

TAR

TENNESSEE ADMINISTRATIVE REGISTER



July 14, 2000
Volume 24, Number 7

TAAAR



RILEY C. DARNELL
Secretary of State

Division of Publications
312 Eighth Avenue North
8th Floor, William R. Snodgrass Tower
Nashville TN 37243 - 0310

DEPARTMENT OF STATE NONDISCRIMINATION POLICY STATEMENT

Pursuant to its policy of nondiscrimination, the Department of State does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service in its policies, or in the admission or access to, or treatment or employment in, its programs, services, or activities.

Equal Employment Opportunity/Affirmative Action inquiries or complaints should be directed to the Department of State, Bard G. Fisher, EEO/AA Coordinator, 7th Floor, 312 Eighth Avenue North, William R. Snodgrass Building, Nashville, TN, 37243-0311 or call (615) 741-7411, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. ADA inquiries or complaints should be directed to Mr. Fisher at the above mentioned location.

PUBLIC INSPECTION OF DOCUMENTS

A certified copy of each document filed with the Department of State, Division of Publications is available for public inspection from 8 A.M. to 4:30 P.M., Monday through Friday. Copies of documents may be made at a cost of 25 cents per page and \$2 for the certification page, payable in advance if requested. The Division of Publications is located on the 8th Floor, 312 Eighth Avenue North, William R. Snodgrass Building, Nashville, TN 37243 - 0310. Telephone inquiries may be made by calling (615) 741-0522, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. Individuals with disabilities who wish to inspect these filings should contact the Division of Publications to discuss any auxiliary aids or services needed to facilitate such inspection. Such contact may be made in person, by writing, telephonically or otherwise and should be made at least ten (10) days in advance of the date such party intends to make such inspection to allow time for the Division of Publications to provide such aid or service.

Department of State, Authorization No. 305084, 530 copies, July 2000. This public document was promulgated at a cost of \$ 6.34 per copy.

PREFACE

The Tennessee Administrative Register (T.A.R) is an official publication of the Tennessee Department of State. The *T.A.R.* is compiled and published monthly by the Department of State pursuant to *Tennessee Code Annotated, Title 4, Chapter 5*. The *T.A.R.* contains in their entirety or in summary form the following: (1) various announcements (e.g. the maximum effective rate of interest on home loans as set by the Department of Commerce and Insurance, formula rate of interest and notices of review cycles); (2) emergency rules; (3) proposed rules; (4) public necessity rules; (5) notices of rulemaking hearings and (6) proclamations of the Wildlife Resources Commission.

Emergency Rules are rules promulgated due to an immediate danger to the public health, safety or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for up to 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. The text or a summary of the emergency rule will be published in the next issue of the *T.A.R.* after the rule is filed. Thereafter, a list of emergency rules currently in effect will be published.

Proposed Rules are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in the *T.A.R.*, the rule will become effective 105 days after said publication date. All rules filed in one month will be published in the *T.A.R.* of the following month.

Public Necessity Rules are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. The text or summary of the public necessity rule will be published in the next issue of the *T.A.R.* Thereafter, a list of public necessity rules currently in effect will be published.

Once a rule becomes effective, it is published in its entirety in the *official compilation-Rules and Regulations of the State of Tennessee*. Replacement pages for the compilation are published on a monthly basis as new rules or changes in existing rules become effective.

Wildlife Proclamations contain seasons, creel, size and bag limits, and areas open to hunting and/or fishing. They also establish wildlife and/or public hunting areas and declare the manner and means of taking. Since Wildlife Proclamations are published in their entirety in the *T.A.R.*, they are not published in the official compilation-Rules and Regulations of the State of Tennessee.

Subscription Orders - The subscription rate, payable in advance, is \$ 50 per year. An order form may be found in the back of each issue of the *Tennessee Administrative Register*.

Back Issues - Some back issues of the *Tennessee Administrative Register* are available. Please send \$ 1.50 per issue along with the volume, number and date you wish to order to the address in the back of this issue.

Copies of Rules from Back Issues of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

Reproduction - There are no restrictions on the reproduction of official documents appearing in the *Tennessee Administrative Register*.

BLANK

pg. iv

**DO
NOT
PRINT**

TABLE OF CONTENTS

ANNOUNCEMENTS

Financial Institutions, Department of
Announcement of Formula Rate of Interest 1
Announcement of Maximum Effective Rate of Interest 1
Government Operations Committees
Announcement of Public Hearings 1
Health Facilities Commission
Notice of Beginning of Review Cycle 8
Revenue, Department of
Notice of Determination of Interest Rate 12
U.S. Office of Surface Mining Reclamation and Enforcement
Letter of Decision 13

EMERGENCY RULES

Emergency Rule Now in Effect 15

PROPOSED RULES

Labor, Department of 17
Tennessee Student Assistance Corporation 27

PUBLIC NECESSITY RULES

Human Services, Department of 33

RULEMAKING HEARINGS

Commerce and Insurance, Department of 81
Counselors, Marital, and Family Therapists, and Clinical Pastoral Therapists, Board for Professional 86
Environment and Conservation, Department of 87
Finance and Administration, Department 94
Human Services, Department of 106
Nursing, Board of 169
Nursing Home Administrators, Board of Examiners for 178
Regulatory Authority 179
State, Department of 183
Wildlife Resources Commission 188

WILDLIFE PROCLAMATIONS

00-5 191
00-6 191
00-7 192
00-8 197
00-9 201
00-10 203
00-11 207
00-12 215

CERTIFICATION 253

CHANGE OF ADDRESS FORM 255

ORDER FORM 257

BLANK

pg. vi

DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180

ANNOUNCEMENT OF FORMULA RATE OF INTEREST

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 13.50 per cent.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180

ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of August, 2000 is 9.94 per cent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the published rate is 5.94 per cent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P. L. 96-221 as amended by P. L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

GOVERNMENT OPERATIONS COMMITTEES

ANNOUNCEMENT OF PUBLIC HEARINGS

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the month of June, 2000. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
06-01	June 22, 2000	0620 Dept of Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	1200-13-1-.06 Provider Reimbursement	George Woods Bureau of TennCare 729 Church St Nashville TN 37247-6501 741-0145	Sept 5, 2000
06-02	June 22, 2000	0620 Dept of Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	1200-13-12-.01 Definitions	George Woods Bureau of TennCare 729 Church St Nashville TN 37247-6501 741-0145	Sept 5, 2000
06-03	June 22, 2000	1200 Dept of Health Bureau of TennCare	Rulemaking Hearing Rules	New Rule	1200-13-1-.15 Criteria for Medicaid Reimbursement of Care in an Intermediate Care Facility	George Woods Bureau of TennCare 729 Church St Nashville TN 37247-6501 741-0145	Sept 5, 2000
06-05	June 27, 2000	0800 Dept of Labor and Workforce Division of Boiler and Elevator Inspection Boiler and Pressure Vessel Section Board of Boiler Rules	Proposed Rules	Amendments	Chapter 0800-3-3 Boiler Inspections 0800-3-3-.01 Definitions 0800-3-3-.02 Adoption by Reference 0800-3-3-.03 Administration 0800-3-3-.04 General Requirements 0800-3-3-.05 Existing Power Boilers 0800-3-3-.06 Existing Heating Boilers 0800-3-3-.07 Existing Pressure Vessels 0800-3-3-.08 Historic Boilers 0800-3-3-.09 Fees	Mark P. Reineke Director of Legal Services Dept of Labor and Workforce Development Shodgrass Twr, 26 th Fl 312 8th Ave N Nashville, TN 37243-0662 (615) 741-0851	Oct 28, 2000
06-06	June 27, 2000	1320 Dept of Revenue	Rulemaking Hearing Rules	Amendments Repeal Amendments	1320-1-1-.03 Payment in Immediately Available Funds 1320-1-1 1320-2-2-.03 Levy and Distraint-Notice Demand 1320-2-1-.15 Manner and Conditions of sale 1320-2-1-.36 Redemption of Property by the State 1320-2-1-.40 Examination of Books and Witnesses 1320-2-1-.41 Summons 1320-2-1-.20	David A. Gerregano Tax Coun Dept. of Revenue Legal Office Shodgrass Twr, 27th Fl 312 8th Ave. N Nashville, TN 37243 615-741-2348	Sept 11, 2000
06-11	June 28, 2000	1320 Dept of Revenue	Rulemaking Hearing Rules	Amendments Repeals	Chapter 1320-1-2 Taxpayer Remedies For Disputed Taxes 1320-1-2-.04 Notice of Liens Chapter 1320-2-1 Taxpayer Enforcement Procedures Act 1320-2-1-.37 Civil Actions By Persons	Arnold B. Clapp, Dir. Legal Office Dept. of Revenue Legal Office Shodgrass Twr, 27th Fl 312 8th Ave. N	Sept 11, 2000

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
06-11, cont.				Amendments	Other Than Taxpayers 1320-2-1-.43 Assessment By Commissioner	Nashville, TN 37243 615-741-2348	
06-12	June 28, 2000	1320 Dept of Revenue	Rulemaking Hearing Rules	Amendments Repeals	Chapter 1320-4-5 Business Tax Rules and Regulations 1320-4-5-.48 Sales of Services and Tangible Personal Property 1320-4-5-.04 1320-4-5-.52	David A. Gerregano Tax Counsel Dept. of Revenue Legal Office Snodgrass Twr, 27th Fl 312 8th Ave. N Nashville, TN 37243 615-741-2348	Sept 11, 2000
06-13	June 28, 2000	1320 Dept of Revenue	Rulemaking Hearing Rules	Amendments	Chapter 1320-5-1 Sales and Use Tax 1320-5-1-.02 Articles Taken in Trade or "Trade Ins" 1320-5-1-.05 Automobile Refinishers and Painters 1320-5-1-.07 Contractors, Lump Sum and Cost-Plus 1320-5-1-.17 Dentists 1320-5-1-.18 Sales to Employees 1320-5-1-.21 Furniture and Storage Warehousemen 1320-5-1-.23 Federal Excise Taxes, When Deductible 1320-5-1-.47 Physicians and Surgeons Returned Merchandise, Credits, and Allowances 1320-5-1-.52 Repositions 1320-5-1-.54 Repair Services 1320-5-1-.61 Undertakers and Funeral Directors 1320-5-1-.63 Registration Certificate 1320-5-1-.72 Service Stations 1320-5-1-.91 Credit for Sales and Use Tax Paid in Other States 1320-5-1-.95 Use of Property Upon Which No Sales or Use Tax Has Been Paid 1320-5-1-1.01 Contractors - Use of Tangible Personal Property Upon Which No Sales or Use Tax Has Been Paid 1320-5-1-1.03 Fabrication or Processing of Tangible Personal Property to be Applied To or Installed on Real Property, or	David A. Gerregano Tax Counsel Dept. of Revenue Legal Office Snodgrass Twr, 27th Fl 312 8th Ave. N Nashville, TN 37243 615-741-2348	Sept 11, 2000

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
06-13, cont.				Repeals	Tangible Personal Property Otherwise Used 1320-5-1-1.04 Parking Lots 1320-5-1-1.06 Industrial Machinery 1320-5-1-1.07 Electricity 1320-5-1-1.08 Natural or Artificial Gas 1320-5-1-1.16 Membership Sports and Recreation Clubs 1320-5-1-1.20 Athletic and Interscholastic Sporting Events 1320-5-1-1.23 Charges for Using Property for Amusement, Sports, Entertainment or Recreation 1320-5-1-.14 Truckers, Haulers, and Peddlers 1320-5-1-.16 Dental Laboratories 1320-5-1-.19 Equipment, Tools, and Supplies for Doing Business 1320-5-1-.30 Ice 1320-5-1-.37 Meals Sold or Furnished to Employees 1320-5-1-.59 Stocks, Bonds, or Securities 1320-5-1-.66 Machinists, Foundrymen, and Pattern Makers 1320-5-1-.69 Shoe Repairmen 1320-5-1-.73 Tire Sales, Repairs and Retreading 1320-5-1-.84 Transient or Itinerant Sellers 1320-5-1-1.12 Residential Use of Electricity and Other Energy Fuels 1320-5-1-1.18 Exempt Recreational or Amusement Activities 1320-5-1-1.24 Coin Operated Amusement Devices 1320-5-1-1.25 Events on Rivers or Waterways 1320-5-1-1.26 Amusement or Recreational Activities Sold to Exempt Entities Chapter 1320-5-2 Local Sales and Use Tax 1320-5-2-.04 Energy Fuel and Water 1320-5-2-.06 Maximum Local Sales Tax		
				Amendments			
				Repeals			

ANNOUNCEMENTS

5

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
06-15	June 29, 2000	1200 Dept of Health Bureau of TennCare	Rulemaking Hearing Rules	Amendments	Chapter 1200-13-1 General Rules 1200-13-1-.10 Criteria for Medicaid Reimbursement at the Intermediate Level of Care	George Woods Bureau of TennCare 729 Church St Nashville TN 37247-6501 (615) 741-0145	Sept 12, 2000
06-16	June 29, 2000	0400 Dept of Environment and Conservation Division of Educational Services	Notice of Rulemaking Hearing	New Rule	0400-10-1-.01 Assistance/Planning Fees for Service to Local Governments.	Jerry Ingram 532-0850	August 17, 2000
06-18	June 30, 2000	0600 State Board of Equalization	Rulemaking Hearing Rules	New Rules	Chapter 0600-7 Contested Case Procedures 0600-7-.01 Definitions 0600-7-.02 Applicability 0600-7-.03 Initiating a contested case 0600-7-.04 Filing 0600-7-.05 [Reserved] 0600-7-.06 Parties 0600-7-.07 Representation by agent 0600-7-.08 Conditions for filing and hearing 0600-7-.09 Assignment of cases 0600-7-.10 Counterclaims 0600-7-.11 Hearings before administrative judge 0600-7-.12 Appeal of initial order 0600-7-.13 Hearings before commission 0600-7-.14 Petition for review 0600-7-.15 Hearings before board 0600-7-.16 Signing of final orders	Kelsie Jones, Executive Secretary State Board of Equalization Ste. 1600 – 505 Deaderick St. Nashville, TN 37243-0280 615/741-4883	Sept12, 2000
06-21	June 30, 2000	1640 TN Student Assistance Corporation	Proposed Rules	Amendments	Chapter 1640-1-1 TN Student Assistance Program 1640-1-1-.01, Definitions	Ron Gambill Executive Director TN Student Assistance Corp. Suite 1950, Parkway Twrs 404 James Robertson Pkway Nashville, TN 37243-0820 (615) 741-1346	Oct 28, 2000
06-22	June 30, 2000	1640 TN Student Assistance Corporation	Proposed Rules	Amendments	Chapter 1640-1-13 Minority Teaching Fellows Program 1640-1-13-.05, Loan Amount and Terms	Ron Gambill Executive Director TN Student Assistance Corp. Suite 1950, Parkway Twrs 404 James Robertson	Oct 28, 2000

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
06-22, cont.						Pkway Nashville, TN 37243-0820 (615) 741-1346	
06-23	June 30, 2000	1640 TN Student Assistance Corporation	Proposed Rules	Amendments	Chapter 1640-1-16 Robert C. Byrd Honors Scholarship Program 1640-1-16-.03 Eligibility and Application Procedures	Ron Gambill Executive Director TN Student Assistance Corp. Suite 1950, Parkway Twrs 404 James Robertson Pkway Nashville, TN 37243-0820 (615) 741-1346	Oct 28, 2000
06-24	June 30, 2000	1640 TN Student Assistance Corporation	Proposed Rules	Amendments	Chapter 1640-1-17 TN Teaching Scholars Program 1640-1-17-.05, Loan Amount and Terms	Ron Gambill Executive Director TN Student Assistance Corp. Suite 1950, Parkway Twrs 404 James Robertson Pkway Nashville, TN 37243-0820 (615) 741-1346	Oct 28, 2000
06-36	June 30, 2000	1220 TN Regulatory Authority	Rulemaking Hearing Rules	Amendments	Chapter 1220-1 Rules Of Practice And Procedure	K. David Waddell TRA 460 James Robertson Parkway, Nashville, TN (615) 741-2904	Sept 13, 2000
06-37	June 30, 2000	1240 Dept of Human Services Community and Field Services Division	Public Necessity Rules	Amendments	Chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children 1240-4-3-.02 Definitions 1240-4-3-.03 Basis for Approval for 1240-4-3-.06 Licensing Organization and Administration 1240-4-3-.07 Staff	William B. Russell, General Counsel Citizens Plaza Bldg 15th Floor 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	June 30, 2000 through
06-38	June 30, 2000	1240 Dept of Human Services Community and Field Services Division	Public Necessity Rules	Amendments	Chapter 1240-4-1 Standards for Group Day Care Homes 1240-4-1-.01 Introduction 1240-4-1-.02 Ownership and Administration	William B. Russell, General Counsel Citizens Plaza Bldg 15th Floor 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	June 30, 2000 through Dec 12, 2000

ANNOUNCEMENTS

7

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
06-39	June 30, 2000	1240 Dept of Human Services Community and Field Services Division	Public Necessity Rules	Amendments	Chapter 1240-4-4 Standards for Family Day Care Homes	William B. Russell, General Counsel Citizens Plaza Bldg 15th Floor 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	June 30, 2000 through Dec 12, 2000
06-40	June 30, 2000	1240 Dept of Human Services Community and Field Services Division	Public Necessity Rules	Amendments	Chapter 1240-5-11 Procedures Affecting Licenses of Child Welfare Agencies 1240-5-11-.01 Purpose and Scope 1240-5-11-.02 Definitions 1240-5-11-.04 Violations of Licensing Regulations 1240-5-11-.05 Restricted Licenses for Child Care Agencies 1240-5-11-.06 Reapplication Periods	William B. Russell, General Counsel Citizens Plaza Bldg 15th Floor 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	June 30, 2000 through Dec 12, 2000
06-41	June 30, 2000	1240 Dept of Human Services Community and Field Services Division	Public Necessity Rules		Chapter 1240-4-6 Licensure Rules for Child Care Centers Serving School-Age Children 1240-4-6-.02 Definitions 1240-4-6-.06 Organization and Administration 1240-4-6-.07 Staff	William B. Russell, General Counsel Citizens Plaza Bldg 15th Floor 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	June 30, 2000 through Dec 12, 2000

HEALTH FACILITIES COMMISSION - 0720**NOTICE OF BEGINNING OF REVIEW CYCLE**

Applications will be heard at the August 23, 2000 Health Facilities Commission Meeting except as otherwise noted.

*Denotes applications being placed on the Consent Calendar.

+Denotes applications under simultaneous review.

This is to provide official notification that the Certificate of Need applications listed below have begun their official 90-day review cycle effective June 1, 2000. The review cycle includes a 60-day period of review by the Division of Assessment and Planning within the Tennessee Department of Health or the Department of Mental Health and Mental Retardation. During this 60-day period, the Department of Health may hold a public hearing, if requested, with respect to each application and will conclude the period with a written report. *Pursuant to Public Chapter 120, Acts of 1993, certain unopposed applications may be placed on a "consent calendar." Such applications are subject to a 60-day review cycle, including a 30-day period of review by the Department of Health, Division of Assessment and Planning or the Department of Mental Health and Mental Retardation. Applications intended to be considered on the consent calendar, if any, are denoted by an asterisk.*

Pursuant to T.C.A., Section 68-11-108(h)(1) effective April 5, 2000, any health care institution wishing to oppose a Certificate of Need must file a written objection with the Tennessee Health Facilities Commission and serve a copy on the contact person no later than fifteen (15) days before the regularly scheduled Tennessee Health Facilities Commission meeting at which the application will be heard.

For more information concerning each application or its review cycle, you may contact the Tennessee Department of Health/ Division of Assessment & Planning (615/741-0244), their designee, or the Health Facilities Commission (615/741-2364).

NAME AND ADDRESS

DESCRIPTION

Tennessee Eye Laser Center
Medical Plaza II, Suite 103
2021 Church Street
Nashville (Davidson Co.), TN 37203
John Wellborn – (615)—269-0070
CN0005-029

The establishment of an ambulatory surgical treatment center limited to ambulatory lasik refractive eye surgery in existing medical office space located in Medical Plaza II, Suite 303, 2021 Church Street, Nashville (Davidson County), Tennessee. The proposed 2,988 square foot laser surgery center will consist of one procedure room, patient reception and waiting area, patient preparation and post operative holding areas, and patient/staff support space.

\$ 1,114,307

Orange Grove Center
Lot 111 River Run Subdivision
7121 River Run Drive
Harrison (Hamilton Co.), TN 37341
Hal Baker – (423)—493-2912
CN0005-030

The establishment of a three (3) bed ICF/MR. The facility will be located at Lot 111 River Run subdivision in Chattanooga (Hamilton County) Tennessee. The facility will be established by relocating three (3) beds from an eight (8) bed ICF/MR. \$ 361,133

Mountain States Diagnostic Center
315 N. State of Franklin Road
Johnson City (Washington Co.), TN 38604
Kelly Crepps – (423)—431-6052
CN0005-032

The acquisition of a magnetic resonance imaging scanner and the renovation of 2,550 square feet of existing space.

