethylene	540-59-0	200	790	—	—	—	—	—
Dichloroethyl ether	111-44-4	5	30	10	60	—	—	X
Dichloromethane; see Methylene chloride								
Dichloromonofluoro-methane	75-43-4	10	40	—	—	—	—	—
1,1-Dichloro-1-nitroethane	594-72-9	2	10	—	—	—	—	—
1,2-Dichloropropane; see Propylenedichloride								
1,3-Dichloropropene	542-75-8	1	5	—	—	—	—	X
2,2-Dichloropropionic acid	75-99-0	1	6	—	—	—	—	—
Dichlorotetrafluoroethane	76-14-2	1000	7000	—	—	—	—	—
Dicrotophos	141-66-2	—	0.25	—	—	—	—	X
Dicyclopentadiene	77-73-6	5	30	—	—	—	—	—
Dicyclopentadienyl iron	102-54-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Dieldrin	60-57-1	—	0.25	—	—	—	—	X
Diethanolamine	111-42-2	3	15	—	—	—	—	—
Diethylamine	109-89-7	10	30	25	75	—	—	—
2-Diethylaminoethanol	100-37-8	10	50	—	—	—	—	X
Diethylene triamine	111-40-0	1	4	—	—	—	—	—
Diethyl ether, see Ethyl ether								
Diethyl ketone	96-22-0	200	705	—	—	—	—	—
Diethyl phthalate	84-66-2	—	5	—	—	—	—	—
Difluorodibromomethane	75-61-6	100	860	—	—	—	—	—
Diglycidyl ether (DGE)	2238-07-5	0.1	0.5	—	—	—	—	—
Dihydroxybenzene; see Hydroquinone								
Diisobutyl ketone	108-83-8	25	150	—	—	—	—	—
Diisopropylamine	108-18-9	5	20	—	—	—	—	X
4-Dimethylaminoazo-benzene; see 29 CFR 1910.1003	60-11-7	—	—	—	—	—	—	—
Dimethoxymethane; see Methytal								
Dimethyl acetamide	127-19-5	10	35	—	—	—	—	X
Dimethylamine	124-40-3	10	18	—	—	—	—	—
Dimethylaminobenzene; see Xylidine								

Dimethylaniline (N,N-Dimethyl-analine)	121-69-7	5	25	10	50	—	—	X
Dimethylbenzene; see Xylene								
Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate	300-76-5	—	3	—	—	—	—	X
Dimethylformamide	68-12-2	10	30	—	—	—	—	X
2,6-Dimethyl-4-hepta-none; see Diisobutyl ketone								
1,1-Dimethylhydrazine	57-14-7	0.5	1	—	—	—	—	X
Dimethylphthalate	131-11-3	—	5	—	—	—	—	—
Dimethyl sulfate	77-78-1	0.1	0.5	—	—	—	—	X
Dinitolmide (3,5-Dinitro-o- toluamide	148-01-6	—	5	—	—	—	—	—
Dinitrobenzene (all isomers) (alpha-) (meta-) (para-)	 528-29-0 99-65-0 100-25-4	—	1	—	—	—	—	X
Dinitro-o-cresol	534-52-1	—	0.2	—	—	—	—	X
Dinitrotoluene	25321-14-6	—	1.5	—	—	—	—	X
Dioxane (Diethylene dioxide)	123-91-1	25	90	—	—	—	—	X
Dioxathion (Delnav)	78-34-2	—	0.2	—	—	—	—	X
Diphenyl (Biphenyl)	92-52-4	0.2	1	—	—	—	—	—
Diphenylamine	122-39-4	—	10	—	—	—	—	—
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate								
Dipropylene glycol methyl ether	34590-94-8	100	600	150	900	—	—	X
Diprophy ketone	123-19-3	50	235	—	—	—	—	—
Diquat	85-00-7	—	0.5	—	—	—	—	—
Di-sec octyl phthalate (Di-2-ethylhexyl-phthalate)	117-81-7	—	5	—	10	—	—	—
Disulfiram	97-77-8	—	2	—	—	—	—	—
Disulfoton	298-04-4	—	0.1	—	—	—	—	X
2-6Di-tert-butyl-p-cresol	128-37-0	—	10	—	—	—	—	—
Diuron	330-54-1	—	10	—	—	—	—	—
Divinyl benzene	1321-74-0	10	50	—	—	—	—	—
Emery	12415-34-8	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Endosulfan	115-29-7	—	0.1	—	—	—	—	X
Endrin	72-20-8	—	0.1	—	—	—	—	X
Epichlorohdrin	106-89-8	2	8	—	—	—	—	X
EPN	2104-64-5	—	0.5	—	—	—	—	X
1,2-epoxypropane; see Propylene oxide								
2-3-Epoxy-1-propanol; see Glydicol								
Ethanethiol; see Ethy mercaptan								
Ethanolamine	141-43-5	3	8	6	15	—	—	—
Ethion	563-12-2	—	0.4	—	—	—	—	X
2-Ethoxyethanol	110-80-5	200	740	—	—	—	—	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	100	540	—	—	—	—	X
Ethyl acetate	141-78-6	400	1400	—	—	—	—	—
Ethyl acrylate	140-88-5	5	20	25	100	—	—	X
Ethyl alcohol (Ethonal)	64-17-5	1000	1900	—	—	—	—	—
Ethylamine	75-04-7	10	18	—	—	—	—	—

Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	—	—	—	—	—
Ethyl benzene	100-41-4	100	435	125	545	—	—	—
Ethyl bromide	74-96-4	200	890	250	1110	—	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	—	—	—	—	—
Ethyl chloride	75-00-3	1000	2600	—	—	—	—	—
Ethyl ether	60-29-7	400	1200	500	1500	—	—	—
Ethyl formate	109-94-4	100	300	—	—	—	—	—
Ethyl mercaptan	75-08-1	0.5	1	—	—	—	—	—
Ethyl silicate	78-10-4	10	85	—	—	—	—	—
Ethylene chlorohydrin	107-07-3	—	—	—	—	1	3	X
Ethylenediamine	107-15-3	10	25	—	—	—	—	—
Ethylene dibromide (STEL – 5 minutes)	106-93-4	20	—	—	30	—	50	—
Ethylene dichloride	107-06-2	1	4	2	8	—	—	—
Ethylene glycol	107-21-1	—	—	—	—	50	125	—
Ethylene glycol dinitrate	628-96-6	—	—	—	0.1	—	—	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate								
Ethyleneimine; see 29 CFR 1910.1003	151-56-4							
Ethylene oxide; see 29 CFR 1910.1047	75-21-8							
Ethylidene chloride; see 1,1-Dichloroethane								
Ethylidene norbormene	16219-75-3	—	—	—	—	5	25	—
Nethylmorpholine	100-74-3	5	23	—	—	—	—	X
Fenamiphos	22224-92-6	—	0.1	—	—	—	—	X
Fensulfothion (Dasanit)	115-90-2	—	0.1	—	—	—	—	—
Fenthion	55-38-9	—	0.2	—	—	—	—	X
Ferbam	14484-64-1	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Ferrovanadium dust	12604-58-9	—	1	—	3	—	—	—
Fluorides (as F)	Varies with compound	—	2.5	—	—	—	—	—
Fluorine	7782-41-4	0.1	0.2	—	—	—	—	—
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	—	—	—	—	1000	5600	—
Fonofos	944-22-9	—	0.1	—	—	—	—	X
Formaldehyde; see 29 CFR 1910.1048								
Formamide	75-12-7	20	30	30	45	—	—	—
Formic acid	64-18-6	5	9	—	—	—	—	—
Furfural	98-01-1	2	8	—	—	—	—	X
Furfuryl alcohol	98-00-0	10	40	15	60	—	—	X
Gasoline	8006-61-9	300	900	500	1500	—	—	—
Bermanium tetrahydride	7782-65-2	0.2	0.6	—	—	—	—	—
Glutaraldehyde	111-30-8	—	—	—	—	0.2	0.8	—
Glycerin (mist)	56-81-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Glycidol	556-52-5	25	75	—	—	—	—	—
Glycol monoethyl ether see 2-Ethoxyethanol								

Grain dust (oat, wheat, barley)	—	—	10	—	—	—	—	—
Graphite, natural respirable dust	7782-42-5	—	2.5	—	—	—	—	—
Graphite, synthetic	—	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Guthion®, see Azinphos methyl								
Gypsum	13397-24-5							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Hafnium	7440-58-6	—	0.5	—	—	—	—	—
Heptachlor	76-44-8	—	0.5	—	—	—	—	X
Heptane (n-Heptane)	142-82-5	400	1600	500	2000	—	—	—
Hexaclorobutadiene	87-68-3	0.02	0.24	—	—	—	—	—
Hexachlorocyclo-pentadiene	77-47-4	0.01	0.1	—	—	—	—	—
Hexacloroethane	67-72-1	1	10	—	—	—	—	X
Hexachloronapthalene	1335-87-1	—	0.2	—	—	—	—	X
Hexafluoroacetone	684-16-2	0.1	0.7	—	—	—	—	X
n-Hexane	110-54-3	50	180	—	—	—	—	—
Hexane isomers	Varies with compound	500	1800	1000	3600	—	—	—
2-Hexanone (Methyl n-butyl ketone)	591-78-6	5	20	—	—	—	—	—
Hexone (Methyl isobutyl ketone)	108-10-1	50	205	75	300	—	—	
sec-Hexyl acetate	108-84-9	50-	300	—	—	—	—	—
Hexylene glycol	107-41-5	—	—	—	—	25	125	—
Hydrazine	302-01-2	0.2	0.1	—	—	—	—	X
Hydrogenated terphenyls	61788-32-7	0.5	5	—	—	—	—	—
Hydrogen bromide	10035-10-6	—	—	—	—	3	10	—
Hydrogen chloride	7647-01-0	—	—	—	—	5	7	—
Hydrogen cyanide	74-90-8	—	—	4.7	5	—	—	X
Hydrogen fluoride (as F)	7664-39-3	3	—	6	—	—	—	—
Hydrogen peroxide	7722-84-1	1	1.4	—	—	—	—	—
Hydrogen selenide (as Se)	7783-07-5	0.05	0.2	—	—	—	—	—
Hydrogen sulfide	7783-06-4	10	14	15	21	—	—	—
Hydroquinone	123-31-9	—	2	—	—	—	—	—
2-Hydroxypropyl acrylate	999-61-1	0.5	3	—	—	—	—	X
Indene	95-13-6	10	45	—	—	—	—	—
Indium and compounds (as in)	7440-74-6	—	0.1	—	—	—	—	—
Iodine	7553-56-2	—	—	—	—	0.1	1	—
Iodoform	75-47-8	0.6	10	—	—	—	—	—
Iron oxide fume	1309-37-1	—	10	—	—	—	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	0.1	0.8	0.2	1.6	—	—	—
Iron salts (soluble) (as Fe)	Varies with compound	—	1	—	—	—	—	—
Isoamyl acetate	123-92-2	100	525	—	—	—	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100	360	125	450	—	—	—
Isobutyl acetate	110-19-0	150	700	—	—	—	—	—
Isobutyl alcohol	78-83-1	50	150	—	—	—	—	—
Isooctyl alcohol	26952-21-6	50	270	—	—	—	—	X
Isophorone	78-59-1	4	23	—	—	—	—	—
Isophorone diisocyanate	4098-71-9	0.005	—	0.02	—	—	—	X
2-Isopropoxyethanol	109-59-1	25	105	—	—	—	—	—
Isopropyl acetate	108-21-4	250	950	310	1185	—	—	—