\$ 3,063,500

NAME AND ADDRESS	DESCRIPTION
Associates of the Memorial/Mission Outpatient Surgery Center, L.L.C. 2525 de Sales Avenue Chattanooga (Hamilton Co.), TN 37404 Jerry W. Taylor – (615)—726-1200 CN0005-033	The establishment of a multi-specialty ambulatory surgical treatment center with four (4) operating rooms and two (2) endoscopy rooms. \$ 6,356,601
Wellmont Bristol Regional Medical Center 1 Medical Park Boulevard Bristol (Sullivan Co.), TN 37620 Greg Neal – (423)—230-8200 CN0005-034	The initiation of mobile PET scanning one day per week. \$ 623,281
Wellmont Holston Valley Medical Center 130 West Ravine Road Kingsport (Sullivan Co.), TN 37660 Greg Neal – (423)—230-8200 CN0005-035	The initiation of mobile PET scanning one day per week. \$ 623,281
Takoma Adventist Hospital 401 Takoma Avenue Greeneville (Greene Co.), TN 37743 Stephen Wilson – (423)—636-2350 CN0005-036	The renovation and expansion of the hospital. The new construction includes a 59,500 square foot 2-story addition to the hospital. Of the total square footage, 23,700 is dedicated to physician office space that is not included in the CON review process. The project will affect the surgical, obstetrical, central sterile processing, mechanical, general circulation/elevator tower and the lobby/admitting/pre-admission testing areas of the hospital. All outpatient services will be relocated to the new addition. Eleven OB/post-partum beds will also be relocated to the new addition. \$ 8,600,000
Center for Assisted Reproductive Technologies (ART) 2011 Murphy Avenue Nashville (Davidson Co.), TN 37203 John Wellborn – (615)—269-0070 CN0005-037	The establishment of an ambulatory surgical treatment center (ASTC) limited to infertility-related procedures. \$ 1,285,769
Southern Hills Medical Center 391 Wallace Road Nashville (Davidson Co.), TN 37211 John Wellborn – (615)—269-0070 CN0005-039	The establishment of an ambulatory surgical treatment center (ASTC) limited to infertility-related procedures. \$ 1,285,769

NAME AND ADDRESS	DESCRIPTION
Semmes-Murphey Neurologic & Spine Institute 6325 Humphreys Boulevard Memphis (Shelby Co.), TN 38120 William West – (615)—259-1450 CN0005-040	The establishment of an ambulatory surgical treatment center (ASTC), the acquisition of a magnetic resonance imaging (MRI) scanner, and the initiation of MRI services. If approved, the services will be limited to the patients of the Semmes-Murphey Clinic. \$ 3,043,810
William S. Witt, M.D.P.C. 1800 Charlotte Avenue Nashville (Davidson Co.), TN 37203 William S. Witt – (615)—329-4840 CN0005-041	The establishment of an outpatient diagnostic center (ODC) and the initiation of magnetic resonance imaging (MRI) services. \$ 2,045,000
**TLC Staffing Resources 10225 Bluegrass Road Knoxville (Knox Co.), TN 37922 Debra Fairman, RN – (865)—675-6521 CN0004-022	The establishment of a home health agency serving the residents of Knox County. The facility will be located at 10225 Bluegrass Road, in Knoxville, Tennessee. \$ 198,300

HEALTH FACILITIES COMMISSION - 0720

NOTICE OF BEGINNING OF REVIEW CYCLE

+Denotes applications under simultaneous review. Applications will be heard at the September 27, 2000 Health Facilities Commission Meeting except as otherwise noted.

*Denotes applications being placed on the Consent Calendar.

+Denotes applications under simultaneous review.

This is to provide official notification that the Certificate of Need applications listed below have begun their official 90-day review cycle effective July 1, 2000. The review cycle includes a 60-day period of review by the Division of Assessment and Planning within the Tennessee Department of Health or the Department of Mental Health and Mental Retardation. During this 60-day period, the Department of Health may hold a public hearing, if requested, with respect to each application and will conclude the period with a written report. *Pursuant to Public Chapter 120, Acts of 1993, certain unopposed applications may be placed on a "consent calendar." Such applications are subject to a 60-day review cycle, including a 30-day period of review by the Department of Health, Division of Assessment and Planning or the Department of Mental Health and Mental Retardation. Applications intended to be considered on the consent calendar, if any, are denoted by an asterisk.*

Pursuant to T.C.A., Section 68-11-108(h)(1) effective April 5, 2000, any health care institution wishing to oppose a Certificate of Need must file a written objection with the Tennessee Health Facilities Commission and serve a copy on the contact person no later than fifteen (15) days before the regularly scheduled Tennessee Health Facilities Commission meeting at which the application will be heard.

For more information concerning each application or its review cycle, you may contact the Tennessee Department of Health/ Division of Assessment & Planning (615/741-0244), their designee, or the Health Facilities Commission (615/741-2364).

NAME AND ADDRESS

DESCRIPTION

Plaza Surgery Center
979 East 3rd Street
Chattanooga (Hamilton Co.), TN 37403
Martin S. McKay – (423)—778-3286
CN0004-028

The establishment of an ambulatory surgical treatment center at 979 East 3rd Street in Chattanooga, TN 37403. The facility has previously operated as an outpatient surgery center under the license of Erlanger Medical Center.
\$ 7,170,000

TLC Laser Eye Center (Refractive I), Inc.
1265 Union Avenue
Memphis (Shelby Co.), TN 38104
Ansel L. Davis, Esquire – (615)—251-6726
CN0005-031

The establishment of an ambulatory surgical treatment center limited to laser refractive eye surgery at 1256 Union Avenue, Memphis, Tennessee.
\$ 990,000

American Drug Care, Inc.
4780 Summer Avenue, Suite 103
Memphis (Shelby Co.), TN 38122
John Hornberger – (901)—794-7911
CN0006-042

The establishment of a non-residential methadone treatment facility at 4780 Summer Avenue, Suite 103 in Memphis, Tennessee.
\$ 104,316.88

Center for Behavioral Health of Nashville, Inc.
602 Gallatin Road, Suite 100
Nashville (Davidson Co.), TN 37206
Marylyn M. Pettit – (205)—985-4331
CN0006-043

The establishment of a non-residential methadone treatment facility to be located at 602 Gallatin Road, Suite 100, Nashville, Tennessee.
\$ 181,777.41

Claiborne County Hospital
1850 Old Knoxville Road
Tazewell (Claiborne Co.), TN 37879-0219
Michael Hutchins – (423)—626-1886
CN0006-046

The acquisition of a magnetic resonance imaging (MRI) scanner and the conversion of mobile MRI services to a fixed service at Claiborne County Hospital.
\$ 1,546,500

G.I. Diagnostic and Therapeutic Center, L.L.C.
1310 Wolf Park Drive
Germantown (Shelby Co.), TN 38138
William H. West – (615)—259-1450
CN0006-048

The relocation and expansion of the current ambulatory surgical treatment center (ASTC) of G. I. Diagnostic and Therapeutic Center, L.L.C. located at 1068 Cresthaven, Suite 300, in Memphis, Shelby County, Tennessee to 1310 Wolf Park Drive, Germantown, Shelby County, Tennessee. The new ASTC will expand from four (4) endoscopy/operating rooms to six (6) endoscopy/operating rooms and consist of approximately 12,600 square feet of space.
\$ 2,928,000

NAME AND ADDRESS	DESCRIPTION
<p>Aspen Surgical, P.L.L.C. 2101 Merchants Row, Suite 3 Germantown (Shelby Co.), TN 38138 E. Graham Baker, Jr. – (615)—383-3332 CN0006-051</p>	<p>The establishment of an ambulatory surgical treatment center limited to plastic and reconstructive surgery located at 2101 Merchants Row, Suite 3, Germantown, Tennessee. The center will consist of approximately 2,000 square feet and will contain one operating room.</p> <p>\$ 1,217,921</p>
<p>Watauga Orthopaedics, P.L.C. 2410 Susannah Street Johnson City (Washington Co.), TN 37601 Jerry W. Taylor – (615)—726-1200 CN0006-053</p>	<p>The acquisition of a magnetic resonance imaging unit and the initiation of MRI services at the orthopaedic practice of Watauga Orthopaedics, P.L.C. located at 2410 Susannah Street, Johnson City, Washington County, Tennessee.</p> <p>\$ 1,404,314</p>
<p>Middle Tennessee Treatment Center 2410 Charlotte Avenue Nashville (Davidson Co.), TN 37203-1517 Jerry W. Taylor – (615)—726-1200 CN0006-054</p>	<p>The relocation and expansion of Middle Tennessee Treatment Center, a non-residential methadone treatment facility, currently located at 1800 Hayes Street in Nashville, Tennessee to 2410 Charlotte Avenue in Nashville, Tennessee.</p> <p>\$ 814,500</p>

DEPARTMENT OF REVENUE - 1320

NOTICE OF DETERMINATION OF INTEREST RATE

Pursuant to *Tenn. Code Ann. § 67-1-801(a)*, notice is hereby given that the rate of interest on all taxes collected or administered by the Department of Revenue shall be thirteen and one-half percent (13.50%) effective on and after July 1, 2000, through June 30, 2001.

Ruth E. Johnson, Commissioner of Revenue

U.S. OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Fall Creek Falls, Tennessee, Lands unsuitable for Surface Coal Mining and Reclamation Operations; Availability of Record of Decision and Statement of Reasons

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior

ACTION: Notice of availability of record of decision and the statement of reasons on the petition to declare certain lands in Fall Creek Falls, Tennessee, unsuitable for surface coal mining.

SUMMARY: The Secretary of Interior has reached a decision on a petition to designate certain areas as unsuitable for surface coal mining operations in Fall Creek Falls, Bledsoe and Van Buren Counties, Tennessee.

ADDRESSES: Copies of the decision and the statement of reasons for the decision may be obtained from the Assistant Director, Program Support, Office of Surface Mining Reclamation and Enforcement (OSM), 1951 Constitution Avenue, HDQ01, Washington, D.C. 20240, or Beverly Brock, Supervisor, Technical Group, Knoxville Field Office, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Office of Surface Mining Reclamation and Enforcement, Knoxville Field Office, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902; telephone (865) 545-4103, extension 146; or e-mail: bbrock@osmre.gov.

SUPPLEMENTAL INFORMATION: The petition was submitted to OSM on July 14, 1995, by Save Our Cumberland Mountains and Tennessee Citizens for Wilderness Planning to designate 85,588 acres of land lying in the watershed and viewshed of the Fall Creek Falls State Park and Natural Area, Bledsoe and Van Buren Counties, Tennessee, as unsuitable for all types of surface coal mining operations. OSM determined the petition to be complete on October 5, 1995, and initiated evaluation of the petition allegations.

The petition was filed in accordance with Section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing regulations at 30 CFR 942.764. The petitioners had five primary allegations: (1) reclamation is not technologically and economically feasible; (2) mining the area would affect fragile or historic lands which could result in significant damage to important historic, cultural, scientific, or esthetic values; (3) mining the area would affect renewable resource lands which could result in a substantial loss or reduction in long-range productivity of water supply or of food or fiber products; (4) mining would affect natural hazard lands which could substantially endanger life and property; and (5) mining the area would be incompatible with existing State or local land use plans or programs.

Pursuant to 30 CFR 942.764, OSM analyzed the allegations of the petition and on June 18, 1998, held a public hearing. OSM filed the final petition evaluation document/environmental impact statement (PED/EIS) for the Fall Creek Falls petition with the Environmental Protection Agency (EPA) on February 24, 2000. The EPA subsequently published the notice of availability on March 3, 2000 (65 FR 11575).

A copy of the decision signed by the Secretary of Interior appears as an appendix to this notice. Additional copies of the decision are available at no cost from the offices listed above under "ADDRESSES." OSM has sent copies of this document to all interested parties of record.

Prior Federal Register notices on the Fall Creek Falls unsuitability petition were the notice of intent to prepare an EIS published in the Federal Register dated November 3, 1995 (60 FR 55815) and the notice of availability of the draft combined PED/EIS dated May 1, 1998 (63 FR 24192).

LETTER OF DECISION**DESIGNATION OF CERTAIN LANDS IN THE WATERSHED OF
FALL CREEK FALLS STATE PARK, TENNESSEE, AS
UNSUITABLE FOR SURFACE COAL MINING OPERATIONS**

Pursuant to Section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) [30 U.S.C. §1272], the Office of Surface Mining (OSM) was petitioned by 49 citizens, Save Our Cumberland Mountains, and Tennessee Citizens for Wilderness Planning to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area in Van Buren and Bledsoe Counties, Tennessee, as unsuitable for all types of surface coal mining operations.

In accordance with Section 522(d) of SMCRA [30 U.S.C. §1272(d)] and Section 102 (2)(C) of the National Environmental Policy Act of 1969 (NEPA) [42 U. S. C. 4332(2)(C)], the OSM's Knoxville Field Office (KFO) prepared a detailed Petition Evaluation Document/ Environmental Impact Statement (PED/EIS). The PED/EIS analyzed the petitioners' allegations, the potential coal resources of the petition area, the demand for coal resources, the impacts of such designation on the environment, and the economy, and alternative actions available to the decision maker.

I have considered the information in the Fall Creek Falls administrative record, including but not limited to the petition and exhibits, information obtained by KFO, analysis of the petitioners' allegations and the environmental impacts of the alternative actions contained in the final PED/EIS, written comments received on the draft and final PED/EIS's, and oral comments received at the public hearing. Based on the analysis of the information contained in the Fall Creek Falls administrative record and presented in the final PED/EIS, I have reached the following decision, as set out in the Record of Decision and Statement of Reasons.

- (1) I am exercising my discretion to designate Fall Creek Falls State Park and Natural Area and the Cane Creek, Falls Creek, and Meadow Creek watersheds as unsuitable for all types of surface coal mining operations in accordance with 30 CFR 762.11(b)(1) and (b)(2).
- (2) I am exercising my discretion to designate the Piney Creek watershed as unsuitable for surface coal mining operations; provided, that a surface coal mining operation may be permitted only in the upper portions of the watershed if a portion of the proposed operation includes previously mined areas and the permit applicant demonstrates that water quality in receiving streams will not be degraded.
- (3) I am not designating any lands within the Dry Fork watershed as unsuitable for surface coal mining operations.

Copies of this decision will be sent to all parties involved in this proceeding. The decision will become effective on the date of the signing of the Record of Decision and Statement of Reasons. An appeal of this decision must be filed within 60 days from the date below in the United States District Court for the Eastern District of Tennessee, as required by Section 526(a)(1) of SMCRA [30 U.S.C. §1276(a)(1)].

Bruce Babbitt
Secretary of the Interior

June 17, 2000

Blank

pg. 16

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

(For the text of the Emergency rules see issue of T.A.R. cited)

- 0080 - Department of Agriculture - Division of Animal Industries - Emergency rules in response to the recent diagnoses of pseudorabies in the swine population on multiple premises in west Tennessee and to protect against further importations of infected swine, chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry, 6 T.A.R. (June 2000) - filed May 21, 2000; effective through November 12, 2000. (05-31)
- 0520 - Department of Education - Emergency rules providing for alternative licensure for teachers under an Interim E License. chapter 0520-2-4 Licensure, 6 T.A.R. (June 2000) - Filed May 15, 2000; effective through October 28, 2000. (05-08)

PROPOSED RULES

TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF BOILER AND ELEVATOR INSPECTION BOILER AND PRESSURE VESSEL SECTION BOARD OF BOILER RULES

Presented herein are proposed amendments of the Department of Labor and Workforce Development, Division of Boiler and Elevator Inspection, Boiler and Pressure Vessel Section, Board of Boiler Rules submitted pursuant to *T.C.A. § 4-5-202* in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these rules and amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the *Tennessee Administrative Register* in which the proposed rules and amendments are published. Such petition, to be effective, must be filed in the Legal Services office of the Department of Labor and Workforce Development, Tennessee Tower - 6th Floor, 312 Eighth Avenue North, Nashville, Tennessee 37243-0293, and in the Department of State, Fifth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact Mr. Noel Chivers, Director, Boiler and Elevator Division, Tennessee Department of Labor and Workforce Development, Andrew Johnson Tower - 3rd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0663, telephone: (615) 741-2123.

The text of the proposed rules, amendments and repeals is as follows:

SUBSTANCE OF PROPOSED RULES

0800-3-3-.01 Definitions is amended by adding the following paragraph:

- (34) Historic power boilers means any steam traction engine, portable or stationary, standard or non-standard power boiler, including free-lance and scale models, owned by publicly operated museums, non-profit organizations and individuals who preserve, maintain, exhibit and only occasionally operate these boilers on a not-for-profit basis and for the primary purpose of perpetuating the agricultural and pioneer heritage of Tennessee.

Authority: *T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.*

Subparagraph (j) of paragraph (8) of rule 0800-3-3-.01 Definitions is amended by deleting the word steam in the first sentence where it appears between the words A and boiler, so that as amended such subparagraph shall read:

- (j) Hot water heating boiler - A boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which is operated at a pressure not exceeding 160 psig. and/or a temperature of 250°F at or near the boiler outlet.

Authority: *T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.*

Subparagraph (m) of paragraph (8) of rule 0800-3-3-.01 Definitions is amended by deleting the word hot in both places where it appears, so that as amended such subparagraph shall read:

- (m) Potable water heater - A heater supplying potable water for commercial purposes in which the pressure does not exceed 160 psig. and the temperature does not exceed 210°F.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Paragraph (9) of rule 0800-3-3-.01 Definitions is amended by deleting the statute citation 68-20-109 and replacing it with the statute citation 68-122-109, so that as amended such paragraph shall read:

- (9) Certificate of competency means a certificate issued by a person who has passed the examination prescribed by the Board pursuant to T.C.A. § 68-122-109.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Paragraph (10) of rule 0800-3-3-.01 Definitions is amended by deleting the statute citation 68-20-111 and replacing it with the statute citation 68-122-111, so that as amended such paragraph shall read:

- (10) Certificate of inspection means a certificate issued for operation of a boiler or pressure vessel as required in T.C.A. § 68-122-111.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Paragraph (12) of rule 0800-3-3-.01 Definitions is amended by deleting the words National Board means in the first line, and by deleting the word By-Laws in the fourth line of said paragraph and inserting the words Rules for Commissioned Inspectors, so that as amended such paragraph shall read:

- (12) Commission – The commission issued by the National Board of Boiler and Pressure Vessel Inspectors to a holder of a certificate of competency who desires to make shop or field inspections in accordance with the National Board Rules for Commissioned Inspectors, and whose employer submits the inspector’s application to the National Board for such commission.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (a) of paragraph (15) of rule 0800-3-3-.01 Definitions is amended by deleting the statute citation 68-20-106 and replacing it with the statute citation 68-122-106, so that as amended such subparagraph shall read:

- (a) Chief Inspector – The Chief Boiler and Pressure Vessel Inspector appointed pursuant to T.C.A. § 68-122-106.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (b) of paragraph (15) of rule 0800-3-3-.01 Definitions is amended by deleting the statute citation 68-20-107 and replacing it with the statute citation 68-122-107, so that as amended such subparagraph shall read:

- (b) Deputy Inspector – Any inspector appointed pursuant to T.C.A. § 68-122-107.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (d) of paragraph (15) of rule 0800-3-3-.01 Definitions is amended by deleting the statute citation 68-20-108 and replacing it with the statute citation 68-122-108, so that as amended such subparagraph shall read:

- (d) Owner-User Inspector – An inspector continuously employed by a company owning and operating pressure vessels in this State for the purposes of making inspections of pressure vessels used or to be used by such company, but not for resale, and providing such company complies with the requirements of T.C.A. § 68-122-108.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (a) of paragraph (1) of rule 0800-3-3-.02 Adoption by Reference is amended by deleting the year 1989 and inserting the year 1998, so that as amended such subparagraph shall read:

- (a) Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME Code), 1998 edition, published by the American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (b) of paragraph (1) of rule 0800-3-3-.02 Adoption by Reference is amended by deleting the year 1989 and inserting the year 1998, so that as amended such subparagraph shall read:

- (b) National Board Inspection Code, 1998 edition, published by the National Board of Boiler and Pressure Vessel Inspectors (NB), 1055 Crupper Avenue, Columbus, Ohio 43229.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (d) of paragraph (1) of rule 0800-3-3-.02 Adoption by Reference is amended by deleting the year 1982 and inserting the year 1995, so that as amended such subparagraph shall read:

- (d) Controls and Safety Devices for Automatically Fired Boilers (ANSI/ASME-CSD-1), 1995 edition, published by the American Society of Mechanical Engineers.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (d) 1. of paragraph (1) of rule 0800-3-3-.03 Administration is amended by deleting the term, ANSI in the last line of said subparagraph and inserting the term ASME, so that as amended such subparagraph shall read:

- 1. Power piping external to power boilers from the boiler to the first stop valve of a single boiler, and to the second stop valve in a battery of two or more boilers, is subject to the requirements of the ASME Code, Power Boilers, Section I. The design, fabrication, installation and testing of the valves and piping shall be in accordance with ASME B 31.1.0.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Paragraph (4) of rule 0800-3-3-.03 Administration is amended by deleting the statute citation 68-20-110 and replacing it with the statute citation 68-122-110, so that as amended such paragraph shall read:

- (4) Frequency of Inspections. All boilers and pressure vessels subject to inspection under the ACT shall be inspected in accordance with the requirements of T.C.A. § 68-122-110.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (c) of paragraph (6) of rule 0800-3-3-.03 Administration is amended by deleting the words twenty-five dollars (\$25.00) in the last line of said subparagraph and inserting the words one hundred dollars (\$100.00), so that as amended such subparagraph shall read:

- (c) An application for examination shall be submitted on the form prescribed by the Chief Inspector at least 45 days prior to the date of examination. Each application shall be accompanied by a non-refundable fee of one hundred dollars (\$100.00).

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (b) of paragraph (7) of rule 0800-3-3-.03 Administration is amended by deleting the words twenty-five dollars (\$25.00) in the last line of said subparagraph and inserting the words fifty dollars (\$50.00), so that as amended such subparagraph shall read:

- (b) A request for a certificate of competency and identification card shall be submitted by the employer on the form prescribed by the Chief Inspector. The request shall be accompanied by a non-refundable fee of fifty dollars (\$50.00).