Isopropyl alcohol	67-63-0	400	980	500	1225	—	—	—
Isopropylamine	75-31-0	5	12	10	24	—	—	—
N-isopropylaniline	768-52-5	2	10	—	—	—	—	X
Isopropyl ether	108-20-3	500	2100	—	—	—	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	75	360	—	—	—
Kaolin								
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Ketene	463-51-4	0.5	0.9	1.5	3	—	—	—
Lead inorganic (as Pb); see 29 CFR 1910.1025	7439-92-1							
Limestone	1317-65-3							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Lindane	58-89-9	—	0.5	—	—	—	—	X
Lithium hydride	7580-67-8	—	0.025	—	—	—	—	—
L.P.G. (liquefied petroleum gas)	68476-85-7	1000	1800	—	—	—	—	—
Magnesite	546-93-0	—	—	—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Magnesium oxide fume	1309-48-4	—	—	—	—	—	—	—
Total particulate	—	—	10	—	—	—	—	—
Malathion	121-75-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	X
Maleic anhydride	108-31-6	0.25	1	—	—	—	—	—
Manganese compounds (as Mn)	7439-96-5	—	—	—	—	—	5	—
Manganese fume (as Mn)	7439-96-5	—	1	—	3	—	—	—
Manganese cyclopenta-dienyl tricarbonyl (as Mn)	12079-65-1	—	0.1	—	—	—	—	X
Manganese tetroxide (as Mn)	1317-35-7	—	1	—	—	—	—	—
Marble	1317-65-3	—	—	—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Mercury (aryl and inorganic) (as Hg)	7439-97-6	—	—	—	—	—	0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439-97-6	—	0.01	—	0.03	—	—	X
Mercury (vapor) (as Hg)	7439-97-6	—	0.05	—	—	—	—	X
Mesityl oxide	141-79-7	15	60	25	100	—	—	—
Methacrylic acid	79-41-4	20	70	—	—	—	—	X
Methanethiol; see Methyl mercapan								
Methomyl (Lannate)	16752-77-5	—	2.5	—	—	—	—	—
Methoxychlor	72-43-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
2-Methoxyethanol; see Methyl cellosolve								
4-Methoxyphenol	150-76-5	—	5	—	—	—	—	—
Methyl acetate	79-20-9	200	610	250	760	—	—	—
Methyl acetylene (Propyne)	74-99-7	1000	1650	—	—	—	—	—
Methyl acetylene-propadiene mixture (MAPP)	—	1000	1800	1250	2250	—	—	—
Methyl acrylate	96-33-3	10	35	—	—	—	—	X
Methylacrylonitrile	126-98-7	1	3	—	—	—	—	X
Methylal (Dimethoxy-methane)	109-87-5	100	3100	—	—	—	—	—

Methyl alcohol	67-56-1	200	260	250	325	—	—	X
Methylamine	74-89-5	10	12	—	—	—	—	—
Methyl amyl alcohol; see Methyl isobutyl carbinol								
Methyl n-amyl ketone	110-43-0	100	465	—	—	—	—	—
Methyl bromide	74-83-9	5	20	—	—	—	—	X
Methyl butyl ketone; see 2-Hexanone								
Methyl cellosolve (2-Methoxyethanol)	109-86-4	25	80	—	—	—	—	X
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	25	120	—	—	—	—	X
Methyl chloride	74-87-3	50	105	100	210	—	—	—
Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350	1900	450	2450	—	—	—
Methyl 2-cyanoacrylate	137-05-3	2	8	4	16	—	—	—
Methyl cyclohexane	108-87-2	400	1600	—	—	—	—	—
Methylcyclohexanol	25639-42-3	50	235	—	—	—	—	—
o-Methylcyclohexanone	583-60-8	50	230	75	345	—	—	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12106-13-3	—	0.2	—	—	—	—	X
Methyl demeton	8022-00-2	—	0.5	—	—	—	—	X
4,4'-Methylene bis (2-chloroaniline (MBOCA)	101-14-4	0.02	0.22	—	—	—	—	X
Methylene bis (4-cyclohexy-isocyanate)	5124-30-1	—	—	—	—	0.01	0.11	X
Methylene chloride; see 29 CFR 1910.1052	75-09-2	—	—	—	—	—	—	—
Methylenedianiline; see 29 CFR 1910.1050								
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	—	—	0.7	5	—
Methyl formate	107-31-3	100	250	150	375	—	—	—
Methyl hydrazine (monomethyl hydrazine)	60-34-4	—	—	—	—	0.2	0.35	X
Methyl iodide	74-88-4	2	10	—	—	—	—	X
Methyl isoamyl ketone	110-12-3	50	240	—	—	—	—	—
Methy isobutyl carbinol	108-11-2	25	100	40	165	—	—	X
Methyl isobutyl ketone; see Hexone								
Methyl isocyanate	624-83-9	0.02	0.05	—	—	—	—	X
Methyl isopropyl ketone	563-80-4	200	705	—	—	—	—	—
Methyl mercaptan	74-93-1	0.5	1	—	—	—	—	—
Methyl methacrylate	80-62-6	100	410	—	—	—	—	—
Methyl parathion	298-00-0	—	0.2	—	—	—	—	X
Methyl propyl ketone; see 2-Pentanone								
Methyl silicate	681-84-5	1	6	—	—	—	—	—
alpha-Methyl styrene	98-83-9	50	240	100	485	—	—	—
Methylene disphenyl isocyanate (MDI)	101-68-8	—	—	—	—	0.02	0.2	—
Metribuzin	21087-64-9	—	5	—	—	—	—	—
Mica; see Silicates								
Molybdenum (as Mo)	7439-98-7							
Soluble compounds	—	—	5	—	—	—	—	—

Insoluble compounds								
Total dust	—	—	10	—	—	—	—	—
Monocrotophos (Azodrin®)	6923-22-4	—	0.25	—	—	—	—	—
Monomethyl aniline	100-61-8	0.5	2	—	—	—	—	X
Morpholine	110-91-8	20	70	30	105	—	—	X
Naphtha (Coal tar)	8030-30-6	100	400	—	—	—	—	—
Naphthalene	91-20-3	10	50	15	75	—	—	—
alpha-Naphthylamine; see 29 CFR 1910.1003	134-32-7							
beta-Naphthylamine; see 29 CFR 1910.1003	91-59-8							
Nickel carbonyl (as Ni)	13463-39-3	0.001	0.007	—	—	—	—	—
Nickel, metal and insoluble compounds (as Ni)	7440-02-0	—	1	—	—	—	—	—
Nickel, soluble compounds (as Ni)	7440-02-0	—	0.1	—	—	—	—	—
Nicotine	54-11-5	—	0.5	—	—	—	—	X
Nitric acid	7697-37-2	2	5	4	10	—	—	—
Nitric oxide	10102-43-9	25	30	—	—	—	—	—
p-Nitroaniline	100-01-6	—	3	—	—	—	—	X
Nitrobenzene	98-95-3	1	5	—	—	—	—	X
p-Nitrochlorobenzene	100-00-5	—	1	—	—	—	—	x
4-Nitrodiphenyl; see 29 CFR 1910.1003	92-93-3							
Nitroethane	79-24-3	100	310	—	—	—	—	—
Nitrogen dioxide	10102-44-0	—	—	1	1.8	—	—	—
Nitrogen trifluoride	7783-54-2	10	29	—	—	—	—	—
Nitroglycerinl	55-63-0	—	—	—	0.1	—	—	X
Nitromethane	75-52-5	100	250	—	—	—	—	—
1-Nitropropane	108-03-2	25	90	—	—	—	—	—
2-Nitropropane	79--46-9	10	35	—	—	—	—	—
N-Nitrosodimethylamine; see 29 CFR 1910.1016	62-79-9							
Nitrotoluene								
o-isomer	88-72-2	2	11	—	—	—	—	X
m-isomer	99-08-1	2	11	—	—	—	—	X
p-isomer	99-99-0	2	11	—	—	—	—	X
Nitrotrichloromethane; see Chloropicin								
Nonane	111-84-2	200	1050	—	—	—	—	—
Octachloronaphthalene	2234-13-1	—	0.1	—	0.3	—	—	X
Octane	111-65-9	300	1450	375	1800	—	—	—
Oil mist, mineral	8012-95-1	—	5	—	—	—	—	—
Osmium tetroxide (as Os)	20816-12-0	0.0002	0.002	0.0006	0.006	—	—	—
Oxalic acid	144-62-7	—	1	—	2	—	—	—
Oxygen difluoride	7783-41-7	—	—	—	—	0.05	0.1	—
Ozone	10028-15-6	0.1	0.2	0.3	0.6	—	—	—
Paraffin wax fume	8002-74-2	—	2	—	—	—	—	—
Paraquat, respirable dust	1910-42-5 4685-14-7 2074-50-2	—	0.1	—	—	—	—	X
Parathion	5838-2	—	0.1	—	—	—	—	X
Particulates not otherwise regulated								
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—