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (d) of paragraph (7) of rule 0800-3-3-.03 Administration is amended by deleting the words fifteen dollars (\$15.00) in the last line of said subparagraph and inserting the words twenty-five dollars (\$25.00), so that as amended such subparagraph shall read:

- (d) Identification cards shall be renewable annually by application of the employer. The application shall be submitted not later than December 31 of each year, and shall be accompanied by a non-refundable fee of twenty-five dollars (\$25.00) for each card.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Paragraph (8) of rule 0800-3-3-.03 Administration is amended by deleting the word inspection in the first line of said paragraph and inserting the word inspector, so that as amended such paragraph shall read:

- (8) Conflict of Interest. An inspector shall not engage in the sale of any service, article or device relating to boilers, pressure vessels, or their appurtenances.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (a) of paragraph (12) of rule 0800-3-3-.03 Administration is amended by deleting the statute citation 68-20-105 in the second line of said subparagraph and replacing it with the statute citation 68-122-105, so that as amended such subparagraph shall read:

- (a) Conduct inspections of pressure vessels (not exempt under T.C.A. § 68-122-105), utilizing only qualified inspection personnel, as provided in this chapter;

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Paragraph (19) of rule 0800-3-3-.03 Administration is amended by deleting the words install a reinstalled in the second line of said paragraph and inserting the words reinstall a, so that as amended such paragraph shall read:

- (19) Reinstalled Boiler or Pressure Vessels. The owner or user shall apply to the Chief Inspector for permission to reinstall a boiler or pressure vessel in this State.

Authority: *T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.*

Subparagraph (b) of Paragraph (21) of rule 0800-3-3-.03 Administration is amended by deleting the statute citation 68-20-201 through 68-20-209 in the third line of said subparagraph, and inserting the statute citation 68-122-201 through 68-122-209, and by deleting the words or, if alterations are to be-made, the applicant shall have a valid ASME certificate of authorization, in the last sentence of said paragraph, so that as amended such subparagraph shall read:

- (b) The person, corporation, partnership or firm performing the repair or alteration shall have a valid license in accordance with *T.C.A. §§ 68-122-201 through 68-122-209*. In order to qualify for such license the applicant shall have a valid certificate of authorization from the National Board for the use of a Repair Code Symbol stamp.

Authority: *T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.*

Subparagraph (b) of Paragraph (24) of rule 0800-3-3-.03 Administration is amended by deleting the word four in both places where said word appears and inserting the words two and one half inches, so that as amended such subparagraph shall read:

- (b) All cast iron, low pressure heating boilers shall have securely attached to the front of the boiler a corrosion-resistant metal tag of not less than one inch by two and one half inches in size, which shall have the serial number of the State stamped thereon. All pressure vessels constructed of cast iron, or of material of such thickness that is should not be stamped, shall have securely attached a corrosion-resistant metal tag of not less than one inch by two and one half inches in size, which shall have the serial number of the State stamped thereon (Tenn 00000).

Authority: *T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.*

Subparagraph (a) of paragraph (5) of rule 0800-3-3-.04 General Requirements is amended by deleting the word hydrostatic in the first line of said subparagraph, so that as amended such subparagraph shall read:

- (a) A pressure test, when applied to boiler or pressure vessels, shall not exceed $1^{1/2}$ times the maximum allowable working pressure. The pressure shall be under proper control so that in no case shall the required test pressure be exceeded by more than 2 percent.

Authority: *T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.*

Subparagraph (b) of paragraph (5) of rule 0800-3-3-.04 General Requirements is amended by deleting the word hydrostatic in the first line of said subparagraph and inserting the word pressure, so that as amended such subparagraph shall read:

- (b) During a pressure test, the safety valve or valves shall be removed, or each valve disc shall be held to its seat by means of a testing clamp (not by screwing down the compression screw upon the spring). A plug device designed for the purpose may be used.

Authority: *T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.*

Subparagraph (c) of paragraph (5) of rule 0800-3-3-.04 General Requirements is amended by deleting the word hydrostatic in the first line of said subparagraph and inserting the word pressure, so that as amended such subparagraph shall read:

- (c) The temperatures of the water used to apply a pressure test shall not be less than 70°F and the temperature during inspection shall not exceed 120°F.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (d) of paragraph (5) of rule 0800-3-3-.04 General Requirements is amended by deleting the word hydrostatic in the first line of said subparagraph and inserting the word pressure, so that as amended such subparagraph shall read:

- (d) When a pressure test is applied to determine tightness, the pressure shall be equal to the normal operating pressure, but need not exceed the release pressure of the safety valve having the lowest release setting.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (e) of paragraph (5) of rule 0800-3-3-.04 General Requirements is amended by deleting the word hydrostatic in the second line of said subparagraph and inserting the word pressure, so that as amended such subparagraph shall read:

- (e) When the contents of the vessel prohibit contamination by any other medium, or when a pressure test not possible, other testing media may be used providing the precautionary requirements of the applicable section of the ASME Code are followed.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (a) of paragraph (6) of rule 0800-3-3-.04 General Requirements is amended by deleting the year 1982 and inserting the year 1995, so that as amended such subparagraph shall read:

- (a) Each automatically-fired boiler shall be equipped with one or more automatic low-water fuel cutoff device conforming to the requirements of ANSI/ASME-CSD-1, 1995 edition. If a water-feeding device is installed, it shall be so constructed that the water inlet valve cannot feed water into the boiler through the float chamber, and so located as to supply requisite feedwater. The lowest safe waterline should not be lower than the lowest visible part of the water glass.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (b) of paragraph (10) of rule 0800-3-3-.04 General Requirements is amended by deleting the rule citation 0800-2-11-.03(21) and inserting the rule citation 0800-3-3-.03(21), so that as amended such subparagraph shall read:

- (b) Alterations shall be made by an organization holding a current National Board Repair Certificate of Authorization and the license required by rule 0800-3-3-.03(21).

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102

Subparagraph (c) of paragraph (10) of rule 0800-3-3-.04 General Requirements is amended by deleting the words the appropriate ASME Code stamp, and inserting the words a current National Board Repair Certificate of Authorization, and is also amended by deleting the rule citation 0800-2-11-.03(21) and inserting the rule citation 0800-3-3-.03(21), so that as amended such subparagraph shall read:

- (c) Alterations shall be made by an organization holding a current National Board Repair Certificate of Authorization and the license required by rule 0800-3-3-.03(21).

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Paragraph (18) of rule 0800-3-3-.04 General Requirements is amended by deleting the year 1982 and inserting the year 1995, so that as amended such subparagraph shall read:

- (18) Prevention of Furnace Explosions. Fuel-burning equipment, the related safety devices and controls, and their operation shall be in accordance with the requirements of ANSI/ASME-CSD-1, 1995 edition, or the NFPA No. 85 series, 1985 edition, as applicable.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, and 68-122-102.

Subparagraph (a) of paragraph (1) of rule 0800-3-3-.05 Existing Power Boilers is amended by deleting the word non-standing in the first line of said subparagraph and inserting the word non-standard, so that as amended such subparagraph shall read:

- (a) There shall be an age limit of 30 years for any non-standard existing power boiler, except for the following:

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Subparagraph (a)1. of paragraph (1) of rule 0800-3-3-.05 Existing Power Boilers is amended by deleting the word hydrostatic in the third line of said subparagraph, and by deleting the number and word 1½ times and inserting the number and word 80% of, so that as amended such subparagraph shall read:

- 1. Any such boiler not having a lap-riveted longitudinal joint may be continued in operation for so long as no distress or leakage develops during a pressure test, of 80% of the allowable working pressure, held for a period of at least 30 minutes.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Subparagraph (b) of paragraph (1) of rule 0800-3-3-.05 Existing Power Boilers is amended by deleting the word hydrostatic in the third line of said subparagraph, and by deleting the number and word 1½ times in the fourth line of said subparagraph and inserting the number and word 80% of, so that as amended such subparagraph shall read:

- (b) The age limit for a standard existing power boiler shall be dependent upon the results of a thorough internal and external inspection and, where required by the inspector, a pressure test not exceeding 80% of the allowable working pressure. The power boiler may be continued under these test conditions.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Subparagraph (e) of paragraph (3) of rule 0800-3-3-.05 Existing Power Boilers is amended by deleting the word valves in the third line of said subparagraph and inserting the word values, so that as amended such subparagraph shall read:

- (e) Factors of Safety – The working pressure shall be decreased by the inspector if the condition and safety of the boiler warrant. The following factors of safety represent minimum values to be used:

The lowest factor of safety permissible on existing installation shall be 5.5; except that, for horizontal return-tubular boilers having continuous longitudinal lap-seams more than 12 feet in length, the factor

of safety shall be 8. When this latter type of boiler is removed from its existing setting, it shall not be reinstalled for pressures in excess of 15 psig.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Subparagraph (i)2. of paragraph (6) of rule 0800-3-3-.05 Existing Power Boilers is amended by deleting the word valves in the third line of said subparagraph and inserting the word values, so that as amended such subparagraph shall read:

2. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam generating capacity) upon the basis of the heating value of this fuel. These computations shall be made as outlined in the Appendix of the ASME Code, Section I; or

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Subparagraph (d) of paragraph (5) of rule 0800-3-3-.06 Existing Heating Boilers is amended by deleting the word stream in the fifth line of said subparagraph and inserting the word steam, and by adding the word foot after the word square in the fifth line of said subparagraph, so that as amended such subparagraph shall read:

- (d) The minimum valve capacity in pounds per hour shall be greater of that determined by dividing the maximum BTU output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000 or shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. In many cases, a greater relieving capacity of valves will have to be provided than the minimum specified by these rules. In every case, the requirements of Item 5, Paragraph (e) shall be met.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Subparagraph (h) of paragraph (5) of rule 0800-3-3-.06 Existing Heating Boilers is amended by deleting the word or wherever it appears in said subparagraph and inserting the word and, and by deleting the word working in the ninth line of said subparagraph, so that as amended such subparagraph shall read:

- (h) No valve of any description shall be placed between the safety valve and the boiler, and on the discharge pipe between the safety valve and the atmosphere. The discharge pipe shall be at least full-size, and shall be fitted with an open drain to prevent water lodging in the upper part of the safety valve and in the discharge pipe. When an elbow is placed on the safety valve discharge pipe, it shall be located close to the safety valve outlet; and the discharge pipe shall be securely anchored and supported. All safety valve discharges shall be so located and piped as not to endanger persons in the area.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Subparagraph (h) of paragraph (6) of rule 0800-3-3-.06 Existing Heating Boilers is amended by deleting the word or wherever it appears in said subparagraph and inserting the word and, by adding the word relief in the sixth line of said subparagraph after the word safety, by adding the words discharge pipe, it shall be located close to the safety relief valve in the sixth line of said subparagraph after the word valve, and by deleting the word working in the last line of said subparagraph, so that as amended such subparagraph shall read:

- (h) No valve of any description shall be placed between the safety relief valve and the boiler, and on the discharge pipe between the safety relief valve and the atmosphere. The discharge pipe shall be at least full-size, and shall be fitted with an open drain to prevent water lodging in the upper part of the safety

relief valve or in the discharge pipe. When an elbow is placed on the safety relief valve discharge pipe, it shall be located close to the safety relief valve outlet; and the discharge pipe shall be properly supported. All safety relief valve discharges shall be so located and piped as not to endanger persons in the area.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Paragraph (4) of rule 0800-3-3-.07 Existing Pressure Vessels is amended by inserting the word no, so that as amended such subparagraph shall read:

- (4) Overpressure Protection. Each pressure vessel shall be provided with safety relief valves and controlling devices as necessary to protect against overpressure. These devices shall be so constructed, located and installed that they cannot be rendered inoperative. The relieving capacity of such pressure relief devices shall be adequate to prevent a rise in pressure in the vessel of no more than 10 percent above the highest pressure to which any pressure relieving device is set. The opening pressure of the lowest set pressure relieving device shall be no greater than the maximum allowable working pressure of the vessel. Where an additional hazard is involved due to fire or other unexpected sources of external heat, the pressure relief devices shall meet the requirements of ASME Code Section VIII, Division 1, Paragraph UG-125 or Division 2, Paragraph AR-130, whichever is applicable.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Paragraph (2) of rule 0800-3-3-.08 Historic Boilers is amended by deleting the word formal in the second line of said paragraph and inserting the word formula, so that as amended such subparagraph shall read:

- (2) The maximum allowable working pressure shall be calculated with a minimum safety factor of 6 using the formula for existing power boilers in 0800-3-3-.05(3)(a) not to exceed 100 psig. The issuance of the annual operating permit will be based on the results of the annual inspection by the inspector.

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104.

Subparagraph (a) of paragraph (1) of rule 0800-3-3-.09 Fees is amended by deleting the fee amount of \$175.00 and inserting the fee amount of \$250.00, so that as amended such subparagraph shall read:

- (a) For one-half (1/2) day of four hours \$250.00

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101 through 68-122-104, 68-122-106, 68-122-111, 68-122-113, and 68-122-116.

Subparagraph (b) of paragraph (1) of rule 0800-3-3-.09 Fees is amended by deleting the fee amount of \$350.00 and inserting the fee amount of \$500.00, so that as amended such subparagraph shall read:

- (b) For one (1) full day of eight (8)hours \$500.00

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101 through 68-122-104, 68-122-106, 68-122-111, 68-122-113, and 68-122-116.

Paragraph (3) of rule 0800-3-3-.09 Fees is amended by deleting subparagraph (e).

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101 through 68-122-104, 68-122-106, 68-122-111, 68-122-113, and 68-122-116.

Paragraph (5) of rule 0800-3-3-.09 Fees is amended by deleting the fee amount of \$25.00 and inserting the fee amount of \$100.00, so that as amended such subparagraph shall read:

(5) Examination fee (non-refundable)..... \$100.00

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101 through 68-122-104, 68-122-106, 68-122-111, 68-122-113, and 68-122-116.

Paragraph (6) of rule 0800-3-3-.09 Fees is amended by deleting the fee amount of \$25.00 and inserting the fee amount of \$50.00, so that as amended such subparagraph shall read:

(6) Certificate of Competency fee (non-refundable)..... \$50.00

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101 through 68-122-104, 68-122-106, 68-122-111, 68-122-113, and 68-122-116.

Paragraph (7) of rule 0800-3-3-.09 Fees is amended by deleting the fee amount of \$15.00 and inserting the fee amount of \$25.00, so that as amended such subparagraph shall read:

(7) Identification card fee (non-refundable) Annual renewal..... \$25.00

Authority: T.C.A. §§4-5-202(a)(3), 68-122-101 through 68-122-104, 68-122-106, 68-122-111, 68-122-113, and 68-122-116.

The proposed rules set out herein were properly filed in the Department of State on the 27th day of June, 2000, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of October, 2000. (06-05)

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640**CHAPTER 1640-1-1
TENNESSEE STUDENT ASSISTANCE PROGRAM****CHAPTER 1640-1-13
MINORITY TEACHING FELLOWS PROGRAM****CHAPTER 1640-1-16
ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM****CHAPTER 1640-1-17
TENNESSEE TEACHING SCHOLARS PROGRAM**

Presented herein are proposed amendments of the Tennessee Student Assistance Corporation submitted pursuant to *Tennessee Code Annotated Section 4-5-202* in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the *Tennessee Administrative Register* in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Student Assistance Corporation, Suite 1950, Parkway Towers, located at 404 James Robertson Parkway, Nashville, Tennessee 37243-0820 and in the Department of State, Fifth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the amendment, or submitted by a municipality which will be affected by the amendment, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendment contact: Ron Gambill, Executive Director, Tennessee Student Assistance Corporation, 404 James Robertson Parkway, Suite 1950, Nashville, TN 37243-0820, (615) 741-1346.

The text of the proposed amendment is as follows:

**CHAPTER 1640-1-1
TENNESSEE STUDENT ASSISTANCE PROGRAM****AMENDMENTS**

Rule 1640-1-1-.01, Definitions, Paragraph (4) is amended by inserting "the Accrediting Council for Independent Colleges and Schools," immediately following "Southern Association of Colleges and Schools," so that as amended, Paragraph (4) shall read as follows:

- (4) An institution of higher education means a public or non-profit educational institution in Tennessee which: (1) admits as regular students only persons who have a high school diploma, the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in Tennessee and who have the ability to benefit from the training offered; (2) is legally authorized to provide an educational program beyond secondary education in Tennessee; and (3) provides an educational program for which it awards an associate or baccalaureate degree, or provides at least a two-year program which is acceptable for full credit toward a baccalaureate degree, or provides at least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation. The term "educational institution" as used in this definition shall be construed to include a hospital school of nursing which offers a diploma nursing program accredited by the National School of Nursing. Provided, however, that any postsecondary educational institution which is accredited by the Southern Association of Colleges and Schools, the Accrediting Council for Independent Colleges and Schools, or by the Council on Occupational Education or by the Accrediting Commission of Career Schools and Colleges of Technology

and which meets standards specified in (1), (2) and (3) shall be deemed to be an institution of higher education, provided, it has been authorized to operate by the Tennessee Higher Education Commission pursuant to the Postsecondary Education Authorization Act of 1974.

Authority: T.C.A. §49-4-204 and §49-4-301.

(06-21)

**CHAPTER 1640-1-13
MINORITY TEACHING FELLOWS PROGRAM
AMENDMENTS**

Rule 1640-1-13-.05, Loan Amount and Terms, Paragraph (3), Subparagraph (a) is amended by adding the following new sentence at the end of the Subparagraph – “If a recipient teaches for three consecutive years within seven years after graduation in an eligible school that is low-performing or on warning status as designated by the State Department of Education or the State Board of Education, the recipient’s obligation will be cancelled. (This normally would be \$6,667 per year plus related interest.)” As amended Subparagraph (a) shall read as follows:

- (a) For each year of full-time eligible service, as defined in these regulations, the recipient shall receive cancellation credit of one year’s award. (This normally would be \$5,000 plus related interest.) If a recipient teaches for three consecutive years within seven years after graduation in an eligible school that is low-performing or on warning status as designated by the State Department of Education or the State Board of Education, the recipient’s obligation will be cancelled. (This normally would be \$6,667 per year plus related interest.)

Authority: T.C.A. §49-4-204 and 49-4-706.

Rule 1640-1-13-.05, Loan Amount and Terms, Paragraph (3) Subparagraph (b) is amended by deleting it in its entirety and replacing it with the following new Subparagraph (b):

- (b) Cancellation credit will be calculated at a rate of \$5,000 per year of service plus interest on each year of service. If a recipient teaches in an eligible school that is low-performing or on warning status, the cancellation credit will be calculated at a rate of \$6,667 per year of service plus interest on each year of service. Fractions of a year will not be credited toward cancellation. A request for postponement of repayment must be submitted to TSAC by those recipients who have not completed a full year of continuous applicable teaching service. At the end of such period, cancellation will be applied upon receipt of verification of the completion of such service.

Authority: T.C.A. §49-4-204 and 49-4-706.

Rule 1640-1-13-.05, Loan Amount and Terms, Paragraph (4), Subparagraph (a) is amended by deleting it in its entirety and replacing it with the following new Subparagraph (a):

- (a) The loan must be repaid should the recipient choose not to honor the terms and conditions of the loan agreement. Repayment will include the full amount of the loan funds received plus interest accrued

from the date of award(s). The interest accrued is determined by an interest rate of 9% per annum. Repayment may be in whole or in monthly installments of at least one hundred dollars (\$100) over a period of not more than ten years from the end of the grace period. Payments of less than one hundred dollars (\$100) per month may be made only if the recipient documents to TSAC's satisfaction his or her inability to make payments of that size. All interest shall be based upon the unpaid principal balance of the loan.

Authority: T.C.A. §49-4-204 and 49-4-706.

Rule 1640-1-13-.05, Loan Amount and Terms, Paragraph (4), Subparagraph (b) is amended by adding the following new sentence at the end of the Subparagraph: "Interest shall begin to accrue on September 1 after completion of the program." As amended Subparagraph (b) shall read as follows:

- (b) Repayment for recipients who complete the plan of study shall begin on the first day of the month following the end of the grace period. Interest shall begin to accrue on September 1 after completion of the program.

Authority: T.C.A. §§49-4-204 and 49-4-706

Rule 1640-1-13-.05, Loan Amount and Terms, Paragraph (4), Subparagraph (c) is amended by deleting it in its entirety and substituting the following new language in its place:

- (c) Repayment for recipients who fail to complete the funded plan of study shall begin on the first day of the month following such failure. Interest shall begin to accrue immediately after the termination of the award. Repayment will include the full amount of the loan funds received plus interest accrued from the date of award(s), and shall be based upon the 9% per annum interest rate from the time of the recipient's first award. Repayment may be made in whole or in monthly installments over a period of not more than ten years from the date of failure to complete the plan of study. All interest shall be based upon the unpaid principal balance of the loan. If a borrower issues a check, draft, warrant or electronic funds transfer, which is subsequently returned to the Tennessee Student Assistance Corporation for reason of insufficient funds, a stop payment order by the issuer, or any other reason, the payment to which these funds was applied shall be reversed on the borrower's account and interest shall continue to accrue from the date of the last valid payment.

Authority: T.C.A. §49-4-204 and 49-4-706.

(06-21)

CHAPTER 1640-1-16 ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

AMENDMENTS

Rule 1640-1-16-.03, Eligibility and Application Procedures, Paragraph (1), Subparagraph (f) is amended by adding a comma after "deadline" and changing "April 1st" to "March 1st". As amended, Subparagraph (f) shall read as follows:

- (f) Apply before the published deadline, which is March 1st each year.

Authority: *T.C.A. §49-4-203 and §49-4-204*

(06-23)

**CHAPTER 1640-1-17
TENNESSEE TEACHING SCHOLARS PROGRAM**

Presented herein are proposed amendments of the Tennessee Student Assistance Corporation submitted pursuant to *Tennessee Code Annotated Section 4-5-202* in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the *Tennessee Administrative Register* in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Student Assistance Corporation, Suite 1950, Parkway Towers, located at 404 James Robertson Parkway, Nashville, Tennessee 37243-0820 and in the Department of State, Fifth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the amendment, or submitted by a municipality which will be affected by the amendment, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendment contact: Ron Gambill, Executive Director, Tennessee Student Assistance Corporation, 404 James Robertson Parkway, Suite 1950, Nashville, TN 37243-0820, (615) 741-1346.

The text of the proposed amendment is as follows:

AMENDMENTS

Rule 1640-1-17-.05, Loan Amount and Terms, Paragraph (4), Subparagraph (a) is amended by adding the following sentence at the end of the subparagraph – “If a recipient teaches in an eligible school that is low-performing or on warning status as designated by the State Department of Education or the State Board of Education, the recipient’s obligation will be cancelled at a rate of one and one-third (1 1/3) of the total annual award.” As amended, Subparagraph (a) shall read as follows:

- (a) For each year of creditable full-time teaching service, as defined in these regulations, the recipient shall receive cancellation credit of one academic year’s award (the equivalent of two semesters) toward repayment of the loan. If a recipient teaches in an eligible school that is low-performing or on warning status as designated by the State Department of Education or the State Board of Education, the recipient’s obligation will be cancelled at a rate of one and one-third (1 1/3) of the total annual award.

Authority: *T.C.A. §§49-4-204 and 49-4-212.*

Rule 1640-1-17-.05, Loan Amount and Terms, Paragraph (5), Subparagraph (b) is amended by adding the following sentence at the end of the Subparagraph. “Interest shall begin to accrue on September 1 after completion of the program.” As amended, Subparagraph (b) shall read as follows:

- (b) Repayment for recipients who complete the plan of study shall begin on the first day of the month following the end of the grace period. Interest shall begin to accrue on September 1 after completion of the program.

Authority: T.C.A. §§49-4-204 and 49-4-212.

Rule 1640-1-17-.05, Loan Amount and Terms, Paragraph (5), Subparagraph (c) is amended by adding the following sentence at the end of the Subparagraph. "Interest shall begin to accrue immediately after termination of the award." As amended, Subparagraph (c) shall read as follows:

- (c) Repayment for recipients who fail to complete the plan of study shall begin on the first day of the month after TSAC has determined that the student is no longer enrolled in a teacher education program or other failure to comply with the terms of the agreement. Interest shall begin to accrue immediately after termination of the award.

Authority: T.C.A. §§49-4-204 and 49-4-212.

(06-24)

The proposed rules set out herein were properly filed in the Department of State on the 30th day of June, 2000, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of October, 2000. (06-21 through 06-24)

Blank

pg. 32

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

**DEPARTMENT OF HUMAN SERVICES - 1240
COMMUNITY AND FIELD SERVICES DIVISION**

**CHAPTER 1240-4-1
STANDARDS FOR GROUP DAY CARE HOMES**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Sections 3 and 8 of Senate Bill 3107/House Bill 3035 (2000), effective for purposes of promulgating rules on June 26, 2000, require the Tennessee Department of Human Services to implement, by public necessity rules by July 1, 2000, certain child care standards for children being cared for in group day care homes licensed by the Department of Human Services.

For a complete copy of these public necessity rules, contact William B. Russell, General Counsel, Tennessee Department of Human Services, 15th Floor, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006, (615) 313-4731.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

**CHAPTER 1240-4-1
STANDARDS FOR GROUP DAY CARE HOMES**

AMENDMENTS

Paragraph (5) of Rule 1240-4-1-.01, Introduction, is amended by adding the following language as new subparagraph (w) and by re-designating the existing subparagraph (w) as subparagraph (x) so that, as amended, the new subparagraph (w) shall read as follows:

- (w) Substitute. Paid or unpaid persons who are replacement for regular staff. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check

pursuant to 1240-4-1-.03(1)(a)6.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Paragraph (5) of Rule 1240-4-1-.01, Introduction, is amended by adding the following language as new subparagraph (y), so that, as amended, new subparagraph (y) shall read as follows:

- (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. Utilization of volunteers shall be recorded in the staff personnel records of the agency.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Subpart (ii) of part 1 of subparagraph (h) of paragraph (7) of Rule 1240-4-1-.02, Ownership and Administration, is amended by deleting subpart (ii) in its entirety and by substituting instead the following language so that, as amended, subpart (ii) shall read as follows:

- (ii) Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the child care agency shall carry vehicle liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-1-.02(8).

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Rule 1240-4-1-.02, Ownership and Administration, is amended by adding the following new Paragraph so that, as amended, the new Paragraph shall read as follows:

- (8) Liability and Accident Insurance.
 - (a) General liability and accident insurance coverage shall be maintained on the operations of the vehicles and facilities owned, operated or leased by the child care agency.
 - (b) Vehicle liability coverage shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000). General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000).
 - (c) Accident insurance for medical payments shall be maintained in a minimum amount of Twenty-Five Thousand Dollars (\$25,000) and accidental death and dismemberment insurance shall be maintained in a minimum amount of Ten Thousand Dollars (\$10,000).
 - (d) 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).
 - (e) Documentation that the necessary insurance is in effect, or that the governmental entity is self-insured, shall be maintained in the records of the child care agency and shall be available to the Department's licensing staff.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Part 6 of subparagraph (a) of paragraph (1) of Rule 1240-4-1-.03, Staff, is amended by deleting the Part in its entirety and by substituting the following new part 6 so that, as amended, part 6 shall read as follows:

6. Criminal history and abuse registry background checks; appeals; exemptions.
 - (i) Each person:
 - (I) Applying to work with children a paid employee, a director, or manager of a child care agency;
 - (II) Applying to work as a new substitute who works more than thirty-six (36) hours per calendar year. For purposes of this subparagraph a “substitute” shall mean paid or unpaid staff who are replacements of regular staff; provided, however, persons serving 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;
 - (III) Who seeks to operate (an “operator”) a child care agency as defined TCA § 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this item, an “operator” shall be an individual who is an owner or administrator of a child care agency or a child care system; or
 - (IV) Fifteen (15) years of age or older who resides in a child care agency shall:
 - I. Complete a criminal history disclosure form as approved by the Department;
 - II. Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation, and shall submit to a fingerprint based criminal history check to be conducted by the Tennessee Bureau of Investigation;
 - III. Submit to a review of their status on the Department of Health’s vulnerable persons registry under title 68, chapter 11, part 10 of the Tennessee Code Annotated.
 - IV. Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.
 - (ii) The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.
 - (iii) The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation.

- (iv) Pending outcome of the fingerprint background check and the Department of Health's vulnerable person's registry the applicant for employment, for a license or for operator or for a substitute services position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of subpart (vii) shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be an operator who has significant contact with the children in the agency's care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.
- (v) A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health's vulnerable persons registry shall be maintained in the child care agency's records for review by the Department of Human Services.
- (vi) The child care agency shall immediately review the report 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 subpart (vii), the child care agency shall immediately exclude such person from employment, substitute services, or if a resident, from access to children in the child care agency. Failure to do so will result in immediate suspension of the child care agency's license.
- (vii) Exclusions from access to children based upon criminal history or other status.
 - (I) No person shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, or director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency; nor shall a person who is a resident in a child care agency have access to children in a child care agency, who has
 - I. any pending warrant, indictment or presentment;
 - II. been convicted, pled guilty to or pled no contest to any crime or charge, or
 - III. any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:
 - A. Any crime, including a lesser included offense derived from any crime, involving a child; or
 - B. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or
 - C. Any crime involving or lesser included offenses derived from any crime involving the manufacture, sale, distribution or possession of any drug; or
 - D. A violation of *T.C.A. §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401* or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.

- (II) No person whose name is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to children in a child care agency.
- (III) No person shall be employed, work as a caregiver or have access to or contact with children in the child care program who is:
 - I. Known to the management of a group child care home as a perpetrator of child abuse or child sexual abuse; or
 - II. Identified to the group child care home's management by the Department of Human Services or the Department of Children's Services as a validated or indicated perpetrator of abuse of a child; and
 - A. who is associated in providing care or ancillary services in any manner within a child care program; or
 - B. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or
 - C. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.
- (IV) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services pursuant to a report of harm, 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.

(viii) Appeals of exclusions.

- (I) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.
- (II) If timely appealed, the department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the department pursuant to subpart (ix).
- (III) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nulled or has resulted in an acquittal.

- (ix) Exemptions from exclusions.
 - (I) The Department will consider the granting of exemptions from the prohibitions under items (I) and (II) under subpart (vii). The exemptions may be granted for persons who have disclosed their criminal history or juvenile status on the disclosure form required by this paragraph or whose background check reveals a criminal history that excludes such person from access to children in the child care agency.
 - (II) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request.
 - (III) Advisory group to review exemption requests.
 - I. The Department will establish an advisory group composed of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.
 - II. The advisory group may review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.
 - III. Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.
 - (IV) Appeal of exemption decision.
 - I. The Department shall notify the person making the request in writing of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.
 - II. The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolle or has resulted in an acquittal.
- (x) Alternate and Supplementary Criminal Background Checks.

- (I) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this part or any other provisions of law to undergo a criminal history background check and may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.
- (II) The Department may require such individuals to complete a disclosure form as required by subpart (i) and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.
- (III) Status Pending Background Check.
 - I. Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.
 - II. The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this part, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.
- (IV) As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA §§ 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in subpart (i), a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating criminal history of such person.
- (V) The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to items (I) and (II) above.
- (VI) All provisions of subpart (vii) including, but not limited to, the exclusion of individuals from providing care, being licensed for the care of children or having access to children upon determination of the criminal background of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons

with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds as determined by the processes established by this subpart.

(VII) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in subpart (viii).

(VIII) Nothing in this part shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this chapter or from having access to a child in a child caring situation if a criminal or juvenile proceeding background is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this part for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.

(xi) Nothing in this part shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of subpart (x) are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

The public necessity rules set out herein were properly filed in the Department of State on the 30th day of June, 2000, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 12th day of December, 2000. (06-38)

**THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
COMMUNITY AND FIELD SERVICES DIVISION**

CHAPTER 1240-4-3

LICENSURE RULES FOR CHILD CARE CENTERS SERVING PRE-SCHOOL CHILDREN

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Sections 3, 8 and 75 of Senate Bill 3107/House Bill 3035 (2000), effective for purposes of promulgating rules on June 26, 2000, require the Tennessee Department of Human Services to implement, by public necessity rules by July 1, 2000, certain child care standards for children being cared for in child care centers caring for pre-school children licensed by the Department of Human Services.

For a complete copy of these public necessity rules, contact William B. Russell, General Counsel, Tennessee Department of Human Services, 15th Floor, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006, (615) 313-4731.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

CHAPTER 1240-4-3

LICENSURE RULES FOR CHILD CARE CENTERS SERVING PRE-SCHOOL CHILDREN

AMENDMENTS

Rule 1240-4-3-.02, Definitions, is amended by adding the following language as new paragraph (25) and by re-numbering the existing paragraph (25) as paragraph (26) so that, as amended, new paragraph (25) shall read as follows:

- (25) Substitute- Paid or unpaid persons who are replacement for regular staff. Substitutes shall meet the same requirements as regular staff for physical examinations as required by 1240-4-3-.10(3)(a). Their utilization shall be recorded in the staff personnel records of the center and shall comply with the orientation requirements of 1240-4-3-.07(3)(c) and (d). Substitutes acting as caregivers shall meet the training requirements of 1240-4-3-.07(3)(f)5 if they have acted as caregivers for two hundred (200) or more hours in the previous calendar year. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-4-3-.07(1)(f).

Authority: TCA §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035(2000).

Rule 1240-4-3-.02, Definitions, is amended by adding the following language as new paragraph (27) and by re-numbering existing paragraph (26) as paragraph (28) so that, as amended, new paragraph (27) shall read as follows:

- (27) Volunteer- A person who provides services for a child care center without payment and who is used to supplement regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. Utilization of volunteers shall be recorded in the staff personnel records of the center.

Authority: TCA §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (f) of paragraph (4) of Rule 1240-4-3-.03, Basis for Approval for Licensing, is amended by deleting the language preceding the charts in subparagraph (f) and by substituting the following language, so that, as amended, the language in subparagraph (f) preceding the charts shall read, as follows:

(f) Adult:Child Ratios.

1. The following adult/child ratios and group sizes are required. (Adult/child ratios and group sizes may exceed requirements up to 10%, rounded to the nearest whole number, for no more frequently than three days per week.) Exception: Infant and toddler groups must never exceed the group size and ratio required.
2. Notwithstanding the provisions of part 1, the following charts shall remain applicable to the adult:child ratios for Licensure Rules for Child Care Centers Serving School-Age Children as referenced in Rule 1240-4-6-.07(4)(f) until further modified by the Department, but the adult:child ratios and group sizes applicable to Child Care Centers Serving Pre-School Children are now contained at Rule 1240-4-3-.07(4)(e), and are effective as stated in parts 1-6 of Rule 1240-4-3-.07(4)(e).

Authority: T.C.A. §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035(2000).

Paragraph (3) of Rule 1240-4-3-.06, Organization and Administration, is amended by deleting paragraph (3) in its entirety and by substituting instead the following language so that, as amended, the paragraph shall read as follows:

(3) Finances.

- (a) Adequate financing of the agency's operation shall be maintained. An annual operating budget (either projected or actual), including a statement of income and expenditures, shall be available to the licensing counselor upon request.
- (b) Liability and Accident Insurance.
 1. General liability and accident insurance coverage shall be maintained on the operations of the vehicles and facilities owned, operated or leased by the child care agency.
 2. Vehicle liability coverage shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000). General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000).
 3. Accident insurance for medical payments shall be maintained in a minimum amount of Twenty-Five Thousand Dollars (\$25,000) and accidental death and dismemberment insurance shall be maintained in a minimum amount of Ten Thousand Dollars (\$10,000).
 4. The requirements of this subparagraph 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).

5. Documentation that the necessary insurance is in effect, or that the governmental entity is self-insured, shall be maintained in the records of the child care agency and shall be available to the Department's licensing staff.

Authority: T.C.A. §§4-5-209; TCA 71-1-105; Senate Bill 3107/House Bill 3035(2000).

Subpart (ii) of Part 1 of subparagraph (a) of paragraph (8) of Rule 1240-4-3-.06, Organization and Administration, is amended by deleting subpart (ii) in its entirety and by substituting instead the following language so that, as amended, subpart (ii) shall read as follows:

- (ii) Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the child care agency, shall carry vehicle liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-3-.06(3).

Authority: T.C.A. §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035(2000); Acts 2000.

Subparagraph (i) of paragraph (8) of Rule 1240-4-3-.06, Organization and Administration, is amended by deleting the subparagraph in its entirety and by substituting instead the following language so that, as amended, the subparagraph shall read as follows:

- (i) Limits on Time Children Are Transported/Transportation Waivers.
 1. Children shall not spend more than sixty (60) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
 2. If extended transportation beyond the limits in part 1 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 director and approved by the Department's licensing counselor after alternatives have been explored with the child care agency and documented by licensing staff.

Authority: T.C.A. §§4-5-209; TCA 71-1-105; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (f) of Paragraph (1) of Rule 1240-4-3-.07, Staff, is amended by deleting the subparagraph in its entirety and by substituting the following new subparagraph (f) so that, as amended, subparagraph (f) shall read as follows:

- (f) Criminal history and abuse registry background checks; appeals; exemptions.
 1. Each person:
 - (i) Applying to work with children as a paid employee, a director, or manager of a child care agency;
 - (ii) Applying to work as a new substitute who works more than thirty-six (36) hours per calendar year. For purposes of this subparagraph a "substitute" shall mean paid or unpaid staff who are replacements of regular staff; provided, however, persons serving 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;
 - (iii) Who seeks to operate (an "operator") a child care agency as defined TCA § 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an "operator" shall be an individual who is an owner or administrator of a child care agency or a child care system; or

- (iv) Fifteen (15) years of age or older who resides in a child care agency shall:
 - (I) Complete a criminal history disclosure form as approved by the Department;
 - (II) Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation, and shall submit to a fingerprint based criminal history check to be conducted by the Tennessee Bureau of Investigation;
 - (III) Submit to a review of their status on the Department of Health's vulnerable persons registry under title 68, chapter 11, part 10 of the Tennessee Code Annotated.
 - (IV) Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.
- 2. The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.
- 3. The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation.
- 4. Pending outcome of the fingerprint background check and the Department of Health's vulnerable person's registry the applicant for employment, for a license or for operator or for a substitute services position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of part 7 shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be an operator who has significant contact with the children in the agency's care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.
- 5. A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health's vulnerable persons registry shall be maintained in the child care agency's records for review by the Department of Human Services.
- 6. The child care agency shall immediately review the report 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 part 7, the child care agency shall immediately exclude such person from employment, substitute services, or if a resident, from access to children in the child care agency. Failure to do so will result in immediate suspension of the child care agency's license.
- 7. Exclusions from access to children based upon criminal history or other status.

- (i) No person shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, or director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency; nor shall a person who is a resident in a child care agency have access to children in a child care agency, who:
 - (I) has any pending warrant, indictment or presentment; has been convicted, pled guilty to or pled no contest to any crime or charge; or has any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, any of which circumstances involves:
 - I. Any crime, including a lesser included offense derived from any crime, involving a child; or
 - II. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or
 - III. Any crime involving or lesser included offenses derived from any crime involving the manufacture, sale, distribution or possession of any drug; or
 - IV. A violation of TCA §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.
- (ii) No person whose name is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to children in a child care agency.
- (iii) No person shall be employed, work as a caregiver or have access to or contact with children in the child care program who is:
 - (I) Known to the management of a child care agency as a perpetrator of child abuse or child sexual abuse; or
 - (II) Identified to the child care agency's management by the Department of Human Services or the Department of Children's Services as a validated or indicated perpetrator of abuse of a child; and
 - I. who is associated in providing care or ancillary services in any manner within a child care program; or
 - II. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or
 - III. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.

- (iv) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services pursuant to a report of harm, 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.
8. Appeals of exclusions.
- (i) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.
 - (ii) If timely appealed, the department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the department pursuant to Part 9.
 - (iii) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.
9. Exemptions from exclusions.
- (i) The Department will consider the granting of exemptions from the prohibitions under subparts (i) and (ii) under part 7. The exemptions may be granted for persons who have disclosed their criminal history or juvenile status on the disclosure form required by this paragraph or whose background check reveals a criminal history that excludes such person from access to children in the child care agency.
 - (ii) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request.
 - (iii) Advisory group to review exemption requests.
 - (I) The Department will establish an advisory group composed of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.
 - (II) The advisory group may review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.

(III) Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.

(iv) Appeal of exemption decision.

(I) The Department shall notify the person making the request in writing of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.

(II) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolleed or has resulted in an acquittal.

10. Alternate and Supplementary Criminal Background Checks.

(i) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this subparagraph or any other provisions of law to undergo a criminal history background check and may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.

(ii) The Department may require such individuals to complete a disclosure form as required by part 1 and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.

(iii) Status Pending Background Check.

(I) Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.

(II) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subparagraph, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.

- (iv) As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA §§ 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in part 1, a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating criminal history of such person.
 - (v) The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to subparts (i) and (ii) above.
 - (vi) All provisions of part 7 including, but not limited to, the exclusion of individuals from providing care, being licensed for the care of children or having access to children upon determination of the criminal background of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds as determined by the processes established by this part.
 - (vii) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in part 8 above.
 - (viii) Nothing in this subparagraph shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this chapter or from having access to a child in a child caring situation if a criminal or juvenile proceeding background is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this subparagraph for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.
11. Nothing in this subparagraph shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of part 10 are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

Authority: T.C.A. §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (e) of paragraph (3) of Rule 1240-4-3-.07, Staff is amended by deleting subparagraph (e) in its entirety and by substituting instead the following new subparagraph so that, as amended, the new subparagraph shall read as follows:

- (e) Director of Child Care Center.

1. The director shall have graduated from an accredited four-year college and have completed one year of full-time documented work experience with young children in a group setting; or
2. The director shall have sixty (60) semester hours (two (2) years) of college training. At least thirty (30) hours shall be in business or management, child or youth development, early childhood education or related field. In addition, the director (in this category) shall have two (2) years of full-time documented work experience with young children in a group setting; or
3. The director shall have earned a high school diploma or its equivalent and four (4) years of full-time documented work experience with young children in a group setting.
4. Effective January 1, 2001, the director shall complete four (4) hours of pre-employment training, which is offered or approved by the Department, that includes, but is not limited to, training in interviewing and evaluating caregivers for service in an agency and in working effectively with parents. If the Department determines that the director has received specific training meeting the requirements of this part within three (3) years prior to employment, the requirement of this part may be waived by the Department.
5. Effective January 1, 2001, no child care agency licensed under these rules shall receive a license unless the child care agency director shall have, at a minimum:
 - (i) received a Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of orientation training; or
 - (ii) received comparable training approved by the Department, and has four (4) years of full-time work experience with young children in a group setting; or
 - (iii) meets the requirements of parts 1 or 2; or
 - (iv) is employed as an on-site child care director or a child care agency owner as of July 1, 2000.
6. Prior to issuance of its first annual license, owners and directors shall complete a child care orientation course sponsored by the Department of Human Services. New directors shall complete orientation within three (3) months of assuming their position.
7. Effective January 1, 2001, during the first year of employment, a new director shall have evidence of receiving at least thirty-six (36) hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. At least six (6) hours shall be in administration, management or supervisory training. This rule applies to new hire situations where the person has not been employed in child care during the last three (3) years. Persons with a B.A. or Associates degree in child development or early childhood education are exempted from this rule.
8. After the first year of employment, the director shall have evidence of receiving at least eighteen (18) clock hours annually of in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. At least six (6) hours shall be in administration, management or supervisory training. After the first year, no more than two (2) hours for required training, such as CPR or Child and Adult Care Food Program (CACFP) shall be included. Up to four (4) hours credit may be earned by conducting training.