Pentaborane	19624-22-7	0.005	0.01	0.015	0.03	—	—	—
Pentachloronaphthalene	1321-64-8	—	0.5	—	—	—	—	X
Pentachlorophenol	87-86-5	—	0.5	—	—	—	—	X
Pentaerythirtol	115-77-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Pentane	109-66-0	600	1800	750	2250	—	—	—
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	250	875	—	—	—
Perchloroethylene (Tetrachloroethylene)	127-18-4	25	170	—	—	—	—	—
Perchloromethyl mercaptan	594-42-3	0.1	0.8	—	—	—	—	—
Perchloryl fluoride	7616-94-6	3	14	6	28	—	—	—
Perlitte								
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Petroleum distillates (Naphtha) (Rubber Solvent)	—	400	1600	—	—	—	—	—
Phenol	108-95-2	5	19	—	—	—	—	X
Phenothiazine	92-84-2	—	5	—	—	—	—	X
p-Phenylene diamine	106-50-3	—	0.1	—	—	—	—	X
Phenyl ether, vapor	101-84-8	1	7	—	—	—	—	—
Phenyl ether-biphenyl mixture, vapor	—	1	7	—	—	—	—	—
Phenylethylene; see Styrene								
Phenyl glycidyl ether (PGE)	122-60-1	1	6	—	—	—	—	—
Phenylhydrazine	100-63-0	5	20	10	45	—	—	X
Phenyl mercaptan	108-98-5	0.5	2	—	—	—	—	—
Phenylphosphine	638-21-1	—	—	—	—	0.05	0.25	—
Phorate	298-02-2	—	0.05	—	0.2	—	—	X
Phosdrin (Mevinphos®)	7786-34-7	0.01	0.1	0.03	0.3	—	—	X
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	—	—	—	—	—
Phosphine	7803-51-2	0.3	0.4	1	1	—	—	—
Phosphoric acid	7664-38-2	—	1	—	3	—	—	—
Phosphorus (yellow)	7723-14-0	—	0.1	—	—	—	—	—
Phosphorus oxychloride	10025-87-3	0.1	0.6	—	—	—	—	—
Phosphorus pentachloride	10026-13-8	—	1	—	—	—	—	—
Phosphorus pentasulfide	1314-80-3	—	1	—	3	—	—	—
Phosphorus trichloride	7719-12-2	0.2	1.5	0.5	3	—	—	—
Phthalic anhydride	85-44-9	1	6	—	—	—	—	—
m-Phthalodinitrile	626-17-5	—	5	—	—	—	—	—
Picloram	1918-02-1	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Picric acid	88-89-1	—	0.1	—	—	—	—	x
Piperazine dihydro-chloride	142-64-3	—	5	—	—	—	—	—
Pindone (2-Pivalyl-1,3-indandione	83-26-1	—	0.1	—	—	—	—	—
Plaster of Paris	26499-65-0	—	—	—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Platinum (as Pt)	7440-06-4	—	—	—	—	—	—	—
Metal	—	—	1	—	—	—	—	—
Soluble salts	—	—	0.002	—	—	—	—	—
Portland cement	65997-15-1	—	—	—	—	—	—	—

Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Potassium hydroxide	1310-58-3	—	—	—	—	—	2	—
Propane	74-98-6	1000	1800	—	—	—	—	—
Propargl alcohol	107-19-7	1	2	—	—	—	—	X
beta-Propriolactone; see 29 CFR 1910.1013	57-57-8							
Propionic acid	79-09-4	10	30	—	—	—	—	—
Propoxur (Baygon)	114-26-1	—	0.5	—	—	—	—	—
n-Propyl acetate	109-60-40	200	840	250	1050	—	—	—
n-propyl alcohol	71-23-8	200	500	250	625	—	—	—
n-Propyl nitrate	627-13-4	25	105	40	170	—	—	—
Propylene dichloride	78-87-5	75	360	110	510	—	—	—
Propylene glycol dinitrate	6423-43-4	0.05	0.3	—	—	—	—	—
Propylene glycol monomethyl ether	107-98-2	100	380	150	540	—	—	—
Propylene imine	75-55-8	2	5	—	—	—	—	X
Propylene oxide	75-56-9	20	50	—	—	—	—	—
Propyne; see Methyl acetylene								
Pyrethrum	8003-34-7	—	5	—	—	—	—	—
Pyridine	110-86-1	5	15	—	—	—	—	—
Quinone	106-51-4	0.1	0.4	—	—	—	—	—
Resorcinol	108-46-3	10	45	20	90	—	—	—
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	—	0.1	—	—	—	—	—
Rhodium (as Rh), soluble compounds	744-16-6	—	0.001	—	—	—	—	—
Ronnel	299-84-3	—	10	—	—	—	—	—
Rosin core solder pyrolysis products, as formaldehyde	—	—	0.1	—	—	—	—	—
Rotenone	83-79-4	—	5	—	—	—	—	—
Rouge								
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Selenium compounds (as Se)	7782-49-2	—	0.2	—	—	—	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	—	—	—	—	—
Silica, amorphous, precipitated and gel	112926-00-8	—	6	—	—	—	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystaline silica	61790-53-2	—	6	—	—	—	—	—
~~Silica, crystaline cristobalite, respirable dust~~	~~14464-46-1~~	—	~~0.05~~	—	—	—	—	—
~~Silica, crystaline quartz, respirable dust~~	~~14808-60-7~~	—	~~0.1~~	—	—	—	—	—
~~Silica, crystaline tripoli (as quartz), respirable dust~~	~~1317-95-9~~	—	~~0.1~~	—	—	—	—	—
~~Silica, crystaline tridmite, respirable dust~~	~~15468-32-3~~	—	~~0.05~~	—	—	—	—	—
Silica, fused, respirable dust	60676-86-0	—	0.1	—	—	—	—	—
Silicates (less than 1% (crystaline silica)								
Mica (respirable dust)	12001-26-2	—	3	—	—	—	—	—
Soapstone, total dust	—	—	6	—	—	—	—	—
Soapstone, respirable dust	—	—	3	—	—	—	—	—

Talc (containing asbestos); use asbestos limit See 29 CFR 1910.1001								
Talc (containing no asbestos); Respirable dust	14807-96-6	—	2	—	—	—	—	—
Tremolite (use asbestos limit); See 29 CFR 1910.1001								
Silicon	7440-21-3							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Silicon carbide	409-21-2							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Silicon tetrahydride	7803-62-5	5	7	—	—	—	—	—
Silver, metal and soluble compounds (as Ag)	7440-22-4	—	0.01	—	—	—	—	—
Soapstone; see Silicates								
Sodium azide	26628-22-8							
(as HN3)	—	—	—	—	—	0.1	—	X
(as NaN3)	—	—	—	—	—	—	0.3	X
Sodium bisulfite	7631-90-5	—	5	—	—	—	—	—
Sodium fluoroacetate	62-74-8	—	0.05	—	0.15	—	—	X
Sodium hydroxide	1310-73-2	—	—	—	—	—	2	—
Sodium metabisulphite	7681-57-4	—	5	—	—	—	—	—
Starch	9005-25-8							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Stibine	7803-52-3	0.1	0.5	—	—	—	—	—
Stoddard solvent	8052-41-3	100	525	—	—	—	—	—
Strychnine	57-24-9	—	0.15	—	—	—	—	—
Styrene	100-42-5	50	215	100	425	—	—	—
Subtilisins (Protolytic enzymes) sample 600-800 lpm for at least 60 minutes	9014-01-1	—	—	—	0.00006	—	—	—
Sucrose	57-50-1	—	—	—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Sulfur dioxide	7446-09-5	2	5	5	10	—	—	—
Sulfur hexafluoride	2551-62-4	1000	6000	—	—	—	—	—
Sulfuric acid	7664-93-9	—	1	—	—	—	—	—
Sulfur monochloride	10025-67-9	—	—	—	—	1	6	—
Sulfur pentafluoride	5714-22-7	—	—	—	—	0.01	0.1	—
Sulfur tetrafluoride	7783-60-0	—	—	—	—	0.1	0.4	—
Sulfuryl fluoride	2699-79-8	5	20	10	40	—	—	—
Sulprofos	35400-43-2	—	1	—	—	—	—	—
Systox®, see Demeton								
2,4,5-T	93-76-5	—	10	—	—	—	—	—
Talc; see Silicates								
Tantalum, metal and oxide dust	7440-25-7	—	5	—	—	—	—	—
TEDP (Sulfotep)	3689-24-5	—	0.2	—	—	—	—	X
Tellurium and compounds (as Te)	13494-80-9	—	0.1	—	—	—	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	—	—	—	—	—
Temephos	3383-96-8							
Total dust	—	—	10	—	—	—	—	—

Respirable fraction	—	—	5	—	—	—	—	—
TEPP	107-49-3	—	0.05	—	—	—	—	X
Terphenyls	26140-60-3	—	—	—	—	0.5	5	—
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	500	4170	—	—	—	—	—
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	500	4170	—	—	—	—	—
1,1,2,2-Tetrachloroethane	79-34-5	1	7	—	—	—	—	X
Tetrachoroethylene; see Perchloroethylene								
Tetrachloromethane; see Carbon tetrachloride								
Tetrachloronaphthalene	1335-88-2	—	2	—	—	—	—	X
Tetraethyl lead (as Pb)	78-00-2	—	0.075	—	—	—	—	X
Tetrahydrofuran	109-99-9	200	590	250	735	—	—	—
Tetramethyl lead, (as Pb)	75-74-1	—	0.75	—	—	—	—	X
Tetramethyl succinonitrile	3333-52-6	0.5	3	—	—	—	—	X
Tetranitromethane	509-14-8	1	8	—	—	—	—	—
Tetrasodium pyrophosphate	7722-88-5	—	5	—	—	—	—	—
Tetryl (2,4,6-Trinitrophenyl-methyl-nitramine)	479-45-8	—	1.5	—	—	—	—	X
Thalium, Soluble compounds (as Tl)	7440-28-0	—	0.1	—	—	—	—	X
4,4'-Thiobis(6-tert, Butyl-m-cresol)	96-69-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Thioglycolic acid	68-11-1	1	4	—	—	—	—	X
Thionyl chloride	7719-09-7	—	—	—	—	1	5	—
Thiram	137-26-8	—	5	—	—	—	—	—
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	—	2	—	—	—	—	—
Tin, organic compounds (as Sn)	7440-31-5	—	0.1	—	—	—	—	X
Tin oxide (as Sn)	21651-19-4	—	2	—	—	—	—	—
Titanium dioxide	13463-67-7	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Toluene	108-88-3	100	375	150	580	—	—	—
Toluene-2,4-diisocynate (TDI)	584-84-9	0.005	0.04	0.02	0.15	—	—	—
m-Toluidine	108-44-1	2	9	—	—	—	—	X
o-Toluidine	95-53-4	5	22	—	—	—	—	X
p-Toluidine	106-49-0	2	9	—	—	—	—	X
Toxaphene; see Chlorinated camphene								
Tremolite; see Silicates								
Tributyl phosphate	126-73-8	0.2	2.5	—	—	—	—	—
Trichloroacetic acid	76-03-9	1	7	—	—	—	—	—
1,2,4-Trichlorobenzene	120-82-1	—	—	—	—	5	40	—
1,1,1-Trichloroethane; see Methyl chloroform								
1,1,2-Trichloroethane	79-00-5	10	45	—	—	—	—	X
Trichloroethylene	79-01-6	50	270	200	1080	—	—	—
Trichloromethane; see Chloroform								
Trichloronaphthalene	1321-65-9	—	5	—	—	—	—	X
1,2,3-Trichloropropane	96-18-4	10	60	—	—	—	—	—
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	1250	9500	—	—	—
Triethylamine	121-44-8	10	40	15	60	—	—	—

Trifluorobromomethane	75-63-8	1000	6100	—	—	—	—	—
Trimellitic anhydride	552-30-7	0.005	0.04	—	—	—	—	—
Trimethylamine	75-50-3	10	24	15	36	—	—	—
Trimethyl benzene	25551-13-7	25	125	—	—	—	—	—
Trimethyl phosphite	121-45-9	2	10	—	—	—	—	—
2,4,6-Trinitrophenyl; see Picric acid								
2,4,6-Trinitrophenylmethyl nitamine; see Tetryl								
2,4,6-Trinitrotoluene (TNT)	118-96-7	—	0.5	—	—	—	—	X
Triorthocresyl phosphate	78-30-8	—	0.1	—	—	—	—	X
Triphenyl amine	603-34-9	—	5	—	—	—	—	—
Triphenyl phosphate	115-86-6	—	3	—	—	—	—	—
Tungsten (as W	7440-33-7	—	—	—	—	—	—	—
Insoluble compounds	—	—	5	—	10	—	—	—
Soluble compounds	—	—	1	—	3	—	—	—
Turpentine	8006-64-2	100	560	—	—	—	—	—
Uranium (as U)	7440-61-1	—	—	—	—	—	—	—
Soluble compounds	—	—	0.05	—	—	—	—	—
Insoluble compounds	—	—	0.2	—	0.6	—	—	—
n-Valeraldehyde	110-62-3	50	175	—	—	—	—	—
Vanadium fume and	1314-62-1	—	—	—	—	—	—	—
Respirable dust (as V2O5)	—	—	0.05	—	—	—	—	—
Vegetable oil mist	—							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Vinyl acetate	108-05-4	10	30	20	60	—	—	—
Vinyl benzene; see Styrene								
Vinyl bromide	593-60-2	5	20	—	—	—	—	—
Vinyl chloride; see 29 CFR 1910.1017	75-01-4	—	—	—	—	—	—	—
Vinyl cyanide; see Acrylonitrile								
Vinyl cyclohexene dioxide	106-87-6	10	60	—	—	—	—	X
Vinylidene chloride (1,1-Dichloro-ethylene)	75-35-4	1	4	—	—	—	—	—
Vinyl toluene	24994	100	480	—	—	—	—	—
VM & P Naphtha	8032-32-4	300	1350	400	1800	—	—	—
Warfarin	81-81-2	—	0.1	—	—	—	—	—
Welding fumes (total particulate)	—	—	5	—	—	—	—	—
Wood dust, all soft and hard woods, except Western red cedar	—	—	5	—	10	—	—	—
Wood dust, Western red cedar	—	—	2.5	—	—	—	—	—
Xylenes (o-, m-, p- isomers)	1330-20-7	100	435	150	655	—	—	—
m-Xylene alpha, alpha-diamine	1477-55-0	—	—	—	—	—	0.1	X
Xylidine	1300-73-8	2	10	—	—	—	—	X
Yttrium	7440-65-5	—	1	—	—	—	—	—
Zinc chloride fume	7646-85-7	—	1	—	2	—	—	—
Zinc chromate (as CrO3)	Varies with compound	—	—	—	—	—	0.1	—
Zinc oxide fume	1314-13-2	—	5	—	10	—	—	—
Zinc oxide	1314-13-2	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Zinc stearate	557-05-1	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—

Respirable fraction	—	—	5	—	—	—	—	—
Zirconium compounds (as Zr)	7440-67-7	—	5	—	10	—	—	—

Proposed Amended Rule:

Substance	CAS No.	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m3	ppm	mg/m3	ppm	mg/m3	
Acetaldehyde	75-07-0	100	180	150	270	—	—	—
Acetic acid	64-19-7	10	25	—	—	—	—	—
Acetic anhydride	108-24-7	—	—	—	—	5	20	—
Acetone	67-64-1	750	1800	1000	2400	—	—	—
Acetonitrile	75-05-8	40	70	60	105	—	—	—
2-Acetylaminofluorine; see 29 CFR 1910.1003	53-96-3	—	—	—	—	—	—	—
Acetylene dichloride; see 1,2-Dichloroethylene								
Acetylene tetrabromide	79-27-6	1	14	—	—	—	—	—
Acetylsalicylic acid (Asprin)	50-78-2	—	5	—	—	—	—	—
Acrolein	107-02-8	0.1	0.25	0.3	0.8	—	—	—
Acrylamide	79-06-1	—	0.03	—	—	—	—	X
Acrylic acid	79-10-7	10	30	—	—	—	—	X
Acrylonitrile; see 29 CFR 1910.1045	107-13-1	—	—	—	—	—	—	—
Aldrin	309-00-2	—	0.25	—	—	—	—	X
Allyl alcohol	107-18-6	2	5	4	10	—	—	X
Allyl chloride	107-05-1	1	3	2	6	—	—	—
Allyd glycidl either (AGE)	106-92-3	5	22	10	44	—	—	—
Allyl propyl disulfide	2179-59-1	2	12	3	18	—	—	—
alpha-Alumina	1344-28-1	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Aluminum (As al) Metal	7429-90-5							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Pyro powders	—	—	5	—	—	—	—	—
Welding fumes	—	—	5	—	—	—	—	—
Soluble salts	—	—	2	—	—	—	—	—
Alkyls	—	—	2	—	—	—	—	—
4-Aminodiphenyl; see 29 CFR 1910.1003	92-67-1							
2-Aminoethanol; see Ethanolamine								
2-Aminopyridine	504-29-0	0.5	2	—	—	—	—	—
Amitrole	61-82-5	—	0.2	—	—	—	—	—
Ammonia	7664-41-7	—	—	35	27	—	—	—
Ammonium chloride fume	12125-02-9	—	10	—	20	—	—	—
Ammonium sulfamate	7773-06-0							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
n-Amyl acetate	628-63-7	100	525	—	—	—	—	—
Sec-Amyl acetate	626-38-0	125	650	—	—	—	—	—
Aniline and homologs	62-53-3	2	8	—	—	—	—	X
Anisidine (o-,p-isomers)	29191-52-4	—	0.5	—	—	—	—	X

Antimony and compounds (as Sb)	7440-36-0	—	0.5	—	—	—	—	—
ANTU (alpha Naphthylthiourea)	86-88-4	—	0.3	—	—	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	—	0.5	—	—	—	—	—
Arsenic, inorganic compounds (as As); see 29 CFR 1910.1018	7440-38-2							
Arsine	7784-42-1	0.05	0.2	—	—	—	—	—
Asbestos; see 29 CFR 1910.1001 and 29 CFR 1926.1101	Varies							
Atrizine	1912-24-9	—	5	—	—	—	—	—
Azinphos-methyl	86-50-0	—	0.2	—	—	—	—	X
Barium, soluble compounds (as Ba)	7440-39-3	—	0.5	—	—	—	—	—
Barium sulfate	7727-43-7							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Benomyl	17804-35-2							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Benzene; see 29 CFR 1910.1028	71-43-2							
Industries excluded from 29 CFR 1910.1028 (STEL – 10 minutes)		10	—	25	—	50	—	—
Benzidine; see 29 CFR 1910.1003	92-87-5							
p-Benzoquinone; see Quinone								
Benzo(a)pyrene; see Coal tar pitch volatiles								
Benzoyl peroxide	94-36-0	—	5	—	—	—	—	—
Benzyl chloride	100-44-7	1	5	—	—	—	—	—
Beryllium and beryllium Compounds (as Be) (STEL – 30 minutes)	7440-41-7	—	0.002	—	0.005	—	0.025 —	—
Biphenyl; see Diphenyl								
Bismuth telluride, Undoped	1304-82-1							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Bismuth telluride, Se-doped	—	—	5	—	—	—	—	—
Borates, tetra, sodium salts								
Anhydrous	1330-43-4	—	10	—	—	—	—	—
Decahydrate	1303-96-4	—	10	—	—	—	—	—
Pentahydrate	12179-04-3	—	10	—	—	—	—	—
Boron oxide	1303-86-2							
Total dust	—	—	10	—	—	—	—	—
Boron tribromide	10294-33-4	—	—	—	—	1	10	—
Boron trifluoride	7637-07-2	—	—	—	—	1	3	—
Bromacil	314-40-9	1	10	—	—	—	—	—
Bromine	7726-95-6	0.1	0.7	0.3	2	—	—	—
Bromine pentafluoride	7789-30-2	0.1	0.7	—	—	—	—	—
Bromoform	75-25-2	0.5	5	—	—	—	—	X
Butadiene (1,3-Butadiene) see 29 CFR 1910.1051	106-99-8							
Butane	106-97-8	800	1900	—	—	—	—	—
Butanethiol; see Butyl mercaptan								
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	300	885	—	—	—
2-Butoxyethanol	111-76-2	25	120	—	—	—	—	X
n-butyl-acetate	123-86-4	150	710	200	950	—	—	—
Sec-Butyl acetate	105-46-4	200	950	—	—	—	—	—
Tert-Butyl acetate	540-88-5	200	950	—	—	—	—	—

Butyl acrylate	141-32-2	10	55	—	—	—	—	—
n-Butyl alcohol	71-36-3	—	—	—	—	50	150	X
Sec-Butyl alcohol	78-92-2	100	305	—	—	—	—	—
Tert-Butyl alcohol	75-65-0	100	300	150	450	—	—	—
Butylamine	109-73-9	—	—	—	—	5	15	X
Tert-Butyl chromate (as CrO3)	1189-85-1	—	—	—	—	—	0.1	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25	135	—	—	—	—	—
n-Butyl lactate	138-22-7	5	25	—	—	—	—	—
Butyl mercaptan	109-79-5	0.5	1.5	—	—	—	—	—
o-sec-Butylphenol	89-72-5	5	30	—	—	—	—	X
p-tert-Butyltoluene	98-51-1	10	60	20	120	—	—	—
Cadmium fume and dust (as Cd); see 29 CFR 1910.1027	7440-43-9							
Calcium carbonate	1317-65-3							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Calcium cyanamide	156-62-7	—	0.5	—	—	—	—	—
Calcuim hydroxide	1305-62-0			—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Calcium oxide	1305-78-8		5	—	—	—	—	—
Calcium silicate	1344-95-2							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Calcium sulfate	7778-18-9							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Camphor, synthetic	76-22-2	—	2	—	—	—	—	—
Caprolactam	105-60-2							
Dust	—	—	1	—	3	—	—	—
Vapor	—	5	20	10	40	—	—	—
Captafol (Difolatan®)	2425-06-1	—	0.1	—	—	—	—	—
Captan	133-06-2	—	5	—	—	—	—	—
Carbaryl (Sevin®)	63-25-2	—	5	—	—	—	—	—
Carbofluran (Furadan®)	1563-66-2	—	0.1	—	—	—	—	—
Carbon black	1333-86-4	—	3.5	—	—	—	—	—
Carbon dioxide	124-38-9	10,000	18,000	30,000	54,000	—	—	—
Carbon disulfide	75-15-0	4	12	12	36	—	—	X
Carbon monoxide (STEL – 5 minutes)	630-08-0	35	40	200	229	1500	—	—
Carbon tetrabromide	558-13-4	0.1	1.4	0.3	4	—	—	—
Carbon tetrachloride	56-23-5	2	12.6	—	—	—	—	—
Carbonyl fluoride	353-50-4	2	5	5	15	—	—	—
Catechol (Pyrocatechol)	120-80-9	5	20	—	—	—	—	X
Cellulose	9004-34-6							
Total Dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Cesium hydroxide	21351-79-1	—	2	—	—	—	—	—
Chlordane	57-74-9	—	0.5	—	—	—	—	X
Chlorinated camphene	8001-35-2	—	0.5	—	1	—	—	X
Chlorinated diphenyl oxide	55720-99-5	—	0.5	—	—	—	—	—
Chlorine	7782-50-5	0.5	1.5	1	3	—	—	—
Chlorine dioxide	10049-04-4	0.1	0.3	0.3	0.9	—	—	—
Chlorine trifluoride	7790-91-2	—	—	—	—	0.1	0.4	—