Subparagraph (f) of paragraph (3) of Rule 1240-4-3-.07, Staff, is amended by deleting subparagraph (f) in its entirety and by adding the following new subparagraph so that, as amended, the new subparagraph shall read as follows:

- (f) Caregivers.
1. Each caregiver (with the exception of #3 below) shall be at least eighteen (18) years of age. At least one (1) caregiver who is present in each group shall be able to read and write English.
 2. Each group shall have at least one caregiver present who has a high school diploma or its equivalent, a Department-recognized credential, or a diploma from a state area vocational school.
 3. When sixteen (16) and seventeen (17) year old vocational child care students are counted in the adult:child ratio, they shall be supervised by an adult.
 4. New Caregiver Training.
 - (i) During the first year, new caregivers shall have evidence of receiving at least eighteen (18) clock hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. This rule applies to new hire situations where the person has not been employed in child care during the last three (3) years. Persons with a Bachelor of Arts or Associates degree in child development or early childhood education are exempted from this rule.
 - (ii) New caregivers shall complete two (2) clock hours of pre-service orientation training offered by the Department and shall complete an additional six (6) hours of the required training within the first six (6) months of employment. For purposes of this rule, "pre-service" orientation shall mean that such orientation occurs within the first thirty (30) days of employment with the agency. Pending completion of the orientation training, the caregiver's status is conditional. Failure of the caregiver to complete the required two (2) hours of pre-service orientation and/or failure to complete the required six (6) hours of training within the first six (6) months shall require that the employee be removed from any caregiver duties for children until completion of the training.
 - (iii) The remaining ten (10) hours of the required training for new caregivers must be completed before the end of the first year of employment
 - (iv) The requirements of this part shall be effective January 1, 2001.
 5. After the first year of employment, caregivers shall have evidence of receiving at least twelve (12) clock hours annually in workshops or in-service training in child development, early childhood education, health/safety or other related field. After the first year, no more than two (2) hours for required training such as CPR or Child and Adult Care Food Program (CACFP), shall be included. Six (6) hours shall be obtained out of the child care agency. Up to four (4) hours credit may be earned by conducting training.

Authority: T.C.A. §§4-5-209; TCA 71-1-105; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (e) of paragraph (4) of Rule 1240-4-3-.07, Staff, is amended by adding the following as a new subparagraph (e), so that, as amended, the subparagraph shall read as follows:

4. Multi-Age Grouping and Adult:Child Ratio Chart:

Age at Beginning of School Year	Maximum Group Size and Adult:Child Ratio							Notes
	10	12	14	16	18	20	25	
Multi-Age Grouping								
Infants/Toddlers: 6 wks. – 30 mos.		1:6						At least 3 children must be walking
2-3 years (24 mos. - 47 mos.)				1:8				
2-4 years				1:8				
2 1/2 - 3 years (30 - 47 mos.)					1:10			
2 1/2 - 5 years						1:12		
2 1/2 - 12 years	1:10							
3 - 5 years (includes 3 - 4 years)						1:15		
4 - 5 years						1:20		
5 - 12 years							1:25	

- 5. Any number of children in excess of the listed adult:child ratios requires a second adult.
- 6. Section 504 and ADA guidelines shall be consulted for care of children with disabilities.

Authority: T.C.A. §§4-5-209; TCA 71-1-105; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (m) of paragraph (4) of Rule 1240-4-3-.07, Staff, is amended by deleting part 1 in its entirety and by substituting instead the following language so that, as amended, part 1 shall read as follows:

- 1. When children are swimming, the number of adults must be double the requirement on the chart in subparagraph (e), and one adult must have a current certificate in Advanced Lifesaving Skills. On field trips off premises, the number of adults must be double the requirement on the chart.

Authority: T.C.A. §§4-5-209; TCA 71-1-105; Senate Bill 3107/House Bill 3035(2000).

The public necessity rules set out herein were properly filed in the Department of State on the 30th day of June, 2000, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 12th December, 2000. (06-37)

**TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
COMMUNITY AND FIELD SERVICES DIVISION**

**CHAPTER 1240-4-4
STANDARDS FOR FAMILY DAY CARE HOMES**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Sections 3 and 8 of Senate Bill 3107/House Bill 3035 (2000), effective for purposes of promulgating rules on June 26, 2000, requires the Tennessee Department of Human Services to implement, by public necessity rules by July 1, 2000, certain child care standards for children being cared for in family day care homes licensed by the Department of Human Services.

For a complete copy of these public necessity rules, contact William B. Russell, General Counsel, Tennessee Department of Human Services, 15th Floor, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006, (615)313-4731.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

CHAPTER 1240-4-4

STANDARDS FOR FAMILY DAY CARE HOMES

AMENDMENTS

Paragraph (5) of Rule 1240-4-4, Introduction, is amended by adding the following language as new subparagraph (x) and by re-designating the existing subparagraph (x) as subparagraph (y) so that, as amended, the new subparagraph (x) shall read as follows:

- (x) Substitute. Paid or unpaid persons who are replacement for regular staff. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-4-4-.03(1)(a)6.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Paragraph (5) of Rule 1240-4-4, Introduction, is amended by adding the following language as new subparagraph (z), so that, as amended, new subparagraph (z) shall read as follows:

- (z) 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. Utilization of volunteers shall be recorded in the staff personnel records of the agency.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Subpart (ii) of part 1 of subparagraph (h) of paragraph (7) of Rule 1240-4-4-.02, Ownership and Administration, is amended by deleting subpart (ii) in its entirety and by substituting instead the following language so that, as amended, subpart (ii) shall read as follows:

- (ii) Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the child care agency shall carry vehicle liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-4-.02(8).

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Rule 1240-4-4-.02, Ownership and Administration, is amended by adding the following new paragraph so that, as amended, the new paragraph shall read as follows:

- (8) Liability and Accident Insurance.
 - (a) General liability and accident insurance coverage shall be maintained on the operations of the vehicles and facilities owned, operated or leased by the child care agency.
 - (b) Vehicle liability coverage shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000). General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000).
 - (c) Accident insurance for medical payments shall be maintained in a minimum amount of Twenty-Five Thousand Dollars (\$25,000) and accidental death and dismemberment insurance shall be maintained in a minimum amount of Ten Thousand Dollars (\$10,000).
 - (d) 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).
 - (e) Documentation that the necessary insurance is in effect, or that the governmental entity is self-insured, shall be maintained in the records of the child care agency and shall be available to the Department's licensing staff.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Part 6 of subparagraph (a) of paragraph (1) of Rule 1240-4-4-.03, Staff, is amended by deleting the part in its entirety and by substituting the following new Part 6 so that, as amended, part 6 shall read as follows:

- 6. Criminal history and abuse registry background checks; appeals; exemptions.
 - (i) Each person:
 - (I) Applying to work with children a paid employee, a director, or manager of a child care agency;

- (II) Applying to work as a new substitute who works more than thirty-six (36) hours per calendar year. For purposes of this subparagraph a “substitute” shall mean paid or unpaid staff who are replacements of regular staff; provided, however, persons serving 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;
- (III) Who seeks to operate (an “operator”) a child care agency as defined TCA § 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this item, an “operator” shall be an individual who is an owner or administrator of a child care agency or a child care system; or
- (IV) Fifteen (15) years of age or older who resides in a child care agency shall:
 - I. Complete a criminal history disclosure form as approved by the Department;
 - II. Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation, and shall submit to a fingerprint based criminal history check to be conducted by the Tennessee Bureau of Investigation;
 - III. Submit to a review of their status on the Department of Health’s vulnerable persons registry under title 68, chapter 11, part 10 of the Tennessee Code Annotated.
 - IV. Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.
- (ii) The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.
- (iii) The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation.
- (iv) Pending outcome of the fingerprint background check and the Department of Health’s vulnerable person’s registry the applicant for employment, for a license or for operator or for a substitute services position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of subpart (vii) shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be an operator who has significant contact with the children in the agency’s care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.
- (v) A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health’s vulnerable persons registry shall be maintained in the child care agency’s records for review by the Department of Human Services.

- (vi) The child care agency shall immediately review the report 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 subpart (vii), the child care agency shall immediately exclude such person from employment, substitute services, or if a resident, from access to children in the child care agency. Failure to do so will result in immediate suspension of the child care agency's license.
- (vii) Exclusions from access to children based upon criminal history or other status.
 - (I) No person shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, or director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency; nor shall a person who is a resident in a child care agency have access to children in a child care agency, who has
 - I. any pending warrant, indictment or presentment;
 - II. been convicted, pled guilty to or pled no contest to any crime or charge, or
 - III. any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:
 - A. Any crime, including a lesser included offense derived from any crime, involving a child; or
 - B. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or
 - C. Any crime involving or lesser included offenses derived from any crime involving the manufacture, sale, distribution or possession of any drug; or
 - D. A violation of TCA §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.
 - (II) No person whose name is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to children in a child care agency.
 - (III) No person shall be employed, work as a caregiver or have access to or contact with children in the child care program who is:
 - I. Known to the management of a group child care home as a perpetrator of child abuse or child sexual abuse; or

- II. Identified to the group child care home's management by the Department of Human Services or the Department of Children's Services as a validated or indicated perpetrator of abuse of a child; and
 - A. who is associated in providing care or ancillary services in any manner within a child care program; or
 - B. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or
 - C. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.
 - (IV) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services pursuant to a report of harm, 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.
- (viii) Appeals of exclusions.
- (I) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.
 - (II) If timely appealed, the department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the department pursuant to subpart (ix).
 - (III) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.
- (ix) Exemptions from exclusions.
- (I) The Department will consider the granting of exemptions from the prohibitions under items (I) and (II) under subpart (vii). The exemptions may be granted for persons who have disclosed their criminal history or juvenile status on the disclosure form required by this paragraph or whose background check reveals a criminal history that excludes such person from access to children in the child care agency.
 - (II) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request.

(III) Advisory group to review exemption requests.

- I. The Department will establish an advisory group composed of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.
- II. The advisory group may review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.
- III. Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.

(IV) Appeal of exemption decision.

- I. The Department shall notify the person making the request in writing of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.
- II. The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolle or has resulted in an acquittal.

(x) Alternate and Supplementary Criminal Background Checks.

- (I) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this part or any other provisions of law to undergo a criminal history background check and may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.
- (II) The Department may require such individuals to complete a disclosure form as required by subpart (i) and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.

(III) Status Pending Background Check.

- I. Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.
 - II. The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this part, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.
- (IV) As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA §§ 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in subpart (i), a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating criminal history of such person.
- (V) The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to items (I) and (II) above.
- (VI) All provisions of subpart (vii) including, but not limited to, the exclusion of individuals from providing care, being licensed for the care of children or having access to children upon determination of the criminal background of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds as determined by the processes established by this subpart.
- (VII) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in subpart (viii) above.
- (VIII) Nothing in this part shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this chapter or from having access to a child in a child caring situation if a criminal or juvenile proceeding background is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this part for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.

- (xi) Nothing in this part shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of subpart (x) are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

The public necessity rules set out herein were properly filed in the Department of State on the 30th day of June, 2000, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 12th day of December, 2000. (06-39)

TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240

COMMUNITY AND FIELD SERVICES DIVISION

CHAPTER 1240-4-6

LICENSURE RULES FOR CHILD CARE CENTERS SERVING SCHOOL-AGE CHILDREN

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Sections 3, 8, and 75 Senate Bill 3107/House Bill 3035 (2000), effective for purposes of promulgating rules on June 26, 2000, require the Tennessee Department of Human Services to implement, by public necessity rules by July 1, 2000, certain child care standards for children being cared for in child care centers serving school-age children licensed by the Department of Human Services.

For a complete copy of these public necessity rules, contact William B. Russell, General Counsel, Tennessee Department of Human Services, 15th Floor, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006, (615) 313-4731.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

**CHAPTER 1240-4-6
LICENSURE RULES FOR CHILD CARE CENTERS SERVING SCHOOL-AGE CHILDREN**

AMENDMENTS

Rule 1240-4-6-.02, Definitions, is amended by adding the following language as new paragraph (24) and by re-numbering the existing paragraph (24) as paragraph (25) so that, as amended, the new paragraph (24) shall read as follows:

- (24) Substitute. Paid or unpaid persons who are replacement for regular staff. Substitutes shall meet the same requirements as regular staff for physical examinations as required by 1240-4-6-.10(3)(a). Their utilization shall be recorded in the staff personnel records of the center comply with the orientation requirements of 1240-4-6-.07(3)(c) and (d). Substitutes acting as caregivers shall meet the training requirements of 1240-4-6-.07(3)(f)5 if they have acted as caregivers for two hundred (200) or more hours in the previous calendar year. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-4-6-.07(1)(f).

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Rule 1240-4-6-.02, Definitions, is amended by adding the following language as new paragraph (26) and by re-numbering the existing paragraph (25) as paragraph (27) so that, as amended, the new paragraph (26) shall read as follows:

- (26) Volunteer. A person who provides services for a child care center without payment and who is used to supplement regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. Utilization of volunteers shall be recorded in the staff personnel records of the center.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Paragraph (3) of Rule 1240-4-6-.06, Organization and Administration, is amended by deleting paragraph (3) in its entirety and by substituting instead the following language so that, as amended, the paragraph shall read as follows:

- (3) Finances.
- (a) Adequate financing of the agency's operation shall be maintained. An annual operating budget (either projected or actual), including a statement of income and expenditures, shall be available to the licensing counselor upon request.
- (b) Liability and Accident Insurance.
- (i) General liability and accident insurance coverage shall be maintained on the operations of the vehicles and facilities owned, operated or leased by the child care agency.
- (ii) Vehicle liability coverage shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000). General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000).

(iii) Accident insurance for medical payments shall be maintained in a minimum amount of Twenty-Five Thousand Dollars (\$25,000) and accidental death and dismemberment insurance shall be maintained in a minimum amount of Ten Thousand Dollars (\$10,000).

(iv) The requirements of this subparagraph 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).

(v) Documentation that the necessary insurance is in effect, or that the governmental entity is self-insured, shall be maintained in the records of the child care agency and shall be available to the Department's licensing staff.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subpart (ii) of part 1 of subparagraph (a) of paragraph (8) of Rule 1240-4-6-.06, Organization and Administration, is amended by deleting subpart (ii) in its entirety and by substituting instead the following language so that, as amended, subpart (ii) shall read as follows:

- (ii) Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the child care agency, shall carry vehicle liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-6-.06(3).

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Paragraph (8) of Rule 1240-4-6-.06, Organization and Administration, is amended by adding the following new subparagraph so that, as amended, the subparagraph shall read as follows:

- (j) Limits on Time Children Are Transported/Transportation Waivers.
 1. Children shall not spend more than sixty (60) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
 2. If extended transportation beyond the limits in part 1 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 director and approved by the Department's licensing counselor after alternatives have been explored with the child care agency and documented by licensing staff.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (f) of Paragraph (1) of Rule 1240-4-6-.07, Staff, is amended by deleting the subparagraph in its entirety and by substituting the following new subparagraph (f) so that, as amended, subparagraph (f) shall read as follows:

- (f) Criminal history and abuse registry background checks; appeals; exemptions.
 1. Each person:
 - (i) Applying to work with children as a paid employee, a director, or manager of a child care agency;

- (ii) Applying to work as a new substitute who works more than thirty-six (36) hours per calendar year. For purposes of this subparagraph a “substitute” shall mean paid or unpaid staff who are replacements of regular staff; provided, however, persons serving 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;
 - (iii) Who seeks to operate (an “operator”) a child care agency as defined TCA § 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an “operator” shall be an individual who is an owner or administrator of a child care agency or a child care system; or
 - (iv) Fifteen (15) years of age or older who resides in a child care agency shall:
 - (I) Complete a criminal history disclosure form as approved by the Department;
 - (II) Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation, and shall submit to a fingerprint based criminal history check to be conducted by the Tennessee Bureau of Investigation;
 - (III) Submit to a review of their status on the Department of Health’s vulnerable persons registry under title 68, chapter 11, part 10 of the Tennessee Code Annotated.
 - (IV) Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.
2. The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.
 3. The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation.
 4. Pending outcome of the fingerprint background check and the Department of Health’s vulnerable person’s registry the applicant for employment, for a license or for operator or for a substitute services position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of part 7 shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be an operator who has significant contact with the children in the agency’s care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.
 5. A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health’s vulnerable persons registry shall be maintained in the child care agency’s records for review by the Department of Human Services.

6. The child care agency shall immediately review the report 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 part 7, the child care agency shall immediately exclude from access such person. Failure to do so will result in immediate suspension of the child care agency's license.
7. Exclusions from access to children based upon criminal history or other status.
 - (i) No person shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, or director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency; nor shall a person who is a resident in a child care agency have access to children in a child care agency, who has
 - (I) any pending warrant, indictment or presentment;
 - (II) been convicted, pled guilty to or pled no contest to any crime or charge, or
 - (III) any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:
 - I. Any crime, including a lesser included offense derived from any crime, involving a child; or
 - II. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or
 - III. Any crime involving or lesser included offenses derived from any crime involving the manufacture, sale, distribution or possession of any drug; or
 - IV. A violation of TCA §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.
 - (ii) No person whose name is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to children in a child care agency.
 - (iii) No person shall be employed, work as a caregiver or have access to or contact with children in the child care program who is:
 - (I) Known to the management of a child care agency as a perpetrator of child abuse or child sexual abuse; or
 - (II) Identified to the child care agency's management by the Department of Human Services or the Department of Children's Services as a validated or indicated perpetrator of abuse of a child; and

- I. who is associated in providing care or ancillary services in any manner within a child care program; or
 - II. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or
 - III. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.
- (iv) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services pursuant to a report of harm, 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.
8. Appeals of exclusions.
- (i) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.
 - (ii) If timely appealed, the department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the department pursuant to Part 9.
 - (iii) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.
9. Exemptions from exclusions.
- (i) The Department will consider the granting of exemptions from the prohibitions under subparts (i) and (ii) under part 7. The exemptions may be granted for persons who have disclosed their criminal history or juvenile status on the disclosure form required by this paragraph or whose background check reveals a criminal history that excludes such person from access to children in the child care agency.
 - (ii) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request
 - (iii) Advisory group to review exemption requests.

- (I) The Department will establish an advisory group composed of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.
 - (II) The advisory group may review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.
 - (III) Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.
- (iv) Appeal of exemption decision.
- (I) The Department shall notify the person making the request in writing of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.
 - (II) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolleed or has resulted in an acquittal.
10. Alternate and Supplementary Criminal Background Checks.
- (i) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this subparagraph or any other provisions of law to undergo a criminal history background check and may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.
 - (ii) The Department may require such individuals to complete a disclosure form as required by part 1 and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.
- (iii) Status Pending Background Check.
- (I) Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.

- (II) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subparagraph, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.
 - (iv) As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA §§ 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in part 1, a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating criminal history of such person.
 - (v) The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to subparts (i) and (ii).
 - (vi) All provisions of part 7 including, but not limited to, the exclusion of individuals from providing care, being licensed for the care of children or having access to children upon determination of the criminal background of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds as determined by the processes established this part.
 - (vii) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in part 8.
 - (viii) Nothing in this subparagraph shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this subparagraph for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.
11. Nothing in this subparagraph shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of part 10 are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

Subparagraph (e) of paragraph (3) of Rule 1240-4-6-.07, Staff, is amended by deleting subparagraph (e) in its entirety and by substituting instead the following new subparagraph so that, as amended, the subparagraph shall read as follows:

(e) Director of Child Care Center.

1. The director shall have graduated from an accredited four-year college and have completed one year of full-time documented work experience with young children in a group setting; or
2. The director shall have sixty (60) semester hours (two (2) years) of college training. At least thirty (30) hours shall be in business or management, child or youth development, early childhood education or related field. In addition, the director (in this category) shall have two (2) years of full-time documented work experience with young children in a group setting; or
3. The director shall have earned a high school diploma or its equivalent and four (4) years of full-time documented work experience with young children in a group setting.
4. Effective January 1, 2001, the director shall complete four (4) hours of pre-employment training, which is offered or approved by the Department, that includes, but is not limited to, training in interviewing and evaluating caregivers for service in an agency and in working effectively with parents. If the Department determines that the director has received specific training meeting the requirements of this part within three (3) years prior to employment, the requirement of this part may be waived by the Department.
5. Effective January 1, 2001, no child care agency licensed under these rules shall receive a license unless the child care agency director shall have, at a minimum:
 - (i) received a Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of orientation training; or
 - (ii) received comparable training approved by the Department, and has four (4) years of full-time work experience with young children in a group setting; or
 - (iii) meets the requirements of parts 1 or 2; or
 - (iv) is employed as an on-site child care director or a child care agency owner as of July 1, 2000.
6. Prior to issuance of its first annual license, owners and directors shall complete a child care orientation course sponsored by the Department of Human Services. New directors shall complete orientation within three (3) months of assuming their position.
7. Effective January 1, 2001, during the first year of employment, a new director shall have evidence of receiving at least thirty-six (36) hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. At least six (6) hours shall be in administration, management or supervisory training. This rule applies to new hire situations where the person has not been employed in child care during the last three (3) years. Persons with a B.A. or Associates degree in child development or early childhood education are exempted from this rule.
8. After the first year of employment, the director shall have evidence of receiving at least eighteen (18) clock hours annually of in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education,

health/safety or other related field. At least six (6) hours shall be in administration, management or supervisory training. After the first year, no more than two (2) hours for required training, such as CPR or Child and Adult Care Food Program (CACFP) shall be included. Up to four (4) hours credit may be earned by conducting training.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (f) of paragraph (3) of Rule 1240-4-6-.07, Staff, is amended by deleting subparagraph (f) in its entirety and by substituting instead the following new subparagraph so that, as amended, the new subparagraph shall read as follows:

- (f) Caregivers.
1. Each caregiver (with the exception of #3 below) shall be at least eighteen (18) years of age. At least one (1) caregiver who is present in each group shall be able to read and write English.
 2. Each group shall have at least one caregiver present who has a high school diploma or its equivalent, a Department-recognized credential, or a diploma from a state area vocational school.
 3. When sixteen (16) and seventeen (17) year old vocational child care students are counted in the adult:child ratio, they shall be supervised by an adult.
 4. New Caregiver Training.
 - (i) During the first year, new caregivers shall have evidence of receiving at least eighteen (18) clock hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. This rule applies to new hire situations where the person has not been employed in child care during the last three (3) years. Persons with a Bachelor of Arts or Associates degree in child development or early childhood education are exempted from this rule.
 - (ii) New caregivers shall complete two (2) clock hours of pre-service orientation training offered by the Department and shall complete an additional six (6) hours of the required training within the first six (6) months of employment. For purposes of this rule, "pre-service" orientation shall mean that such orientation occurs within the first thirty (30) days of employment with the agency. Pending completion of the orientation training, the caregiver's status is conditional. Failure of the caregiver to complete the required two (2) hours of pre-service orientation and/or failure to complete the required six (6) hours of training within the first six (6) months shall require that the employee be removed from any caregiver duties for children until completion of the training.
 - (iii) The remaining ten (10) hours of the required training for new caregivers must be completed before the end of the first year of employment.
 - (iv) The requirements of this part shall be effective January 1, 2001.
 5. After the first year of employment, caregivers shall have evidence of receiving at least twelve (12) clock hours annually in workshops or in-service training in child development, early childhood education, health/safety or other related field. After the first year, no more than two (2) hours for required training such as CPR or Child and Adult Care Food Program (CACFP), shall be included. Six (6) hours shall be obtained out of the child care agency. Up to four (4) hours credit may be earned by conducting training.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

The public necessity rules set out herein were properly filed in the Department of State on the 30th day of June, 2000, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 12 day of December, 2000. (06-41)

**THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
COMMUNITY AND FIELD SERVICES DIVISION**

**CHAPTER 1240-5-11
PROCEDURES AFFECTING LICENSES OF CHILD WELFARE AGENCIES**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Section 10 of Senate Bill 3107/House Bill 3035 (2000), effective for purposes of promulgating rules on June 26, 2000, requires the Tennessee Department of Human Services to implement, by public necessity rules by July 1, 2000, any necessary procedures authorized by Senate Bill 3107/House Bill 3035 for the enforcement by the Department of Human Services of licensing violations involving child care agencies which it licenses.