Chloroacetaldehyde	107-20-0	—	—	—	—	1	3	—
a-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	—	—	—	—	—
Chloroacetyl chloride	79-04-9	0.05	0.2	—	—	—	—	—
Chlorobenzene	108-90-7	75	350	—	—	—	—	—
o-Chlorobenzylidene malononitrile	2698-41-1	—	—	—	—	0.05	0.4	X
Chlorobromomethane	74-97-5	200	1050	—	—	—	—	—
2-Chloro-1,3-butadiene; see b-Chloroprene								
Chlorodifluoromethane	75-45-6	1000	3500	—	—	—	—	—
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9	—	1	—	—	—	—	X
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1	—	0.5	—	—	—	—	X
1-Chloro,2,3-epoxypropane; see Epichlorohydrin								
2-Chloroethanol; see Ethylene chlorohydrin								
Chloroethylene; see Vinyl chloride								
Chloroform (Trichloromethane)	67-66-3	2	9.78	—	—	—	—	—
Bis(Chloromethyl) ether see 29 CFR 1910.1003	542-88-1							
Chloromethyl methyl ether; see 29 CFR 1910.1003	107-30-2							
1-Chloro-1-nitropropane	600-25-9	2	10	—	—	—	—	—
Chloropentafluoroethane	76-15-3	1000	6320	—	—	—	—	—
Chloropicrin	76-06-2	0.1	0.7	—	—	—	—	—
Beta-Chloroprene	126-99-8	10	35	—	—	—	—	X
o-Chlorostyrene	2039-87-4	50	285	75	428	—	—	—
o-Chlorotoluene	95-49-8	50	250	—	—	—	—	—
2-Chloro-6-trichloro-methpyridine	1929-82-4							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Chlorpyrifos	2921-88-2	—	0.2	—	—	—	—	X
Chromic acid and chromates (as CrO3)	Varies with compound	—	—	—	—	—	0.1	—
Chromium, sol chromic, chromous salts (as Cr)	7440-47-3	—	0.5	—	—	—	—	—
Chromium, metal and insoluble Salts	7440-47-3	—	1	—	—	—	—	—
Chrysene; see Coal tar pitch volatiles								
Clopidol	2971-90-6							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Coal dust (less than 5% SiO2) Respirable fraction	—	—	0.2	—	—	—	—	—
Coal dust (greater than or equal to 5% SiO2), Respirable quartz fraction	—	—	0.1	—	—	—	—	—
Coal tar pitch volatiles (benzene soluble fraction), anthrancene, BaP, phenanthrene, acidine, chrysene, pyrene	65966-93-2	—	0.2	—	—	—	—	—

Cobalt metal, dust, and fume (as Co)	7440-48-4	—	0.05	—	—	—	—	—
Cobalt carbonyl (as Co)	10210-68-1	—	0.1	—	—	—	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	—	0.1	—	—	—	—	—
Coke oven emissions; see 29 CFR 1910.1029	—							
Copper	7440-50-8	—	—	—	—	—	—	—
Fume (as Cu)	—	—	0.1	—	—	—	—	—
Dusts and mists (as Cu)	—	—	1	—	—	—	—	—
Cotton dust (raw)	—	—	1	—	—	—	—	—
This 8-hour TWA applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instruction. The time-weighted average applies to the cotton waste processing operations of waste recycling (sorting, blending, cleaning and willowing) and garnetting. See also 29 CFR 1910.1043 for cotton dust limits applicable to other sectors.								
Crag herbicide (Sesone)	136-78-7	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Cresol, all isomers	1319-77-3	5	22	—	—	—	—	X
Crotonaldehyde	123-73-9; 4170-30-3	2	6	—	—	—	—	—
Crufomate	299-86-5	—	5	—	—	—	—	—
Cumene	98-82-8	50	245	—	—	—	—	X
Cyanamide	420-04-2	—	2	—	—	—	—	—
Cyanides (as CN)	Varies with compound	—	5	—	—	—	—	—
Cyanogen	460-19-5	10	20	—	—	—	—	—
Cyanogen chloride	506-77-4	—	—	—	—	0.3	0.6	—
Cyclohexane	110-82-7	300	1050	—	—	—	—	—
Cyclohexanol	108-93-0	50	200	—	—	—	—	X
Cyclohexanone	108-94-1	25	100	—	—	—	—	X
Cyclohexene	110-83-8	300	1015	—	—	—	—	—
Cyclohexylamine	108-91-8	10	40	—	—	—	—	—
Cyclonite	121-82-4	—	1.5	—	—	—	—	X
Cyclopentadiene	542-92-7	75	200	—	—	—	—	—
Cyclopentane	287-92-3	600	1720	—	—	—	—	—
Cyhexatin	13121-70-5	—	5	—	—	—	—	—
2,4-D (Dichlorophenoxyacetic acid)	94-75-7	—	10	—	—	—	—	—
Decaborane	17702-41-9	0.05	0.3	0.15	0.9	—	—	X
Demeton (Systox®)	8065-48-3	—	0.1	—	—	—	—	X
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	—	1	—	—	—	—	X
Dichlorvos (DDVP)	62-73-7	—	1	—	—	—	—	X
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2	50	240	—	—	—	—	—
1,2-Diaminoethane; see Ethylenediamine								
Diazinon	333-41-5	—	0.1	—	—	—	—	X
Diazomethane	334-88-3	0.2	0.4	—	—	—	—	—
Diborane	19287-45-7	0.1	0.1	—	—	—	—	—
1,2-Dibromo-3-chloropropane; see 29 CFR 1910.1044	96-12-8							
2-N-Dibutylaminoethanol	102-81-8	2	14	—	—	—	—	—
Dibutyl phosphate	107-66-4	1	5	2	10	—	—	—
Dibutyl phthalate	84-74-2	—	5	—	—	—	—	—

Dichloroacetylene	7572-29-4	—	—	—	—	0.1	0.4	—
o-Dichlorobenzene	95-50-1	—	—	—	—	50	300	—
p-Dichlorobenzene	106-46-7	75	450	110	675	—	—	—
3,3'-Dichlorobenzidine see 29 CFR 1910.1003	91-94-1							
Dichlorodifluoromethane	75-71-8	1000	4950	—	—	—	—	—
1,3-Dichloro-5,5-dimethyl hydantion	118-52-5	—	0.2	—	0.4	—	—	—
1,1-Dichlorothane	75-34-3	100	400	—	—	—	—	—
1,2-Dichloroethylene	540-59-0	200	790	—	—	—	—	—
Dichloroethyl ether	111-44-4	5	30	10	60	—	—	X
Dichloromethane; see Methylene chloride								
Dichloromonofluoro-methane	75-43-4	10	40	—	—	—	—	—
1,1-Dichloro-1-nitroethane	594-72-9	2	10	—	—	—	—	—
1,2-Dichloropropane; see Propylenedichloride								
1,3-Dichloropropene	542-75-8	1	5	—	—	—	—	X
2,2-Dichloropropionic acid	75-99-0	1	6	—	—	—	—	—
Dichlorotetrafluoroethane	76-14-2	1000	7000	—	—	—	—	—
Dicrotophos	141-66-2	—	0.25	—	—	—	—	X
Dicyclopentadiene	77-73-6	5	30	—	—	—	—	—
Dicyclopentadienyl iron	102-54-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Dieldrin	60-57-1	—	0.25	—	—	—	—	X
Diethanolamine	111-42-2	3	15	—	—	—	—	—
Diethylamine	109-89-7	10	30	25	75	—	—	—
2-Diethylaminoethanol	100-37-8	10	50	—	—	—	—	X
Diethylene triamine	111-40-0	1	4	—	—	—	—	—
Diethyl ether, see Ethyl ether								
Diethyl ketone	96-22-0	200	705	—	—	—	—	—
Diethyl phthalate	84-66-2	—	5	—	—	—	—	—
Difluorodibromomethane	75-61-6	100	860	—	—	—	—	—
Diglycidyl ether (DGE)	2238-07-5	0.1	0.5	—	—	—	—	—
Dihydroxybenzene; see Hydroquinone								
Diisobutyl ketone	108-83-8	25	150	—	—	—	—	—
Diisopropylamine	108-18-9	5	20	—	—	—	—	X
4-Dimethylaminoazo-benzene; see 29 CFR 1910.1003	60-11-7	—	—	—	—	—	—	—
Dimethoxymethane; see Methytal								
Dimethyl acetamide	127-19-5	10	35	—	—	—	—	X
Dimethylamine	124-40-3	10	18	—	—	—	—	—
Dimethylaminobenzene; see Xylidine								
Dimethylaniline (N,N-Dimethyl-analine)	121-69-7	5	25	10	50	—	—	X
Dimethylbenzene; see Xylene								
Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate	300-76-5	—	3	—	—	—	—	X
Dimethylformamide	68-12-2	10	30	—	—	—	—	X
2,6-Dimethyl-4-hepta-none; see Diisobutyl ketone								
1,1-Dimethylhydrazine	57-14-7	0.5	1	—	—	—	—	X

Dimethylphthalate	131-11-3	—	5	—	—	—	—	—
Dimethyl sulfate	77-78-1	0.1	0.5	—	—	—	—	X
Dinitolmide (3,5-Dinitro-o- toluamide	148-01-6	—	5	—	—	—	—	—
Dinitrobenzene (all isomers) (alpha-) (meta-) (para-)	 528-29-0 99-65-0 100-25-4	—	1	—	—	—	—	X
Dinitro-o-cresol	534-52-1	—	0.2	—	—	—	—	X
Dinitrotoluene	25321-14-6	—	1.5	—	—	—	—	X
Dioxane (Diethylene dioxide)	123-91-1	25	90	—	—	—	—	X
Dioxathion (Delnav)	78-34-2	—	0.2	—	—	—	—	X
Diphenyl (Biphenyl)	92-52-4	0.2	1	—	—	—	—	—
Diphenylamine	122-39-4	—	10	—	—	—	—	—
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate								
Dipropylene glycol methyl ether	34590-94-8	100	600	150	900	—	—	X
Diprophy ketone	123-19-3	50	235	—	—	—	—	—
Diquat	85-00-7	—	0.5	—	—	—	—	—
Di-sec octyl phthalate (Di-2-ethylhexyl-phthalate)	117-81-7	—	5	—	10	—	—	—
Disulfiram	97-77-8	—	2	—	—	—	—	—
Disulfoton	298-04-4	—	0.1	—	—	—	—	X
2-6Di-tert-butyl-p-cresol	128-37-0	—	10	—	—	—	—	—
Diuron	330-54-1	—	10	—	—	—	—	—
Divinyl benzene	1321-74-0	10	50	—	—	—	—	—
Emery	12415-34-8	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Endosulfan	115-29-7	—	0.1	—	—	—	—	X
Endrin	72-20-8	—	0.1	—	—	—	—	X
Epichlorohdrin	106-89-8	2	8	—	—	—	—	X
EPN	2104-64-5	—	0.5	—	—	—	—	X
1,2-epoxypropane; see Propylene oxide								
2-3-Epoxy-1-propanol; see Glydicol								
Ethanethiol; see Ethy mercaptan								
Ethanolamine	141-43-5	3	8	6	15	—	—	—
Ethion	563-12-2	—	0.4	—	—	—	—	X
2-Ethoxyethanol	110-80-5	200	740	—	—	—	—	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	100	540	—	—	—	—	X
Ethyl acetate	141-78-6	400	1400	—	—	—	—	—
Ethyl acrylate	140-88-5	5	20	25	100	—	—	X
Ethyl alcohol (Ethonal)	64-17-5	1000	1900	—	—	—	—	—
Ethylamine	75-04-7	10	18	—	—	—	—	—
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	—	—	—	—	—
Ethyl benzene	100-41-4	100	435	125	545	—	—	—
Ethyl bromide	74-96-4	200	890	250	1110	—	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	—	—	—	—	—
Ethyl chloride	75-00-3	1000	2600	—	—	—	—	—
Ethyl ether	60-29-7	400	1200	500	1500	—	—	—
Ethyl formate	109-94-4	100	300	—	—	—	—	—
Ethyl mercaptan	75-08-1	0.5	1	—	—	—	—	—

Ethyl silicate	78-10-4	10	85	—	—	—	—	—
Ethylene chlorohydrin	107-07-3	—	—	—	—	1	3	X
Ethylenediamine	107-15-3	10	25	—	—	—	—	—
Ethylene dibromide (STEL – 5 minutes)	106-93-4	20	—	—	30	—	50	—
Ethylene dichloride	107-06-2	1	4	2	8	—	—	—
Ethylene glycol	107-21-1	—	—	—	—	50	125	—
Ethylene glycol dinitrate	628-96-6	—	—	—	0.1	—	—	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate								
Ethyleneimine; see 29 CFR 1910.1003	151-56-4							
Ethylene oxide; see 29 CFR 1910.1047	75-21-8							
Ethylidene chloride; see 1,1-Dichloroethane								
Ethylidene norbormene	16219-75-3	—	—	—	—	5	25	—
Nethylmorpholine	100-74-3	5	23	—	—	—	—	X
Fenamiphos	22224-92-6	—	0.1	—	—	—	—	X
Fensulfothion (Dasanit)	115-90-2	—	0.1	—	—	—	—	—
Fenthion	55-38-9	—	0.2	—	—	—	—	X
Ferbam	14484-64-1	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Ferrovanadium dust	12604-58-9	—	1	—	3	—	—	—
Fluorides (as F)	Varies with compound	—	2.5	—	—	—	—	—
Fluorine	7782-41-4	0.1	0.2	—	—	—	—	—
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	—	—	—	—	1000	5600	—
Fonofos	944-22-9	—	0.1	—	—	—	—	X
Formaldehyde; see 29 CFR 1910.1048								
Formamide	75-12-7	20	30	30	45	—	—	—
Formic acid	64-18-6	5	9	—	—	—	—	—
Furfural	98-01-1	2	8	—	—	—	—	X
Furfuryl alcohol	98-00-0	10	40	15	60	—	—	X
Gasoline	8006-61-9	300	900	500	1500	—	—	—
Bermanium tetrahydride	7782-65-2	0.2	0.6	—	—	—	—	—
Glutaraldehyde	111-30-8	—	—	—	—	0.2	0.8	—
Glycerin (mist)	56-81-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Glycidol	556-52-5	25	75	—	—	—	—	—
Glycol monoethyl ether see 2-Ethoxyethanol								
Grain dust (oat, wheat, barley)	—	—	10	—	—	—	—	—
Graphite, natural respirable dust	7782-42-5	—	2.5	—	—	—	—	—
Graphite, synthetic	—	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Guthion®, see Azinphos methyl								
Gypsum	13397-24-5							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—

Hafnium	7440-58-6	—	0.5	—	—	—	—	—
Heptachlor	76-44-8	—	0.5	—	—	—	—	X
Heptane (n-Heptane)	142-82-5	400	1600	500	2000	—	—	—
Hexaclorobutadiene	87-68-3	0.02	0.24	—	—	—	—	—
Hexachlorocyclo-pentadiene	77-47-4	0.01	0.1	—	—	—	—	—
Hexacloroethane	67-72-1	1	10	—	—	—	—	X
Hexachloronapthalene	1335-87-1	—	0.2	—	—	—	—	X
Hexafluoroacetone	684-16-2	0.1	0.7	—	—	—	—	X
n-Hexane	110-54-3	50	180	—	—	—	—	—
Hexane isomers	Varies with compound	500	1800	1000	3600	—	—	—
2-Hexanone (Methyl n-butyl ketone)	591-78-6	5	20	—	—	—	—	—
Hexone (Methyl isobutyl ketone)	108-10-1	50	205	75	300	—	—	
sec-Hexyl acetate	108-84-9	50-	300	—	—	—	—	—
Hexylene glycol	107-41-5	—	—	—	—	25	125	—
Hydrazine	302-01-2	0.2	0.1	—	—	—	—	X
Hydrogenated terphenyls	61788-32-7	0.5	5	—	—	—	—	—
Hydrogen bromide	10035-10-6	—	—	—	—	3	10	—
Hydrogen chloride	7647-01-0	—	—	—	—	5	7	—
Hydrogen cyanide	74-90-8	—	—	4.7	5	—	—	X
Hydrogen fluoride (as F)	7664-39-3	3	—	6	—	—	—	—
Hydrogen peroxide	7722-84-1	1	1.4	—	—	—	—	—
Hydrogen selenide (as Se)	7783-07-5	0.05	0.2	—	—	—	—	—
Hydrogen sulfide	7783-06-4	10	14	15	21	—	—	—
Hydroquinone	123-31-9	—	2	—	—	—	—	—
2-Hydroxypropyl acrylate	999-61-1	0.5	3	—	—	—	—	X
Indene	95-13-6	10	45	—	—	—	—	—
Indium and compounds (as in)	7440-74-6	—	0.1	—	—	—	—	—
Iodine	7553-56-2	—	—	—	—	0.1	1	—
Iodoform	75-47-8	0.6	10	—	—	—	—	—
Iron oxide fume	1309-37-1	—	10	—	—	—	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	0.1	0.8	0.2	1.6	—	—	—
Iron salts (soluble) (as Fe)	Varies with compound	—	1	—	—	—	—	—
Isoamyl acetate	123-92-2	100	525	—	—	—	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100	360	125	450	—	—	—
Isobutyl acetate	110-19-0	150	700	—	—	—	—	—
Isobutyl alcohol	78-83-1	50	150	—	—	—	—	—
Isooctyl alcohol	26952-21-6	50	270	—	—	—	—	X
Isophorone	78-59-1	4	23	—	—	—	—	—
Isophorone diisocyanate	4098-71-9	0.005	—	0.02	—	—	—	X
2-Isopropoxyethanol	109-59-1	25	105	—	—	—	—	—
Isopropyl acetate	108-21-4	250	950	310	1185	—	—	—
Isopropyl alcohol	67-63-0	400	980	500	1225	—	—	—
Isopropylamine	75-31-0	5	12	10	24	—	—	—
N-isopropylaniline	768-52-5	2	10	—	—	—	—	X
Isopropyl ether	108-20-3	500	2100	—	—	—	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	75	360	—	—	—
Kaolin								
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Ketene	463-51-4	0.5	0.9	1.5	3	—	—	—

Methoxyethanol)								
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	25	120	—	—	—	—	X
Methyl chloride	74-87-3	50	105	100	210	—	—	—
Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350	1900	450	2450	—	—	—
Methyl 2-cyanoacrylate	137-05-3	2	8	4	16	—	—	—
Methyl cyclohexane	108-87-2	400	1600	—	—	—	—	—
Methylcyclohexanol	25639-42-3	50	235	—	—	—	—	—
o-Methylcyclohexanone	583-60-8	50	230	75	345	—	—	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12106-13-3	—	0.2	—	—	—	—	X
Methyl demeton	8022-00-2	—	0.5	—	—	—	—	X
4,4'-Methylene bis (2-chloroaniline (MBOCA)	101-14-4	0.02	0.22	—	—	—	—	X
Methylene bis (4-cyclohexy-isocyanate)	5124-30-1	—	—	—	—	0.01	0.11	X
Methylene chloride; see 29 CFR 1910.1052	75-09-2	—	—	—	—	—	—	—
Methylenedianiline; see 29 CFR 1910.1050								
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	—	—	0.7	5	—
Methyl formate	107-31-3	100	250	150	375	—	—	—
Methyl hydrazine (monomethyl hydrazine)	60-34-4	—	—	—	—	0.2	0.35	X
Methyl iodide	74-88-4	2	10	—	—	—	—	X
Methyl isoamyl ketone	110-12-3	50	240	—	—	—	—	—
Methy isobutyl carbinol	108-11-2	25	100	40	165	—	—	X
Methyl isobutyl ketone; see Hexone								
Methyl isocyanate	624-83-9	0.02	0.05	—	—	—	—	X
Methyl isopropyl ketone	563-80-4	200	705	—	—	—	—	—
Methyl mercaptan	74-93-1	0.5	1	—	—	—	—	—
Methyl methacrylate	80-62-6	100	410	—	—	—	—	—
Methyl parathion	298-00-0	—	0.2	—	—	—	—	X
Methyl propyl ketone; see 2-Pentanone								
Methyl silicate	681-84-5	1	6	—	—	—	—	—
alpha-Methyl styrene	98-83-9	50	240	100	485	—	—	—
Methylene disphenyl isocyanate (MDI)	101-68-8	—	—	—	—	0.02	0.2	—
Metribuzin	21087-64-9	—	5	—	—	—	—	—
Mica; see Silicates								
Molybdenum (as Mo)	7439-98-7							
Soluble compounds	—	—	5	—	—	—	—	—
Insoluble compounds								
Total dust	—	—	10	—	—	—	—	—
Monocrotophos (Azodrin®)	6923-22-4	—	0.25	—	—	—	—	—
Monomethyl aniline	100-61-8	0.5	2	—	—	—	—	X
Morpholine	110-91-8	20	70	30	105	—	—	X
Naphtha (Coal tar)	8030-30-6	100	400	—	—	—	—	—
Naphthalene	91-20-3	10	50	15	75	—	—	—
alpha-Naphthylamine; see 29 CFR 1910.1003	134-32-7							