For a complete copy of these public necessity rules, contact William B. Russell, General Counsel, Tennessee Department of Human Services, 15th Floor, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006, (615) 313-4731.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

CHAPTER 1240-5-11

PROCEDURES AFFECTING LICENSES OF CHILD WELFARE AGENCIES

AMENDMENTS

Rule 1240-5-11-.01, Purpose and Scope, is amended by deleting the Rule in its entirety and by substituting instead the following so that, as amended, the Rule shall read as follows:

1240-5-11-.01 PURPOSE AND SCOPE.

- (1) These rules shall apply to all child welfare agencies licensed by the Department of Human Services pursuant to TCA §§ 71-3-501 et seq. and to all proceedings held before the Board of Review established pursuant to §§ 71-3-501 et seq. Any conflict between these rules and those governing specific classes of child welfare agencies shall be resolved by reference to these rules.
- (2) These rules shall also apply to 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) Any conflict between these rules and the licensing laws for child care agencies as established pursuant to TCA §§ 71-3-501 et seq., as modified by Senate Bill 3107/House Bill 3035 (2000) shall be governed by the provisions of those bills and Acts, and any inconsistent provisions of these rules shall be read in the context of those changes and shall be modified and applied as required by the amendments to the licensing law made by those bills and Acts.

Authority: T.C.A. §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035 (2000).

Rule 1240-5-11-.02, Definitions, is amended by deleting the Rule in its entirety and by substituting instead the following so that, as amended, the Rule shall read as follows:

1240-5-11-.02 DEFINITIONS.

- (1) Annual License - An annual permit issued by the Department to a child welfare agency, 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. The license may be revoked at any time upon 90 days notice to the licensee, or if the health, safety, or welfare of the children in care imperatively require, it may be summarily suspended.
- (2) Applicant-The person or entity seeking an initial annual license or the issuance or renewal of any annual or extended license from the Department of Human Services.

- (3) Application-The form for and the process of applying for a license from the Department of Human Services.
- (4) Application for Renewal-Application for a new annual license during the existence of a current license.
- (5) Board of Review - The entity designated formerly by TCA §§71-3-508 through 71-3-512 and now designated by TCA § 71-3-510 to hear the appeals of denials or revocations of licenses of child welfare (“child care”) agencies licensed by the Department of Human Services. Effective July 1, 2000, the Board is called the “Child Care Agency Board of Review” and hears appeals of licensing action of both the Department of Children’s Services and the Department of Human Services.
- (6) Child care agency (previously “child welfare 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.
- (7) Child Care Agency Board of Review (formerly “Child Welfare Agency Board of Review”)-The entity established by TCA §§ 71-3-510 and 37-5-515 to hear the appeals of the denial, revocation, or limitation of licenses, other than summary suspensions, for child care agencies issued by the Departments of Children’s Services and Human Services and for the adjudication of civil penalties imposed by the Department of Human Services against a child care agency under its jurisdiction.
- (8) Child Welfare Agency-Child caring entity as defined in TCA §71-3-501. It has the same meaning as “child care agency”.
- (9) Civil Penalty-A financial sanction imposed by the Department against a child care agency that has violated a licensing regulation.
- (10) Commissioner-Executive head of the Tennessee Department of Human Services.
- (11) Compliance-The adherence to all licensing requirements by a licensee or an applicant for a new license. The period of compliance shall be the time frame given by the Department to a licensee or applicant for meeting licensing requirements prior to revocation or denial of a license.
- (12) Conditional License - A permit issued by the Department to a new child welfare agency or to a new child care system central operator or to such persons or entities making reapplication, permitting and authorizing the licensee to begin child care operations. It is valid, unless suspended, for 90 days or until the application for an annual license is finally determined, and is issued upon application or reapplication 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 the rules governing the applicable class of child welfare agency, the Department will issue an annual license to the child welfare agency.
- (13) Denial-The decision of the Department not to issue a license.
- (14) Department-The Department of Human Services.
- (15) Hearing Official-The administrative law judge or hearing officer assigned to conduct the summary suspension hearings, to rule on evidentiary and procedural matters relating to the conduct of the proceedings and who enters the orders resulting from such hearing.
- (16) Law-The statutory or regulatory provisions (rules) affecting the operation of a child welfare agency.

- (17) License-A permit issued by the Department of Human Services to a child care agency authorizing the licensee to provide child care in accordance with the Department's licensing laws and regulations governing that class of child care agency.
- (18) Licensee-The person, agency, group, or entity to whom or to which a license to operate a child welfare agency is issued by the Department of Human Services.
- (19) Reapplication-Application for a new license following denial or revocation of a license.
- (20) Revocation-The permanent removal of an existing license.
- (21) Suspension-The removal of a license for violation of licensing laws or regulations or other factors immediately affecting the health, safety, or welfare of children in a child care agency.
- (22) Temporary license (formerly "conditional license")-A permit issued by the Department to a new child care agency permitting and authorizing the licensee to begin child care operations while working towards full compliance with all other applicable regulations. It 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. If, at the end of the one hundred twenty (120) 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 the rules governing the applicable class of child care agency, the Department will issue an annual license to the child welfare agency.

Authority: TCA §§ 4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035 (2000).

Rule 1240-5-11-.04, Notices of Violations of Licensing Standards, is amended by deleting the Rule in its entirety and by substituting instead the following so that, as amended, the Rule shall read as follows:

1240-5-11-.04 VIOLATIONS OF LICENSING REGULATIONS.

- (1) 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 a reasonable written notice to the agency of the violation, the Department determines that the violation 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. The 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 provisions of this paragraph 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.
- (2) Civil Penalties.
- (a) 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.
 - (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 the 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) up to Five Hundred Dollars (\$500.00). 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 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) Lack of proper supervision of children;
 - (IV) Failure to properly dispense or store medications;
 - (V) 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) Failure to properly store hazardous items such as, but not limited to, cleaning products, pesticides, hazardous chemicals, or other poisonous items; and
 - (VII) 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) 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 the civil penalty that it may impose 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.

- (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.
 - (g) Remedies for Failure to Pay Final 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 a final civil penalty in full 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.
- (3) 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 of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, which notice is consistent with the safety of the children in the care of the child care agency, 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 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, annual, or extended 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, 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 (4).

(4) Summary Suspension of Licenses.

- (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.
- (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 notify the licensee of the opportunity for an informal hearing before an administrative law judge or before a hearing officer who is not an employee of the Department 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 delivered by any authorized representative of the Department by personal delivery 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 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. 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.

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 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 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 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: T.C.A. §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035 (2000).

Rule 1240-5-11-.05, Summary Suspension of Licenses, is amended by deleting the Rule in its entirety and by substituting instead the following so that, as amended, the Rule shall read as follows:

1240-5-11-.05 RESTRICTED LICENSES FOR CHILD CARE AGENCIES.

- (1) 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. 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.

Authority: T.C.A. §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035 (2000).

Rule 1240-5-11-.06, Revocation and Denial of Licenses, is amended by deleting the Rule in its entirety and by substituting instead the following so that, as amended, the Rule shall read as follows:

1240-5-11-.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 1240-5-11-.04(3)(c), a license would have expired during the time a case 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 or revocation of the license, the licensee must apply for 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 Child Care Agency Board of Review or panel chair or vice-Chair of the Child Care Agency Board of Review.

Authority: T.C.A. §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035 (2000).

Rule 1240-5-11-.08, Reapplication for Licenses Following Denial or Revocation, is amended by deleting the Rule in its entirety.

Authority: T.C.A. §§4-5-209; 71-1-105; Senate Bill 3107/House Bill 3035 (2000).

The public necessity rules set out herein were properly filed in the Department of State on the 30th day of June, 2000, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 12th day of December, 2000. (06-40)

RULEMAKING HEARINGS

DEPARTMENT OF COMMERCE AND INSURANCE - 0780 DIVISION OF FIRE PREVENTION

There will be a hearing before the Department of Commerce and Insurance to consider the promulgation of rules and amendments to rules pursuant to *T.C.A. §§ 68-102-113 and 68-120-101*. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, Section 4-5-204* and will take place in Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at 10:00 a.m. (Central Time) on the 23rd day of August, 2000.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the department to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the department to determine how it may reasonably provide such aid or service. Initial contact may be made with Verna Norris, the department's ADA Coordinator, at 500 James Robertson Parkway, Nashville, Tennessee 37243 (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Tim Garrington, 500 James Robertson Parkway, 3rd Floor, Nashville, Tennessee 37243 (615) 741-7190.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-2-2 CODES AND STANDARDS

AMENDMENTS TO RULES

Rule 0780-2-2-.01 Adoption by Reference is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for fire prevention, fire protection and building construction safety in the State of Tennessee shall be those prescribed in the following publications:
 - (a) SBCCI Standard Building Code, 1999 edition, including SBCCI Standard Gas Code, 1999 edition and SBCCI Standard Mechanical Code, 1997 edition, published by the Southern Building Code Congress International Inc., 400 Montclair Road, Birmingham, Alabama 35213-1206.
 - (b) Fire Prevention Code, (NFPA No. 1-2000), including each reference in NFPA 1, Chapter 43 thereof, published by the National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269. Each reference in NFPA 1, Chapter 43 to an NFPA code or standard shall be deemed to be the edition thereof printed in the National Fire Codes, 2000 edition.

Paragraph (1) of this rule shall not be construed as adopting any provision of the cited publications which establishes:

- (a) an optional or recommended, rather than mandatory, standard or practice; or
- (b) any agency, procedure, fees or penalties for administration or enforcement purposes.

Authority: T.C.A. §§ 68-120-101 and 68-102-113.

Rule 0780-2-2-.03 Retroactive Enforcement is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Any existing building which conformed to the standards legally effective at the time of its construction shall not be subject to the standards adopted by reference in rule 0780-2-2-.01, unless the nonconformity of the building to such standards poses a serious life safety hazard. However, any construction as defined in rule 0780-2-2-.01 undertaken after the effective date of this chapter shall be in compliance with the standards adopted by reference in rule 0780-2-2-.01.

Authority: T.C.A. §§ 68-102-113 and 68-120-102.

CHAPTER 0780-2-3 REVIEW OF CONSTRUCTION PLANS AND SPECIFICATIONS

AMENDMENTS TO RULES

Rule 0780-2-3-.01 Definitions is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

As used in this chapter, unless the context otherwise requires:

- (a) Division means the Division of Fire Prevention of the Department of Commerce and Insurance.
- (b) Construction means the erection of a new building, an addition to an existing building, a change of occupancy, an alteration that alters the exit arrangement, fire resistive assemblies, or type of construction, or involves the installation of fire suppression or detection systems or fuel-fired equipment. The term "construction" shall not be construed to include excavation or site preparation.
- (c) State building means any public building owned or leased by the State of Tennessee or any department, institution, or agency thereof.
- (d) Educational occupancy means the use of a building or structure, or a portion thereof, for educational purposes by six (6) or more persons for four (4) or more hours per day or more than twelve (12) hours per week. Educational occupancy includes part-day nursery schools, day care centers licensed by the Department of Human Services, and all other schools including kindergarten through twelfth grade.
- (e) Detention and correctional occupancy, business occupancy, residential occupancy, place of assembly and covered mall shall be defined as in the 2000 edition of the Life Safety Code (NFPA No. 101-2000). High hazard industrial facility shall be defined as in the 1999 edition of the Standard Building Code for subclasses H-1 and H-2 only.
- (f) Local government means any city, county, town, municipal corporation, metropolitan government, or political subdivision.

Authority: T.C.A. §§ 68-102-113 and 68-120-101.

Rule 0780-2-3-.02 Submission of Plans is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) After the effective date of this chapter, no person shall commence construction of any educational occupancy, detention and correctional occupancy, or state building until plans and specifications therefor have been submitted to and approved in writing by the Division. The Division shall review plans submitted for review of day care centers, including those facilities licensed by the Department of Human Services.
- (2) After January 1, 1983, no person shall commence construction of any place of assembly having an aggregate capacity of 300 or more persons until plans and specifications therefor have been submitted to and approved in writing by the Division.
- (3) After July 1, 1983, no person shall commence construction of any business occupancy three (3) stories or more in height, or residential occupancy three (3) stories or more in height, until plans and specifications therefor have been submitted to and approved in writing by the Division.
- (4) After January 1, 1986, no person shall commence construction of any covered mall occupancy until plans and specifications therefor have been submitted to and approved in writing by the Division.
- (5) After July 1, 1986, no person shall commence construction of any two-story residential occupancy having twelve (12) units or more until plans and specifications therefor have been submitted to and approved in writing by the Division.
- (6) After January 1, 2001, no person shall commence construction of any occupancy that requires an inspection by the Division for initial licensure requirements of other state departments or agencies until plans and specifications therefor have been submitted to and approved in writing by the Division.
- (7) Notwithstanding the foregoing paragraphs of this rule, any construction requiring approval by the Division may be undertaken prior to approval of final plans and specifications if:
 - (a) The Division has received a written request for a phased or fast-track approval;
 - (b) preliminary drawings adequately describing the nature and scope of the project have been submitted to the Division; and
 - (c) complete plans and specifications for that phase of construction to be undertaken have been submitted to the Division; and
 1. the Division has approved such plans and specifications in writing; or
 2. the Division has failed to transmit a written evaluation of such plans and specifications within twenty-one (21) working days after receipt thereof.
- (8) Resubmission of the complete plans and specifications for any proposed project which is identical in structure and interior arrangement to a project previously reviewed and approved in accordance with this chapter is required; however, no review fee shall be required.

Authority: *T.C.A. §§ 68-102-113 and 68-120-101.*

Rule 0780-2-3-.03 Requirements is amended by deleting the text of paragraph (1)(c) and substituting instead the following language so that, as amended, paragraph (1)(c) shall read:

- (1) (c) be accompanied by an estimate, certified by the owner or his authorized representative, of the total construction cost of the project. The Division may request additional verification of cost prior to the issuance of a certificate of occupancy.

Authority: T.C.A. §§ 68-102-113 and 68-120-101.

Rule 0780-2-3-.03 Requirements is further amended by adding the following language as a new paragraph (3):

- (1) Shop drawings for commercial hood and duct systems shall be submitted in accordance with the standards adopted in rule 0780-2-2-.01.

Authority: T.C.A. §§ 68-102-113 and 68-120-101.

Rule 0780-2-3-.05 Approval of Plans is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Plans and specifications submitted pursuant to rule 0780-2-3-.02 shall be approved only if the proposed construction would be in compliance with the minimum standards for fire prevention, fire protection, and building construction safety in effect at the time of the initial submission.
- (2) The Division will not give final approval of plans and specifications unless a plans review submittal form and the applicable fee for plans review are received by the Division.
- (3) No final approval of plans and specifications shall be valid unless the construction represented by such plans and specifications has substantially progressed within six (6) months after the effective date of any adopted revisions of the standards in effect at the time of the initial submission. Construction must be completed and a certificate of occupancy issued within twenty-four (24) months after the commencement of construction.
- (4) A copy of the approved plans and specifications shall be placed on the job site prior to the commencement of construction and shall be retained on the job site until completion of the project.
- (5) Construction shall proceed in accordance with the plans and specifications as approved hereunder. If construction is completed in accordance with the approved plans and specifications, the building represented by such plans and specifications shall be exempt from subsequently adopted standards for fire prevention, fire protection, and building construction safety, unless the non-conformity of the building to such standards poses a serious life safety hazard.
- (6) No approval of, or failure to review, plans and specifications by the Division shall relieve the owner, developer, or designing architect or engineer of their respective responsibilities for compliance with applicable codes respecting fire prevention, fire protection, and building construction safety.
- (7) Approval of modular building units, along with a final inspection, shall be required by the Division; however, no certificate of occupancy shall be issued thereon. Temporary factory manufactured structures which are not designed and constructed in accordance with the Tennessee Modular Building Act (T.C.A. §§ 68-120-301 et seq. and chapter 0780-2-13) shall have an independent third party inspection label permanently affixed to the unit. For purposes of this paragraph, temporary means placed on a site for less than twelve (12) months.

Authority: T.C.A. §§ 68-102-113 and 68-120-101.

Rule 0780-2-3-.06 Inspection of Construction is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

When the Division inspects any construction covered by this chapter, the inspector shall determine whether the construction conforms to the approved plans and specifications; however, if such plans and specifications are not specific with respect to any applicable standard, the inspection shall be made pursuant to the standards adopted in this chapter.

Authority: T.C.A. §§ 68-102-113 and 68-120-101.

Rule 0780-2-3-.07 Issuance of Permits is amended by deleting the numbers and punctuation “0780-1-3-.08” and substituting instead the numbers and punctuation “0780-2-3-.08”.

Authority: T.C.A. §§ 68-102-113 and 68-120-101.

Rule 0780-2-3-.08 Local Exclusions is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) This chapter shall not apply to any building, other than state buildings or educational occupancies, located within the jurisdiction of a local government which is exempt from the Division’s building construction safety standards under T.C.A. § 68-120-101.
- (2) Any local government not covered by paragraph (1) may submit a written request to the Division that proposed construction, other than state buildings and educational occupancies, within its jurisdiction be excluded from the provisions of this chapter. The request shall be supported by written documentation relative to the local government’s capability and legal framework for enforcing building construction safety standards. Such documentation shall include an adequate description of local procedures and requirements for:
 - (a) review of construction plans and specifications;
 - (b) issuance of building permits; and
 - (c) inspection of buildings during and after construction.
- (2) If the Division denies any request submitted pursuant to paragraph (2) of this rule, it shall notify the local government in writing of the reasons for the denial. Such local government shall be afforded an opportunity for an informal conference before the Division to reconsider its decision.
- (3) Any local exclusion granted by the Division may be withdrawn if, after affording appropriate written notice of grounds and opportunity for hearing, it determines that the local government is not adequately performing its enforcement functions. The hearing provided by this paragraph shall be conducted in the manner prescribed by the Uniform Administrative Procedures Act, compiled in T.C.A. title 4, chapter 5.

Authority: T.C.A. §§ 68-102-113 and 68-120-101.

Rule 0780-2-3-.10 Certificate of Occupancy is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

- (1) Where written approval of plans and specifications is required under this chapter, a new building or addition shall not be occupied, nor shall a change of occupancy be made, until the Division has issued a "certificate of occupancy" therefor.
- (2) The certificate of occupancy shall state:
 - (a) the project name and location of the building;
 - (b) the construction type of the building;
 - (c) the occupancy classification of the building under the standards adopted by reference in rule 0780-2-2-.01; and
 - (d) the names of the building owner, contractor, and project architect or engineer.
- (3) A temporary certificate of occupancy may be issued by the Division for a portion or portions of a building that may be occupied safely prior to final completion of the building.
- (4) A certificate of occupancy for a change in the occupancy classification of an existing building may be obtained by applying to the Division and supplying the information and data necessary to determine compliance with the standards adopted by reference in rule 0780-2-2-.01. When deemed necessary by the Division, two (2) sets of detailed drawings, or a general inspection, or both, may be required.

Authority: *T.C.A. §§ 68-102-113 and 68-120-101.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-27)

BOARD FOR PROFESSIONAL COUNSELORS, MARITAL AND FAMILY THERAPISTS, AND CLINICAL PASTORAL THERAPISTS - 0450

There will be a hearing before the Tennessee Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists to consider the promulgation of amendments to rules pursuant to *T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102*. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, Section 4-5-204* and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 20th day of September, 2000.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENT

Rule 0450-1-.01, Definitions, is amended by adding the following language as new paragraph (11) and renumbering the remaining paragraphs accordingly:

- (11) Clinical setting – A setting that applies the principles, methods, and therapeutic techniques practiced by professional counselors including diagnosis, appraisal, assessment, treatment and treatment planning of a broad spectrum of client problems including, but not limited to, developmental, mental, emotional, family, and DSM disorders. This setting shall be comprised of no fewer than two (2) full-time licensed mental health professionals, as listed in Rule 0450-1-.05 (5) (b) 1., and shall provide adequate supervision and training experiences, with the physical resources necessary to allow for supervision and appropriate service delivery. A clinical setting shall include, but not be limited to, mental health or community agency settings pursuant to T.C.A. §§ 63-22-104 (3) (B).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, and 63-22-120.*

Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN 37247-1010 615-532-4397.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of June, 2000. (06-14)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 **DIVISION OF EDUCATIONAL SERVICES**

There will be a public rulemaking hearing before the Tennessee Department of Environment and Conservation, Division of Educational Services, acting on behalf of the Commissioner, to consider the adoption and promulgation of rules pursuant to *Tennessee Code Annotated, Sections 11-1-101(f), 11-1-110, 11-3-104* and the Uniform Administrative Procedures Act, *Tennessee Code Annotated, Section 4-5-101 et seq.* The Department held three rulemaking hearings, January 19 and 25, 2000 and February 10, 2000, on previously proposed similar rules for the Division of Recreation Resources. The following proposed rules are an outgrowth of those hearings. The current proposal reflects a broader statutory authority and expands the scope of the renamed Division's responsibilities. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204, and will take place at the following time and location:

DATE	HEARING LOCATION	TIME
August 17, 2000	L & C Tower 5 th Floor Conference Room 401 Church Street Nashville, TN 37243-1535	1:00 pm CDT

Individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person or by writing, telephone, or other means, and should be made no less than ten (10) days prior to the specific scheduled meeting date or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation, ADA Coordinator, Isaac Okoreeh-Baah, 7th Floor Annex, 401 Church Street, Nashville, TN 37243 (615) 532-0059. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

SUBSTANCE OF PROPOSED RULES

New Rule 0400-10-1-.01 Assistance/Planning Fees for Service to Local Governments of Rule Chapter 0400-10-1 Educational Services shall read as follows:

NEW RULE

TABLE OF CONTENTS

0400-10-1-.01 Assistance/Planning Fees for Service to Local Governments.

0400-10-1-.01 ASSISTANCE/PLANNING FEES FOR SERVICE TO LOCAL GOVERNMENTS.

(1) Purpose.

This rule is promulgated for the purpose of establishing technical assistance and planning assistance fees to provide funding in order to maintain and improve the quality of educational services offered to all county and municipal governments. It is the Commissioner’s intent that funds raised pursuant to this rule will remain exclusively within the Division of Educational Services.

(2) Fees for Services.

Municipalities or counties that contract with the Tennessee Department of Environment and Conservation, Division of Educational Services shall pay the following fees:

(a) Itemized Fees for Educational Services:

Service	Fee
Parks and Recreation Quarterly Technical Journal	\$50.00 annually

Specific Resource Bulletins	\$5.00 each bulletin
Strategic Planning Process (SPP)	\$1,000.00
Recreation Planning Assistance	\$200.00 ½ day \$350.00 full
Assistance for Hiring/Screening/Interview Process	\$500.00 per position
Training Classes	\$50.00 per person
Comprehensive Consultation on Delivery System, Administration/Operation	\$200.00 ½ day \$350.00 full day
Trails/Greenways Assistance \$350.00 full day	\$200.00 ½ day
Assistance for the Development of Partnerships, Agreements, Etc.	\$200.00 ½ day \$350.00 full day
Playground Safety Inspection	\$100.00 one playground inspection \$50.00 each additional inspection

- (b) For services to be rendered that are not itemized above, the fee shall be based on actual cost plus reasonable overhead.

Authority: T.C.A. §§11-1-101(f), 11-1-110, and 11-3-104.

OTHER INFORMATION

The Division of Educational Services has prepared a set of draft rules for public review and comment. Copies of these draft rules are available for review at the Development Districts located as follows:

East Tennessee Development District
5616 Kingston Pike
P. O. Box 19806
Knoxville, TN 37939-2806
(423) 584-8553

First Tennessee Development District
207 North Boone Street
Suite 800
Johnson City, TN 37064
(423) 928-0224

Greater Nashville Regional Council
501 Union Street
6th Floor
Nashville, TN 37219
(615) 862-8828

Memphis-Delta (MAAG)
157 Poplar Room
B-150 Memphis, TN 38103-1948
(901) 545-4610

Northwest Tennessee Development
District 124 Weldon Drive
P. O. Box 63
Martin, TN 38237
(901) 587-4215

South Central Tennessee Development District
P. O. Box 1346
Columbia, TN 38402-1346
(931) 381-2040

Southeast Tennessee Development District
P. O. Box 4757
25 Cherokee Blvd.
Chattanooga, TN 37405-0757
(423) 266-5781

Southwest Tennessee Development District
27 Conrad Drive Suite
150 Jackson, TN 38305-2850
(901) 668-7112

Upper Cumberland Tennessee Development District
1225 S. Willow Avenue
Cookeville, TN 38506
(931) 432-4111

The "DRAFT" rules may also be accessed for review using <http://www.state.tn.us/environment/new.htm> to locate the Department's World Wide Web Site.

Copies are also available at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation
Division of Educational Services
10th Floor L & C Tower
401 Church Street
Nashville, TN 37243
(615) 532-0748

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Division of Educational Services; Tennessee Department of Environment and Conservation; Attention: Joyce Hoyle; 10th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243; telephone 615-532-0748 or FAX 615-532-0778. However, such written comments must be received by 4:30 PM CST, Date, in order to assure consideration.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of June, 2000. (06-16)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF SUPERFUND

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendments to Rule 1200-1-13, Inactive Hazardous Substance Site Remedial Action Program, pursuant to *T.C.A. § 68-212-201 et seq.* The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, § 4-5-204* and will take place at the time and location given below. Written comments will be considered if received by the close of business, September 15, 2000, in the office of Enforcement Manager, Robert L. Powell, Division of Superfund, 401 Church Street, L & C Annex, 4th Floor, Nashville, TN 37243-1538. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any aids or services needed to facilitate such participation. Such contact may be in person, in writing, or by telephone and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

ALL LOCATIONS

August 15, 2000
9:00 a.m. - 11:00 a.m. CT
10:00 a.m. - 12:00 noon ET

Jackson
West Tennessee Center for Agricultural Research Extension
605 Airways Boulevard, Room 105
Jackson, TN

Nashville
Center for Industrial Services
226 Capitol Boulevard Building
Suite 606
Nashville, TN

Memphis
The University of Tennessee
Coleman Building, Room A-138
956 Court Street
Memphis, TN

Johnson City
 East Tennessee State University
 Room 138, Lamb Hall
 Dossett Drive
 Johnson City, TN

Knoxville
 The University of Tennessee
 Center for Telecommunications and Video
 61 Communications and University Extension Building
 Circle Park Drive, Studio B
 Knoxville, TN

Chattanooga
 The University of Tennessee
 212 Fletcher Hall
 615 McCallie Avenue
 Chattanooga, TN

Lawrenceburg
 Columbia State Community College
 Lawrence County Video Conference Center
 Room 116
 1620 Springer Road
 Lawrenceburg, TN

SUBSTANCE OF PROPOSED CHANGES

CHAPTER 1200-1-13 INACTIVE HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION PROGRAM

The Tennessee Department of Environment and Conservation, Division of Superfund is proposing amendments to Rule 1200-1-13 to establish both guidance and criteria for site remediation, and deletion from the List of Inactive Hazardous Substance Sites. Included in the amendments are changes to the following:

Rule 1200-1-13-.07(3) Site Promulgation Process is amended by deleting it in its entirety and substituting the following:

(3) **Criteria for Deleting sites from the List of Inactive Hazardous Substance Sites**

In order for a promulgated site to be removed from the List, the following shall have occurred:

- (a) The hazardous substances which posed or may have posed a threat to human health or the environment have to the satisfaction of the Commissioner been removed/stabilized or determined to no longer pose a threat,
- (b) All relevant site characteristics, including, but not limited to, migration pathways, have been evaluated and either no longer pose a threat to human health or the environment, or have been remediated or any such threat is being controlled by other means, such as institutional controls, to the satisfaction of the Commissioner,
- (c) The site will require no long term monitoring and maintenance activities, or financial assurance for the costs of these activities has been established in a form, amount, and manner acceptable to the Commissioner,

- (d) All monitoring wells, etc., that serve as potential sources or routes for future contamination have been properly abandoned, protected, or otherwise accounted for, and
- (e) All state cost recovery issues have been resolved to the satisfaction of the Commissioner.

Rule 1200-1-13-.08(10) Remediation Goals is amended by adding the following:

- (iv) If an institutional control is required at a hazardous substance site as part of the clean up, remedy, or reclamation under *T.C.A. §68-212-201 et seq.* or these rules, then the current owner shall notify other liable parties and the Department of any change in use or proposed change in use. Said notification requirement shall be included in the deed notification.

Rule 1200-1-13-.09(2)(a)(4) Remedial Investigation and Feasibility Study is amended by deleting it in its entirety and substituting the following:

Before performing site activities a health and safety plan shall be prepared and submitted by the responsible party(ies) which complies with OSHA requirements.

Rule 1200-1-13-.10(3)(j) Remedial DESIGN is amended by deleting it in its entirety and substituting the following:

Before performing site activities a health and safety plan shall be prepared and submitted by the responsible party(ies) which complies with OSHA requirements.

Rule 1200-1-13-.12(3) Final Operation and Maintenance Plan is amended by deleting it in its entirety and substituting the following:

- (3) Financial assurance may be required by the Commissioner to insure the O & M costs. This financial assurance shall be posed in a form, amount, and in the manner specified by the Commissioner.

For copies of the complete text of the proposed rules, please contact:

Robert L. Powell
Division of Superfund
401 Church Street
4th Floor, L & C Annex
Nashville, TN 37243-1538
(615)532-0916

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-25)

**DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.D.T. on the 16th day of August, 2000.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone at (615) 741-0155 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 729 Church Street, Nashville, Tennessee 37247-6501 or call (615) 741-0145.

SUBSTANCE OF PROPOSED RULES

Paragraph (2) of rule 1200-13-12-.01 Definitions is amended by deleting the words "Department of Health" where it occurs and replacing them with the words "Department of Finance and Administration."

Paragraph (3) of rule 1200-13-12-.01 Definitions is amended by deleting the words "Department of Health" and replacing them with the words "Department of Finance and Administration."

Paragraph (10) of rule 1200-13-12-.01 v is amended by deleting the word "and" and inserting a comma following the word "deductibles" and by inserting the symbol and words "and/or coinsurance" following the word "copayments" so that, as amended, the paragraph shall read as follows:

- (10) Cost Sharing shall mean premiums, deductibles, copayments and/or coinsurance that certain enrollees are required to pay.

Paragraph (11) of rule 1200-13-12-.01 Definitions is amended by deleting it in its entirety and replacing it with a new paragraph (11) which shall read as follows:

- (11) Disenrollment shall mean the discontinuance of an individual's participation in the TennCare program. Participation shall mean that an individual is enrolled in TennCare and receives covered services under the terms of the contract between the Tennessee Department of Finance and Administration and the managed care organization. The Bureau of TennCare must approve all disenrollments. TennCare will notify the enrollee of the reason for disenrollment and the right to an appeal under the procedures set out in 1200-13-12-.11 of these rules.

Rule 1200-13-12-.01 Definitions is amended by adding a new paragraph (13) and renumbering the present paragraph (13) as (14) and subsequent paragraphs renumbered accordingly so as amended the new paragraph (13) shall read as follows:

- (13) EMPLOYER-SPONSORED HEALTH INSURANCE PLAN shall mean health insurance that is available to an individual, and/or to the individual's family, as the result of that individual's employment. The employer does not have to pay all or a part of the premium for a health insurance plan to be considered employer-sponsored.

Paragraph (16) renumbered as (17) of rule 1200-13-12-.01 Definitions is amended by deleting it in its entirety and replacing it with a new paragraph (17) which shall read as follows:

- (17) (a) FAMILY for non-Medicaid TennCare purposes is defined as being one of the following:
1. A married couple residing at the same address without children in the home; or
 2. A married couple and their children or step-children under age 18 residing at the same address; or
 3. A single parent and children under age 18 residing at the same address; or
 4. A guardian with children under age 18 residing at the same address; or
 5. An unmarried adult age 18 or older, with no children; or
 6. An unmarried minor female who has one or more children, and/or is pregnant. If the mother is TennCare-eligible, the baby will be added upon notification in writing of the child's birth; or
 7. An emancipated minor as defined at T.C.A. 39-11-106(a)(10); or
 8. A non-parental caretaker, relative, guardian, etc., who has legal proof of responsibility, guardianship or custodial care for a minor child, as evidenced by, but not limited to, adoption papers, court-ordered guardianship, or other court-ordered assignment making an adult responsible for the care and support of a minor.
- (b) All members of a family unit must be listed on a TennCare application regardless of whether each person wants TennCare or is eligible for TennCare under current eligibility criteria at the time of application.
- (c) An individual marrying into a TennCare household, children from a previous marriage moving into a TennCare household, or children moving in with a TennCare-covered guardian are not automatically given TennCare coverage. While inclusion of these individuals can impact cost sharing responsibilities, they must meet current TennCare eligibility criteria to be given coverage.
- (d) Excluded from this definition are two or more unmarried adults residing at the same address.

Paragraph (18) renumbered as (19) of rule 1200-13-12-.01 Definitions is amended by inserting the words, numerals and punctuation "Title XVIII, " between the words "administering" and "Title XIX" and the words, numerals and punctuation "and Title XXI" between the words "Title XIX" and "of the Social" so the paragraph shall read as follows:

- (19) Health Care Financing Administration (HCFA) shall mean the agency within the United States Department of Health and Human Services that is responsible for administering Title XVIII, Title XIX and Title XXI of the Social Security Act.

Rule 1200-13-12-.01 Definitions is amended by adding a new paragraph (23) and renumbering the renumbered paragraph (23) as (24) and subsequent paragraphs renumbered accordingly.

- (23) HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996, as amended.

Paragraph (22) renumbered as (24) of rule 1200-13-12-.01 Definitions is deleted in its entirety and replaced with a new renumbered paragraph (24) which shall read as follows:

- (24) INCOME shall mean the adjusted gross income as shown on their most recent, complete income tax return plus any Social Security payments received. In lieu of a tax return, an applicant/enrollee may show proof of income through at least four (4) pay check stubs or a letter showing an increase or decrease in benefits received. Income does NOT include child support payments or money earned by a dependent child under the age of nineteen (19).

Rule 1200-13-12-.01 Definitions is amended by adding a new paragraph (25) and the paragraph that was renumbered as (25) is renumbered as (26) and subsequent paragraphs renumbered accordingly:

- (25) Inmate shall be defined as an individual confined for a criminal offense in a local, state, or federal prison, jail, youth development center, or other penal or correctional facility, including a furlough from such facility. Excluded from this definition are persons confined in a juvenile detention center.

Rule 1200-13-12-.01 Definitions is amended by adding a new renumbered paragraph (29) and renumbering the present paragraph (29) and subsequent paragraphs renumbered accordingly.

- (29) Medicare shall mean the program administered through the Social Security Administration pursuant to Title XVIII, available to most individuals upon attaining age 65, to some disabled individuals under 65 years of age, and individuals having End Stage Renal Disease (ESRD).

Rule 1200-13-12-.01 Definitions is amended by adding a new paragraph (33) and renumbering the present paragraph (33) and subsequent paragraphs accordingly.

- (33) Reassignment shall mean that process by which the Bureau of TennCare transfers an enrollee from one managed care organization (MCO) to another as described at 1200-13-12-.03(4) of these rules.

Rule 1200-13-12-.01 Definition is amended by adding a new renumbered paragraph (38) and renumbering the renumbered paragraph (38) and subsequent paragraphs accordingly

- (38) TennCare shall mean the program administered by the Department of Finance and Administration pursuant to a Title XIX waiver granted to the State of Tennessee.

Paragraph (35) renumbered as (41) of rule 1200-13-12-.01 Definitions shall be amended by deleting it in its entirety and replacing it with a new renumbered paragraph (41) which shall read as follows:

- (41) Uninsurable shall mean any person who is unable, because of a prior existing or existing medical condition, to purchase health insurance. Pregnancy is not considered to be a prior existing or existing condition.

Paragraph (36) renumbered as (42) of rule 1200-13-12-.01 Definitions is amended by deleting it in its entirety and replacing it with a new renumbered paragraph (42) which shall read as follows:

- (42) Uninsured shall mean any person who does not have health insurance under an individual health insurance policy or who does not have, directly or indirectly through another family member, coverage under or access to employer-sponsored health insurance, COBRA benefits throughout the COBRA benefits period, or another government health plan, and continues to lack this access. "Another government health plan" shall include, but not be limited to, benefits from Medicare or TRICARE (formerly known as CHAMPUS).

Subparagraph (a) of paragraph (1) of rule 1200-13-12-.02 Eligibility is amended by deleting the words "Department of Health" and replacing them with the words "Department of Finance and Administration."

Paragraph (2) of rule 1200-13-12-.02 Eligibility is deleted in its entirety and replaced with a new paragraph (2) which shall read as follows:

(2) Technical Eligibility Requirements for TennCare

(a) All Medicaid-eligible individuals must:

1. Meet all technical eligibility requirements applicable to the appropriate category of medical assistance as described in Chapter 1240-3-3 of the Rules of the Tennessee Department of Human Services – Division of Medical Services; or
2. Be approved for the Supplemental Security Income (SSI) program by the Social Security Administration.

(b) All non-Medicaid-eligible individuals must meet the following technical requirements:

1. Must be able to document U.S. citizenship or lawfully admitted alien status for permanent residence. Acceptable documentation includes, but is not limited to, the following:
 - (i) A certified birth certificate;
 - (ii) Naturalization papers;
 - (iii) Notarized affidavit of birth;
 - (iv) A resident alien green card;
2. Must be a Tennessee resident;
3. Must present a Social Security number, or proof of having applied for one. Acceptable documentation includes, but is not limited to, the following:
 - (i) A Social Security card or copy of one;
 - (ii) A Tennessee Driver's License, or copy, that has the individual's Social Security number;
 - (iii) A federal income tax return showing Social Security numbers;
 - (iv) Documentation from the Social Security Administration showing the individual's Social Security number, or a receipt where a number has been applied for; or
 - (v) Federal, state, or local government correspondence showing individual names and Social Security number;
4. Must not be an inmate, as defined at 1200-13-12-.01(25);
5. Must not be eligible for participation in Medicare, except those individuals who are determined to be uninsurable or dually eligible for Medicare and Medicaid;
6. Must not be eligible for participation in TRICARE (formerly known as CHAMPUS), except those individuals who are also determined to be eligible for Medicaid;

7. Must not be enrolled in an individually funded, non-employer-sponsored health insurance plan;
8. Must not be eligible for participation in an employer-sponsored health insurance plan, either directly or indirectly through another family member;
9. Must respond to all requests for reverification of eligibility from the Bureau of TennCare; and
10. Must not be responsible for out-standing cost-sharing obligation(s).

Paragraph (3) of rule 1200-13-12-.02 Eligibility shall be deleted in its entirety and replaced with a new paragraph (3) which shall read as follows:

(2) Financial Eligibility Requirements for TennCare

(a) All Medicaid-eligible individuals must:

1. Meet all financial eligibility requirements applicable to the appropriate category of medical assistance as described in Chapter 1240-3-3 of the Rules of the Tennessee Department of Human Services – Division of Medical Services; or
2. Meet the financial requirements for the Supplemental Security Income (SSI) program of the Social Security Administration.

(b) All Non-Medicaid Eligibles must comply with the following:

1. Report the total income, as defined at 1200-13-12-.01(24), of the family members listed on the application for use in determining cost sharing responsibilities. There is no resource limit for TennCare eligibility for non-Medicaid-eligible individuals.
2. Changes in family income and/or household composition, such as the addition of a new family member or the deletion of someone no longer in the household, must be reported in writing to the Bureau of TennCare - Member Services within ten (10) days of the change. Any changes in cost sharing responsibilities as the result of a change in income or family size will become effective the first day of the month following the month of notification to TennCare.

Paragraph (4) of rule 1200-13-12-.02 Eligibility is deleted in its entirety and replaced with a new paragraph (4) which shall read as follows:

(3) Coverage Groups Under TennCare

(a) Eligibility for TennCare is limited to individuals who meet one of the following criteria:

1. Would have been Medicaid-eligible under the Medicaid program as it was administered during the state fiscal year 1992-93;
2. Are uninsurable as defined at 1200-13-12-.01(41).
3. Are uninsured as defined at 1200-13-12-.01(42). Such person(s) must report changes in employment status to the Bureau in writing within ten (10) days so that the Bureau can determine the access (or lack of) to employer-sponsored health insurance;

4. Dislocated workers as defined at 1200-13-12-.01(33) and their families as defined at 1200-13-12-.01(17). Such workers and their families shall be eligible for TennCare coverage without regard to availability of COBRA benefits. Enrollment in TennCare for such workers and their families shall be subject to the availability of federal funding. TennCare family coverage is available to workers and their families eligible under this section only if the worker had employer-sponsored health insurance family coverage at the time of the employer's business closing or layoff.
 - (i) Enrollment shall become effective upon confirmation of eligibility criteria and payment of any applicable premiums. A worker eligible under this section shall have the option to prepay the first's month's premium, if any, and select a later effective date. The TennCare cost sharing items shall be based on family income.
 - (ii) Enrollment in TennCare shall continue until employer-sponsored health insurance is available to the worker or his/her spouse. Changes in employment status shall be reported to TennCare in writing within ten (10) days in order to facilitate the determination of employer-sponsored health insurance.
 - (iii) TennCare coverage shall not be available to workers eligible under this section or their families if employer-sponsored health insurance is available through the dislocated worker's spouse.
5. Children under age nineteen (19) who meet the TennCare uninsured criteria as set forth at paragraph (2) of this rule
6. Uninsured children under age nineteen (19) whose family income is less than 200% of the federal poverty level are eligible for TennCare coverage, even though the family may have access to health insurance but due to the family financial situation cannot afford it. When the family's income equals or exceeds 200% of the federal poverty level and the family has access to health insurance, TennCare eligibility for children under age nineteen (19) who are eligible under this section will end.
 - (b) The phrase "the Medicaid program as it was administered in State fiscal year 1992-93" refers to Medicaid policies and regulations regarding coverage groups and methodologies. Specific income and resource standards (e.g., 100% of Federal poverty level) and age groups will be updated each year of the TennCare program.
 - (c) TennCare reserves the right to implement changes in eligibility laws, policies, and regulations occurring after state fiscal year 1992-93 if these changes are appropriate for the TennCare population.