Lead inorganic (as Pb); see 29 CFR 1910.1025	7439-92-1							
Limestone	1317-65-3							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Lindane	58-89-9	—	0.5	—	—	—	—	X
Lithium hydride	7580-67-8	—	0.025	—	—	—	—	—
L.P.G. (liquefied petroleum gas)	68476-85-7	1000	1800	—	—	—	—	—
Magnesite	546-93-0	—	—	—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Magnesium oxide fume	1309-48-4	—	—	—	—	—	—	—
Total particulate	—	—	10	—	—	—	—	—
Malathion	121-75-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	X
Maleic anhydride	108-31-6	0.25	1	—	—	—	—	—
Manganese compounds (as Mn)	7439-96-5	—	—	—	—	—	5	—
Manganese fume (as Mn)	7439-96-5	—	1	—	3	—	—	—
Manganese cyclopenta-dienyl tricarbonyl (as Mn)	12079-65-1	—	0.1	—	—	—	—	X
Manganese tetroxide (as Mn)	1317-35-7	—	1	—	—	—	—	—
Marble	1317-65-3	—	—	—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Mercury (aryl and inorganic) (as Hg)	7439-97-6	—	—	—	—	—	0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439-97-6	—	0.01	—	0.03	—	—	X
Mercury (vapor) (as Hg)	7439-97-6	—	0.05	—	—	—	—	X
Mesityl oxide	141-79-7	15	60	25	100	—	—	—
Methacrylic acid	79-41-4	20	70	—	—	—	—	X
Methanethiol; see Methyl mercapan								
Methomyl (Lannate)	16752-77-5	—	2.5	—	—	—	—	—
Methoxychlor	72-43-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
2-Methoxyethanol; see Methyl cellosolve								
4-Methoxyphenol	150-76-5	—	5	—	—	—	—	—
Methyl acetate	79-20-9	200	610	250	760	—	—	—
Methyl acetylene (Propyne)	74-99-7	1000	1650	—	—	—	—	—
Methyl acetylene-propadiene mixture (MAPP)	—	1000	1800	1250	2250	—	—	—
Methyl acrylate	96-33-3	10	35	—	—	—	—	X
Methylacrylonitrile	126-98-7	1	3	—	—	—	—	X
Methylal (Dimethoxy-methane)	109-87-5	100	3100	—	—	—	—	—
Methyl alcohol	67-56-1	200	260	250	325	—	—	X
Methylamine	74-89-5	10	12	—	—	—	—	—
Methyl amyl alcohol; see Methyl isobutyl carbinol								
Methyl n-amyl ketone	110-43-0	100	465	—	—	—	—	—
Methyl bromide	74-83-9	5	20	—	—	—	—	X
Methyl butyl ketone; see 2-Hexanone								
Methyl cellosolve (2-	109-86-4	25	80	—	—	—	—	X

beta-Naphthylamine; see 29 CFR 1910.1003	91-59-8							
Nickel carbonyl (as Ni)	13463-39-3	0.001	0.007	—	—	—	—	—
Nickel, metal and insoluble compounds (as Ni)	7440-02-0	—	1	—	—	—	—	—
Nickel, soluble compounds (as Ni)	7440-02-0	—	0.1	—	—	—	—	—
Nicotine	54-11-5	—	0.5	—	—	—	—	X
Nitric acid	7697-37-2	2	5	4	10	—	—	—
Nitric oxide	10102-43-9	25	30	—	—	—	—	—
p-Nitroaniline	100-01-6	—	3	—	—	—	—	X
Nitrobenzene	98-95-3	1	5	—	—	—	—	X
p-Nitrochlorobenzene	100-00-5	—	1	—	—	—	—	x
4-Nitrodiphenyl; see 29 CFR 1910.1003	92-93-3							
Nitroethane	79-24-3	100	310	—	—	—	—	—
Nitrogen dioxide	10102-44-0	—	—	1	1.8	—	—	—
Nitrogen trifluoride	7783-54-2	10	29	—	—	—	—	—
Nitroglycerinl	55-63-0	—	—	—	0.1	—	—	X
Nitromethane	75-52-5	100	250	—	—	—	—	—
1-Nitropropane	108-03-2	25	90	—	—	—	—	—
2-Nitropropane	79--46-9	10	35	—	—	—	—	—
N-Nitrosodimethylamine; see 29 CFR 1910.1016	62-79-9							
Nitrotoluene								
o-isomer	88-72-2	2	11	—	—	—	—	X
m-isomer	99-08-1	2	11	—	—	—	—	X
p-isomer	99-99-0	2	11	—	—	—	—	X
Nitrotrichloromethane; see Chloropicin								
Nonane	111-84-2	200	1050	—	—	—	—	—
Octachloronaphthalene	2234-13-1	—	0.1	—	0.3	—	—	X
Octane	111-65-9	300	1450	375	1800	—	—	—
Oil mist, mineral	8012-95-1	—	5	—	—	—	—	—
Osmium tetroxide (as Os)	20816-12-0	0.0002	0.002	0.0006	0.006	—	—	—
Oxalic acid	144-62-7	—	1	—	2	—	—	—
Oxygen difluoride	7783-41-7	—	—	—	—	0.05	0.1	—
Ozone	10028-15-6	0.1	0.2	0.3	0.6	—	—	—
Paraffin wax fume	8002-74-2	—	2	—	—	—	—	—
Paraquat, respirable dust	1910-42-5 4685-14-7 2074-50-2	—	0.1	—	—	—	—	X
Parathion	5838-2	—	0.1	—	—	—	—	X
Particulates not otherwise regulated								
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Pentaborane	19624-22-7	0.005	0.01	0.015	0.03	—	—	—
Pentachloronaphthalene	1321-64-8	—	0.5	—	—	—	—	X
Pentachlorophenol	87-86-5	—	0.5	—	—	—	—	X
Pentaerythirtol	115-77-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Pentane	109-66-0	600	1800	750	2250	—	—	—
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	250	875	—	—	—

Perchloroethylene (Tetrachloroethylene)	127-18-4	25	170	—	—	—	—	—
Perchloromethyl mercaptan	594-42-3	0.1	0.8	—	—	—	—	—
Perchloryl fluoride	7616-94-6	3	14	6	28	—	—	—
Perlitte								
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Petroleum distillates (Naphtha) (Rubber Solvent)	—	400	1600	—	—	—	—	—
Phenol	108-95-2	5	19	—	—	—	—	X
Phenothiazine	92-84-2	—	5	—	—	—	—	X
p-Phenylene diamine	106-50-3	—	0.1	—	—	—	—	X
Phenyl ether, vapor	101-84-8	1	7	—	—	—	—	—
Phenyl ether-biphenyl mixture, vapor	—	1	7	—	—	—	—	—
Phenylethylene; see Styrene								
Phenyl glycidyl ether (PGE)	122-60-1	1	6	—	—	—	—	—
Phenylhydrazine	100-63-0	5	20	10	45	—	—	X
Phenyl mercaptan	108-98-5	0.5	2	—	—	—	—	—
Phenylphosphine	638-21-1	—	—	—	—	0.05	0.25	—
Phorate	298-02-2	—	0.05	—	0.2	—	—	X
Phosdrin (Mevinphos®)	7786-34-7	0.01	0.1	0.03	0.3	—	—	X
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	—	—	—	—	—
Phosphine	7803-51-2	0.3	0.4	1	1	—	—	—
Phosphoric acid	7664-38-2	—	1	—	3	—	—	—
Phosphorus (yellow)	7723-14-0	—	0.1	—	—	—	—	—
Phosphorus oxychloride	10025-87-3	0.1	0.6	—	—	—	—	—
Phosphorus pentachloride	10026-13-8	—	1	—	—	—	—	—
Phosphorus pentasulfide	1314-80-3	—	1	—	3	—	—	—
Phosphorus trichloride	7719-12-2	0.2	1.5	0.5	3	—	—	—
Phthalic anhydride	85-44-9	1	6	—	—	—	—	—
m-Phthalodinitrile	626-17-5	—	5	—	—	—	—	—
Picloram	1918-02-1	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Picric acid	88-89-1	—	0.1	—	—	—	—	x
Piperazine dihydro-chloride	142-64-3	—	5	—	—	—	—	—
Pindone (2-Pivalyl-1,3-indandione	83-26-1	—	0.1	—	—	—	—	—
Plaster of Paris	26499-65-0	—	—	—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Platinum (as Pt)	7440-06-4	—	—	—	—	—	—	—
Metal	—	—	1	—	—	—	—	—
Soluble salts	—	—	0.002	—	—	—	—	—
Portland cement	65997-15-1	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Potassium hydroxide	1310-58-3	—	—	—	—	—	2	—
Propane	74-98-6	1000	1800	—	—	—	—	—
Propargl alcohol	107-19-7	1	2	—	—	—	—	X
beta-Propriolactone; see 29 CFR 1910.1013	57-57-8							
Propionic acid	79-09-4	10	30	—	—	—	—	—
Propoxur (Baygon)	114-26-1	—	0.5	—	—	—	—	—

n-Propyl acetate	109-60-40	200	840	250	1050	—	—	—
n-propyl alcohol	71-23-8	200	500	250	625	—	—	—
n-Propyl nitrate	627-13-4	25	105	40	170	—	—	—
Propylene dichloride	78-87-5	75	360	110	510	—	—	—
Propylene glycol dinitrate	6423-43-4	0.05	0.3	—	—	—	—	—
Propylene glycol monomethyl ether	107-98-2	100	380	150	540	—	—	—
Propylene imine	75-55-8	2	5	—	—	—	—	X
Propylene oxide	75-56-9	20	50	—	—	—	—	—
Propyne; see Methyl acetylene								
Pyrethrum	8003-34-7	—	5	—	—	—	—	—
Pyridine	110-86-1	5	15	—	—	—	—	—
Quinone	106-51-4	0.1	0.4	—	—	—	—	—
Resorcinol	108-46-3	10	45	20	90	—	—	—
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	—	0.1	—	—	—	—	—
Rhodium (as Rh), soluble compounds	744-16-6	—	0.001	—	—	—	—	—
Ronnel	299-84-3	—	10	—	—	—	—	—
Rosin core solder pyrolysis products, as formaldehyde	—	—	0.1	—	—	—	—	—
Rotenone	83-79-4	—	5	—	—	—	—	—
Rouge								
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Selenium compounds (as Se)	7782-49-2	—	0.2	—	—	—	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	—	—	—	—	—
Silica, amorphous, precipitated and gel	112926-00-8	—	6	—	—	—	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystaline silica	61790-53-2	—	6	—	—	—	—	—
Silica, crystaline cristobalite, respirable dust, see 29 CFR 1910.1053	14464-46-1	—	—	—	—	—	—	—
Silica, crystaline quartz, respirable dust, see 29 CFR 1910.1053	14808-60-7	—	—	—	—	—	—	—
Silica, crystaline tripoli (as quartz), respirable dust, see 29 CFR 1910.1053	1317-95-9	—	—	—	—	—	—	—
Silica, crystaline tridmite, respirable dust, see 29 CFR 1910.1053	15468-32-3	—	—	—	—	—	—	—
Silica, fused, respirable dust	60676-86-0	—	0.1	—	—	—	—	—
Silicates (less than 1% (crystaline silica)								
Mica (respirable dust)	12001-26-2	—	3	—	—	—	—	—
Soapstone, total dust	—	—	6	—	—	—	—	—
Soapstone, respirable dust	—	—	3	—	—	—	—	—
Talc (containing asbestos); use asbestos limit See 29 CFR 1910.1001								
Talc (containing no asbestos); Respirable dust	14807-96-6	—	2	—	—	—	—	—
Tremolite (use asbestos limit); See 29 CFR 1910.1001								

Replacement language

Silicon	7440-21-3							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Silicon carbide	409-21-2							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Silicon tetrahydride	7803-62-5	5	7	—	—	—	—	—
Silver, metal and soluble compounds (as Ag)	7440-22-4	—	0.01	—	—	—	—	—
Soapstone; see Silicates								
Sodium azide	26628-22-8							
(as HN3)	—	—	—	—	—	0.1	—	X
(as NaN3)	—	—	—	—	—	—	0.3	X
Sodium bisulfite	7631-90-5	—	5	—	—	—	—	—
Sodium fluoroacetate	62-74-8	—	0.05	—	0.15	—	—	X
Sodium hydroxide	1310-73-2	—	—	—	—	—	2	—
Sodium metabisulphite	7681-57-4	—	5	—	—	—	—	—
Starch	9005-25-8							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Stibine	7803-52-3	0.1	0.5	—	—	—	—	—
Stoddard solvent	8052-41-3	100	525	—	—	—	—	—
Strychnine	57-24-9	—	0.15	—	—	—	—	—
Styrene	100-42-5	50	215	100	425	—	—	—
Subtilisins (Protolytic enzymes) sample 600-800 lpm for at least 60 minutes	9014-01-1	—	—	—	0.00006	—	—	—
Sucrose	57-50-1	—	—	—	—	—	—	—
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Sulfur dioxide	7446-09-5	2	5	5	10	—	—	—
Sulfur hexafluoride	2551-62-4	1000	6000	—	—	—	—	—
Sulfuric acid	7664-93-9	—	1	—	—	—	—	—
Sulfur monochloride	10025-67-9	—	—	—	—	1	6	—
Sulfur pentafluoride	5714-22-7	—	—	—	—	0.01	0.1	—
Sulfur tetrafluoride	7783-60-0	—	—	—	—	0.1	0.4	—
Sulfuryl fluoride	2699-79-8	5	20	10	40	—	—	—
Sulprofos	35400-43-2	—	1	—	—	—	—	—
Systox®, see Demeton								
2,4,5-T	93-76-5	—	10	—	—	—	—	—
Talc; see Silicates								
Tantalum, metal and oxide dust	7440-25-7	—	5	—	—	—	—	—
TEDP (Sulfotep)	3689-24-5	—	0.2	—	—	—	—	X
Tellurium and compounds (as Te)	13494-80-9	—	0.1	—	—	—	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	—	—	—	—	—
Temephos	3383-96-8							
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
TEPP	107-49-3	—	0.05	—	—	—	—	X
Terphenyls	26140-60-3	—	—	—	—	0.5	5	—
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	500	4170	—	—	—	—	—
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	500	4170	—	—	—	—	—

1,1,2,2-Tetrachloroethane	79-34-5	1	7	—	—	—	—	X
Tetrachoroethylene; see Perchloroethylene								
Tetrachloromethane; see Carbon tetrachloride								
Tetrachloronaphthalene	1335-88-2	—	2	—	—	—	—	X
Tetraethyl lead (as Pb)	78-00-2	—	0.075	—	—	—	—	X
Tetrahydrofuran	109-99-9	200	590	250	735	—	—	—
Tetramethyl lead, (as Pb)	75-74-1	—	0.75	—	—	—	—	X
Tetramethyl succinonitrile	3333-52-6	0.5	3	—	—	—	—	X
Tetranitromethane	509-14-8	1	8	—	—	—	—	—
Tetrasodium pyrophosphate	7722-88-5	—	5	—	—	—	—	—
Tetryl (2,4,6-Trinitrophenyl-methyl-nitramine)	479-45-8	—	1.5	—	—	—	—	X
Thalium, Soluble compounds (as Tl)	7440-28-0	—	0.1	—	—	—	—	X
4,4'-Thiobis(6-tert, Butyl-m-cresol)	96-69-5	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Thioglycolic acid	68-11-1	1	4	—	—	—	—	X
Thionyl chloride	7719-09-7	—	—	—	—	1	5	—
Thiram	137-26-8	—	5	—	—	—	—	—
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	—	2	—	—	—	—	—
Tin, organic compounds (as Sn)	7440-31-5	—	0.1	—	—	—	—	X
Tin oxide (as Sn)	21651-19-4	—	2	—	—	—	—	—
Titanium dioxide	13463-67-7	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Toluene	108-88-3	100	375	150	580	—	—	—
Toluene-2,4-diisocynate (TDI)	584-84-9	0.005	0.04	0.02	0.15	—	—	—
m-Toluidine	108-44-1	2	9	—	—	—	—	X
o-Toluidine	95-53-4	5	22	—	—	—	—	X
p-Toluidine	106-49-0	2	9	—	—	—	—	X
Toxaphene; see Chlorinated camphene								
Tremolite; see Silicates								
Tributyl phosphate	126-73-8	0.2	2.5	—	—	—	—	—
Trichloroacetic acid	76-03-9	1	7	—	—	—	—	—
1,2,4-Trichlorobenzene	120-82-1	—	—	—	—	5	40	—
1,1,1-Trichloroethane; see Methyl chloroform								
1,1,2-Trichloroethane	79-00-5	10	45	—	—	—	—	X
Trichloroethylene	79-01-6	50	270	200	1080	—	—	—
Trichloromethane; see Chloroform								
Trichloronaphthalene	1321-65-9	—	5	—	—	—	—	X
1,2,3-Trichloropropane	96-18-4	10	60	—	—	—	—	—
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	1250	9500	—	—	—
Triethylamine	121-44-8	10	40	15	60	—	—	—
Trifluorobromomethane	75-63-8	1000	6100	—	—	—	—	—
Trimellitic anhydride	552-30-7	0.005	0.04	—	—	—	—	—
Trimethylamine	75-50-3	10	24	15	36	—	—	—
Trimethyl benzene	25551-13-7	25	125	—	—	—	—	—
Trimethyl phosphite	121-45-9	2	10	—	—	—	—	—
2,4,6-Trinitrophenyl; see Picric acid								
2,4,6-Trinitrophenylmethyl nitamine;								

see Tetryl								
2,4,6-Trinitrotoluene (TNT)	118-96-7	—	0.5	—	—	—	—	X
Triorthocresyl phosphate	78-30-8	—	0.1	—	—	—	—	X
Triphenyl amine	603-34-9	—	5	—	—	—	—	—
Triphenyl phosphate	115-86-6	—	3	—	—	—	—	—
Tungsten (as W	7440-33-7	—	—	—	—	—	—	—
Insoluble compounds	—	—	5	—	10	—	—	—
Soluble compounds	—	—	1	—	3	—	—	—
Turpentine	8006-64-2	100	560	—	—	—	—	—
Uranium (as U)	7440-61-1	—	—	—	—	—	—	—
Soluble compounds	—	—	0.05	—	—	—	—	—
Insoluble compounds	—	—	0.2	—	0.6	—	—	—
n-Valeraldehyde	110-62-3	50	175	—	—	—	—	—
Vanadium fume and	1314-62-1	—	—	—	—	—	—	—
Respirable dust (as V2O5)	—	—	0.05	—	—	—	—	—
Vegetable oil mist	—							
Total dust	—	—	15	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Vinyl acetate	108-05-4	10	30	20	60	—	—	—
Vinyl benzene; see Styrene								
Vinyl bromide	593-60-2	5	20	—	—	—	—	—
Vinyl chloride; see 29 CFR 1910.1017	75-01-4	—	—	—	—	—	—	—
Vinyl cyanide; see Acrylonitrile								
Vinyl cyclohexene dioxide	106-87-6	10	60	—	—	—	—	X
Vinylidene chloride (1,1-Dichloro-ethylene)	75-35-4	1	4	—	—	—	—	—
Vinyl toluene	24994	100	480	—	—	—	—	—
VM & P Naphtha	8032-32-4	300	1350	400	1800	—	—	—
Warfarin	81-81-2	—	0.1	—	—	—	—	—
Welding fumes (total particulate)	—	—	5	—	—	—	—	—
Wood dust, all soft and hard woods, except Western red cedar	—	—	5	—	10	—	—	—
Wood dust, Western red cedar	—	—	2.5	—	—	—	—	—
Xylenes (o-, m-, p- isomers)	1330-20-7	100	435	150	655	—	—	—
m-Xylene alpha, alpha-diamine	1477-55-0	—	—	—	—	—	0.1	X
Xylidine	1300-73-8	2	10	—	—	—	—	X
Yttrium	7440-65-5	—	1	—	—	—	—	—
Zinc chloride fume	7646-85-7	—	1	—	2	—	—	—
Zinc chromate (as CrO3)	Varies with compound	—	—	—	—	—	0.1	—
Zinc oxide fume	1314-13-2	—	5	—	10	—	—	—
Zinc oxide	1314-13-2	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Zinc stearate	557-05-1	—	—	—	—	—	—	—
Total dust	—	—	10	—	—	—	—	—
Respirable fraction	—	—	5	—	—	—	—	—
Zirconium compounds (as Zr)	7440-67-7	—	5	—	10	—	—	—

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

* 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 (*board/commission/other authority*) on 03-19-2018 (*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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 3-19-18

Signature: Burns Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

DESIREE W FELTS
STATE OF TENNESSEE NOTARY PUBLIC
CHEATHAM COUNTY

Subscribed and sworn to before me on: March 19, 2018

Notary Public Signature: Desiree W. Felts

My commission expires on: March 17, 2021

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

4/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 5/7/18

Effective on: 8/5/18

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2018 MAY -7 PM 3:16
SECRETARY OF STATE
PUBLICATIONS