Part 1. of subparagraph (b) of paragraph (5) of rule 1200-13-12-.02 Eligibility is amended by inserting the word "insurance" following the word "health" and before the word "plan" so as amended part 1. shall read as follows:

1. The enrollee becomes eligible for participation in an employer-sponsored health insurance plan, either directly or indirectly through a family member;

Part 2. of subparagraph (b) of paragraph (5) of rule 1200-13-12-.02 Eligibility is amended by deleting the part in its entirety and replacing it with the following:

2. The enrollee becomes eligible for participation in Medicare or in TRICARE (formerly CHAMPUS) unless the enrollee is also eligible for Medicaid;

Part 3. of subparagraph (b) of paragraph (5) of rule 1200-13-12-.02 Eligibility is amended by deleting after the comma the phrase "unless the plan is the Tennessee Comprehensive Health Insurance Program" and replacing the comma (,) with a semi-colon (;), so that as amended part 3. shall read as follows:

3. The enrollee purchases or becomes covered by an individually funded, non-employer-sponsored health insurance, regardless of the extent of coverage;

Part 5. of subparagraph (b) of paragraph (5) of rule 1200-13-12-.02 Eligibility is amended by deleting after the word “fails” the words “or refuses” so that as amended part 5. shall read as follows:

5. The enrollee fails to pay the required premiums in order to enroll and/or remain enrolled in the TennCare system. There will be a grace period of up to sixty (60) days allowed by TennCare prior to disenrollment proceedings;

Part 6. of subparagraph (b) of paragraph (5) of rule 1200-13-12-.02 Eligibility is amended by deleting after the word “enrollee” the words “has been determined able but simply unwilling to” and replacing it with the word “fails”, and replace the words “deductibles, copayments and/or special fees” with the words “cost sharing amounts” so that as amended part 6. shall read as follows:

6. The enrollee fails to pay the applicable cost sharing amounts for services received and the Bureau of TennCare has authorized disenrollment;

Part 8. of subparagraph (b) of paragraph (5) of rule 1200-13-12-.02 Eligibility is amended by deleting after the word “individual” the words “has been willfully and repeatedly refused” and replacing in its place the word “fails” so that as amended part 8. shall read as follows:

8. The individual fails to comply with the health plan’s requirements or TennCare’s requirements, subject to state and federal laws and regulations;

Part 11. of subparagraph (b) of paragraph (5) of rule 1200-13-12-.02 Eligibility is amended by deleting after the word “of” the reference “1200-13-12-.02(3)(b)” and inserting in its place the reference “1200-13-12-.02(2)(b)” so that as amended part 11. shall read as follows:

11. It is determined that any of the technical eligibility requirements of 1200-13-12-.02(2)(b) are no longer met and the Bureau of TennCare has authorized disenrollment;

Part 12. of subparagraph (b) of paragraph (5) of rule 1200-13-12-.02 Eligibility is amended by deleting part 12. in its entirety and replacing it with a new part 12. shall read as follows:

12. The enrollee has failed to respond to a reverification process requirement to assure that the enrollee, and other family members as appropriate, remains eligible for TennCare;

Subparagraph (b) of paragraph (5) of rule 1200-13-12-.02 Eligibility is amended by adding four new parts numbered 13., 14., 15. and 16. as follows:

13. When the Bureau of TennCare – Member Services receives a voluntary written request for termination of eligibility from a non-Medicaid TennCare enrollee;
14. When an enrollee no longer resides in Tennessee;
15. When an individual becomes incarcerated as an inmate; or
16. When the enrollee is no longer eligible for TennCare.

Rule 1200-13-12-.02 Eligibility is amended by inserting a new paragraph (9) which shall read as follows:

(9) TennCare and Medicare

A TennCare enrollee who becomes eligible for Medicare is no longer eligible for TennCare coverage as an uninsured, because the enrollee has access to health insurance other than TennCare.

- (a) A TennCare enrollee who becomes eligible for Medicare is expected to apply for Medicare Parts A and B, and should also select a Medigap (Medicare supplemental) policy that provides the desired level of coverage. Medicare and Medigap coverage must be maintained even if a beneficiary becomes TennCare-eligible, as TennCare is always the payor of last resort. The Tennessee Department of Human Services (DHS) determines Medicaid eligibility for the following special populations:
1. Individuals who are dually eligible for Medicare and Medicaid, as “spenddowns” are eligible for all Medicare and TennCare benefits without either Medicare or TennCare cost sharing responsibilities.
 2. Individuals who are dually eligible for Medicare and Medicaid as Qualified Medicare Beneficiaries (QMBs) will have Part A premiums paid, if any, Part B premiums (if enrolled) paid, and consistent with the Medicaid State plan, Medicare deductibles and co-insurance paid for Medicare services provided by Medicare providers. Full TennCare benefits are not available to this population.
 3. For QMBs with full Medicaid coverage (QMB Plus), Medicaid pays Medicare Part A premiums, if any, Part B premiums, and to the extent consistent with the Medicaid State plan, Medicare deductibles and coinsurance. These enrollees are also eligible for full TennCare benefits.
 4. Specified Low-Income Medicare Beneficiaries (SLIMBs) are eligible to have Medicare Part B premiums paid by the Medicaid Program. No other TennCare benefits are available.
 5. For SLIMBs with full Medicaid benefits (SLIMB Plus), enrollees are eligible to have the Medicaid Program pay Part B Medicare premiums and receive full TennCare benefits.
 6. Qualified Disabled and Working Individuals (QDWIs) are eligible to have Medicare Part A premiums paid by the Medicaid Program. No other TennCare benefits are available.
 7. Qualifying Individuals (1) (QI-1s) are eligible to have Medicare Part B premiums paid by the Medicaid Program. No other TennCare benefits are available.
 8. Qualifying Individuals (2) (QI-2s) are eligible to have the Medicaid Program pay a portion of Part B premiums determined by HCFA. No other TennCare benefits are available.
- (b) Individuals enrolled in a Medicare HMO plan are not eligible for TennCare.
- (c) An individual who has Medicare is eligible for enrollment in TennCare as an uninsurable if that individual is under age 65 and has a letter of denial for a Medigap health insurance policy because of a medical condition. The letter must be dated within one (1) year prior to the individual’s TennCare application. A person who is enrolled in TennCare as a Medicare uninsurable shall have Medicare cost-sharing requirements (as determined by HCFA), as well as TennCare cost-sharing requirements if the family income is above 100% of the federal poverty level. At age 65, an individual is eligible for Part B coverage and for a Medigap policy. This individual’s TennCare eligibility shall end the last day of the month prior to his/her birth month in which he/she attains the age of 65 years.

- (d) Individuals who have Medicare coverage (either Part A and/or Part B) are considered to be insured. Therefore they are not eligible for TennCare coverage as uninsureds. Individuals having TennCare when turning 65 years of age will be disenrolled from TennCare, as they will now have access to health insurance through the Medicare program. An individual who is not eligible for Medicare upon turning 65 due to a lack of qualifying work periods may remain on TennCare provided that person submits proof to the Bureau of TennCare of this lack of eligibility for Medicare. Such proof shall be a letter of denial of eligibility from Medicare.
1. Pursuant to HCFA rules and guidelines, the period when an individual may apply for Medicare begins three (3) months prior to the month the individual turns 65 years old and runs for a total of seven (7) months. Medicare eligibility begins the first day of the month that the individual turns 65 years old. If an individual delays application, Medicare will determine the date that Medicare coverage will begin. The Bureau of TennCare shall send a letter to each enrollee three (3) months prior to the enrollee's 65th birthday, based on the demographic information contained in TennCare's files. This letter shall inform the enrollee that according to TennCare records that individual is turning 65 years old and should apply for Medicare through the local Social Security Administration Office. The letter shall also inform the enrollee that TennCare eligibility will end the last day of the month prior to the enrollee's birth month.
 2. Medigap policies are automatically available to beneficiaries for six (6) months, beginning the first day of the month the person is 65 years of age or older, and is enrolled in Part B.
 3. Should a Medicare-eligible individual not enroll in Medicare Part B during the initial enrollment period, Medicare provides for late enrollment, therefore, a Medicare-eligible beneficiary is still not TennCare-eligible.

Should a Medicare beneficiary be denied a Medigap policy for health reasons, that beneficiary may enroll in TennCare as a Medicare uninsurable only upon presentation of proof of denial of coverage, consisting of a letter from an insurance company authorized to offer and sell Medigap policies in Tennessee, which states the medical reason for denial. Increased premiums due to late application do not meet the uninsurable requirement for TennCare coverage. Medicare Parts A and B must be maintained as primary coverage and TennCare is the payor of last resort.

Rule 1200-13-12-.02 Eligibility is amended by inserting a new paragraph (10) which shall read as follows:

(10) Reverification of Eligibility

All TennCare enrollees shall periodically prove that they remain eligible for participation in the TennCare program. The eligibility process through which they enrolled in TennCare determines how this reverification is done.

- (a) Enrollees in TennCare who qualified as Medicaid-eligible shall reverify their Medicaid eligibility as required by the appropriate category of medical assistance as described in Chapter 1240-3-3 of the Rules of the Tennessee Department of Human Services – Division of Medical Services; those enrollees eligible through the Supplemental Security Income (SSI) program of the Social Security Administration (SSA) shall follow the reverification process as required by the SSA.
- (b) A non-Medicaid TennCare enrollee must reverify eligibility as requested by the Bureau of TennCare. The enrollee's eligibility to remain on TennCare is determined as of the date of the reverification interview.
 1. The reverification process requires that the enrollee, or responsible party, arrange for an in-person reverification interview at the health department of the county in which he/she resides. The notice of reverification will be sent to the latest address of record that the Bureau of TennCare has on file for that individual. Reasonable accommodations will be made for persons with disabilities who require assistance in responding to a reverification request.

2. Information to be reverified includes changes in address, income, employment, family size, access to health insurance, and verification of Social Security numbers. Reverification interviews must be scheduled and kept regardless of whether any changes have occurred. It is the responsibility of the enrollee to furnish all information requested. The letter notifying the enrollee that a reverification of eligibility is needed will inform the enrollee of what documentation is to be brought to the review.
 3. If as a result of the review it is found that any enrollee no longer meets the technical eligibility requirements as found at 1200-13-12-.02(1) of these rules, that (those) enrollee(s) will be disenrolled immediately from TennCare. Any enrollee who is disenrolled from TennCare has the right to appeal such decision within thirty (30) calendar days of being informed of loss of eligibility. The enrollee's right to appeal is found at 1200-13-12-.11 of these rules.
 4. Reverification of eligibility may occur annually, or at any time the Bureau determines a review is needed. Such conditions include, but are not limited to, changes in family composition, unusual changes in income, or for any other reason the Bureau determines that a review is required.
- (c) The reverification process for non-Medicaid enrollees consists of the following:
1. A notice is mailed to the enrollee's most current address in the Bureau's files. This notice informs the enrollee that a review of eligibility for TennCare is needed, and how to arrange for the review.
 2. A follow-up letter is required due to non-response (the failure to schedule a review) or as a result of returned mail. The Bureau will make reasonable attempts to locate an enrollee whose mail was returned to the Bureau. Such measures include, but are not limited to, mailing another notice requesting that the U.S.P.S. forward the mail if possible; contacting the enrollee's MCO requesting assistance in locating the enrollee; or other measures as appropriate. Failure to respond to the second notice or return of the second notice as undeliverable will result in the termination of TennCare eligibility.
 3. Once an eligibility review is scheduled, the enrollee must keep the appointment. If necessary, a review may be re-scheduled a maximum of two (2) times for a period not to exceed sixty (60) calendar days from the date of the initial notification letter. Failure to complete the reverification process within sixty (60) days of the date of the initial notification letter will result in termination of TennCare eligibility as stated at 1200-13-12-.02(5)(b)12. of these rules. If the last day of the 60-day period for scheduling and keeping a reverification interview falls on a weekend or State holiday, the enrollee has until the next State business day to have the interview.
 4. It is the responsibility of the enrollee or responsible party to furnish all information required to determine if the enrollee, and other family members as appropriate, remains eligible for TennCare. If during the review of eligibility it is found that the enrollee lacks necessary information, the review process may be put on hold for a period not to exceed thirty (30) calendar days from the date of the interview. If the enrollee fails to provide the information by the expiration of the thirty (30) day extension the enrollee's TennCare eligibility will be terminated. If the last day of the extension falls on a weekend or State holiday, the enrollee has until the next State business day to provide the missing information. This thirty (30) day extension is the only exception that will permit the review period to continue more than the sixty (60) day period as described in 3. above. Under no circumstances shall the total reverification period exceed one hundred and twenty (120) days from the date of the initial notification letter.

Rule 1200-13-12-.03 Enrollment, Disenrollment, Re-enrollment shall be re-titled as Enrollment, Disenrollment, Re-enrollment, and Reassignment.

Subparagraph (f) of paragraph (1) of rule 1200-13-12-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment is amended by adding a new part 6. which shall read as follows:

6. If an individual is enrolled in TennCare as a “limited benefits” uninsurable, that enrollee must maintain the non-TennCare health insurance policy in force at the time of TennCare enrollment. Termination of such coverage shall result in termination of TennCare coverage effective the date the Bureau is made aware that the non-TennCare health insurance policy was canceled. The enrollee may be responsible for services received and paid for by the TennCare managed care organization from the date the non-TennCare health insurance policy was canceled and the date the Bureau of TennCare terminates coverage.

Subpart (i) of part 2. of subparagraph (f) of paragraph (1) of rule 1200-13-12-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment is deleted in its entirety and replaced with a new subpart (i) which shall read as follows:

- (i) The applicant must submit documentation that the health insurance policy has a specific exclusion or rider of non-coverage based on a specific prior existing or existing condition (e.g., diabetes), category of medical conditions (e.g., mental illness), or treatment of such specific prior existing or existing condition or category of medical condition. For purposes of this rule, a prior existing or existing condition exclusion for pregnancy or any other condition reasonably anticipated to last less than twelve (12) months if untreated does not qualify an applicant for TennCare as a “limited benefits” uninsurable; or

Rule 1200-13-12-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment is amended by deleting in its entirety paragraph (3) CHANGE OF HEALTH PLANS and re-numbering the current paragraph (4) Re-enrollment as paragraph (3) RE-ENROLLMENT.

Subparagraph (a) of renumbered paragraph from (4) to (3) of rule 1200-13-12-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment is deleted in its entirety and replaced with a new subparagraph (a) which reads as follows:

- (a) A TennCare enrollee who is not eligible for Medicaid and who is disenrolled due to failure to pay the required premiums shall be required to pay all unpaid premiums in order to be re-enrolled in TennCare. For purposes of this subparagraph, “all unpaid premiums” shall refer to those premiums accrued beginning with the first month of unpaid premiums until the date the Bureau terminated TennCare eligibility. A disenrolled individual must re-apply for TennCare under current eligibility criteria. The application of such an individual shall be processed in the same manner as all other applications.

Subparagraph (c) of renumbered paragraph from (4) to (3) of rule 1200-13-12-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment is deleted in its entirety and replaced with a new subparagraph (c) which reads as follows:

- (c) A TennCare enrollee who is not eligible for Medicaid and who is disenrolled for failure to pay applicable cost sharing items may re-apply for TennCare during the next period of open enrollment provided such cost sharing items have been paid in full. The application of such an individual shall be processed in the same manner as all other applications.

Renumbered paragraph from (4) to (3) of rule 1200-13-12-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment shall be amended by inserting a new subparagraph (e) which shall read as follows:

- (e) Non-Medicaid-eligible children under age 19, whose parental TennCare coverage was terminated due to non-payment of premiums, deductibles and/or co-insurance, may re-apply for TennCare. Children under age 19 shall not be denied TennCare eligibility because of arrearages accumulated by a parent(s). Such application shall be processed in the same manner as all other applications.

Rule 1200-13-12-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment shall be amended by adding a new paragraph (4) REASSIGNMENT which shall read as follows:

(4) Reassignment

Reassignment to an MCO other than the current plan in which the enrollee is placed is subject to an MCO's capacity to accept new enrollees, must be approved by the Bureau of TennCare, and is the result of one of the following:

- (a) During the initial 45-day period of eligibility, an enrollee may request transfer to an MCO other than the one to which he/she was assigned.
- (b) During an annual period in which enrollees are given the opportunity to transfer to another MCO.
- (c) An enrollee must change MCOs if he/she moves outside the MCO's community service area (CSA), and that MCO is not authorized to operate in the enrollee's new place of residence. When an enrollee moves outside the CSA he/she will be given fifteen (15) calendar days to select a new health plan serving the CSA where he/she has moved. If an enrollee fails to select a new health plan within fifteen (15) calendar days of moving to a new CSA, the Bureau of TennCare will assign him/her to a health plan. Until an enrollee selects or is assigned to a new health plan and his/her enrollment is deemed complete, his/her medical care will remain the responsibility of the original health plan. Once reassigned, an enrollee will have forty-five (45) calendar days to change his/her choice of health plans in the new CSA.
- (d) Enrollees will be given the opportunity to select a new health plan if their MCO withdraws from participation in TennCare and is no longer available. If the enrollee does not make a selection within the allotted time frame, the Bureau will assign him/her to an MCO operating in their CSA.

Enrollees may change health plans at any time if they have gone through the grievance procedure and have obtained approval from the Bureau of TennCare.

Rule 1200-13-12-.06 Managed Care Organizations is amended by deleting the words "Department of Health' wherever they occur and replacing them with the words "Department of Finance and Administration."

Rule 1200-13-12-.07 Managed Care Organization Payment is amended by deleting the words "Department of Health' and replacing them with the words "Department of Finance and Administration."

Rule 1200-13-12-.09 Third Party Resources is deleted in its entirety and replaced with a new rule which shall read as follows:

1200-13-12-.09 THIRD PARTY RESOURCES.

- (1) Individuals applying for TennCare coverage shall disclose the availability of any third party health care coverage to the agency responsible for determining the individual's eligibility for TennCare.
- (2) Individuals enrolled in TennCare shall disclose access to third party resources to their specified managed care organizations as soon as they become aware of the existence of any third party resources.
- (3) Managed care organizations under contract with the Tennessee Departments of Finance and Administration or Mental Health and Mental Retardation shall provide all third party resource information obtained from their enrollees to the Bureau of TennCare on a regular basis as required by their contracts.
- (4) Managed care organizations shall enforce TennCare subrogation rights pursuant to T.C.A. § 71-5-117(b).
- (5) Managed care organizations may pay health insurance premiums for their enrollees if such payments are determined to be cost effective.
- (6) TennCare shall be the payor of last resort.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-26)

TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240

COMMUNITY AND FIELD SERVICES DIVISION

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of new rules pursuant to TCA §§ 71-3-501 et seq. and Senate Bill 3107/House Bill 3035 (2000). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A, 7th Floor, State Office Building, 531 Henley Street, Knoxville, Tennessee 37902 at 6:30PM Eastern Time on Tuesday, August 22, 2000; and in the 2nd Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30PM Central Time on Thursday, August 24, 2000; and in the 2nd Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Tuesday, August 29, 2000.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting dates, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Shirley Gaudin, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

SUBSTANCE OF PROPOSED RULES OF THE TENNESSEE DEPARTMENT OF HUMAN SERVICES COMMUNITY AND FIELD SERVICES DIVISION

CHAPTER 1240-4-6

LICENSURE RULES FOR CHILD CARE CENTERS SERVING SCHOOL-AGE CHILDREN

AMENDMENTS

Rule 1240-4-6-.02, Definitions, is amended by adding the following language as new paragraph (24) and by re-numbering the existing paragraph (24) as paragraph (25) so that, as amended, the new paragraph (24) shall read as follows:

- (24) Substitute. Paid or unpaid persons who are replacement for regular staff. Substitutes shall meet the same requirements as regular staff for physical examinations as required by 1240-4-6-.10(3)(a). Their utilization shall be recorded in the staff personnel records of the center comply with the orientation requirements of 1240-4-6-.07(3)(c) and (d). Substitutes acting as caregivers shall meet the training requirements of 1240-4-6-.07(3)(f)5 if they have

acted as caregivers for two hundred (200) or more hours in the previous calendar year. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-4-6-.07(1)(f).

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Rule 1240-4-6-.02, Definitions, is amended by adding the following language as new paragraph (26) and by re-numbering the existing paragraph (25) as paragraph (27) so that, as amended, the new paragraph (26) shall read as follows:

- (26) Volunteer. A person who provides services for a child care center without payment and who is used to supplement regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. Utilization of volunteers shall be recorded in the staff personnel records of the center.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Paragraph (3) of Rule 1240-4-6-.06, Organization and Administration, is amended by deleting paragraph (3) in its entirety and by substituting instead the following language so that, as amended, the paragraph shall read as follows:

- (3) Finances.
- (a) Adequate financing of the agency's operation shall be maintained. An annual operating budget (either projected or actual), including a statement of income and expenditures, shall be available to the licensing counselor upon request.
- (b) Liability and Accident Insurance.
- (i) General liability and accident insurance coverage shall be maintained on the operations of the vehicles and facilities owned, operated or leased by the child care agency.
- (ii) Vehicle liability coverage shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000). General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000).
- (iii) Accident insurance for medical payments shall be maintained in a minimum amount of Twenty-Five Thousand Dollars (\$25,000) and accidental death and dismemberment insurance shall be maintained in a minimum amount of Ten Thousand Dollars (\$10,000).
- (iv) The requirements of this subparagraph 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).
- (v) Documentation that the necessary insurance is in effect, or that the governmental entity is self-insured, shall be maintained in the records of the child care agency and shall be available to the Department's licensing staff.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subpart (ii) of part 1 of subparagraph (a) of paragraph (8) of Rule 1240-4-6-.06, Organization and Administration, is amended by deleting subpart (ii) in its entirety and by substituting instead the following language so that, as amended, subpart (ii) shall read as follows:

- (ii) Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the child care agency, shall carry vehicle liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-6-.06(3).

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Paragraph (8) of Rule 1240-4-6-.06, Organization and Administration, is amended by adding the following new subparagraph so that, as amended, the subparagraph shall read as follows:

- (j) Limits on Time Children Are Transported/Transportation Waivers.
 - 1. Children shall not spend more than sixty (60) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
 - 2. If extended transportation beyond the limits in part 1 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 director and approved by the Department's licensing counselor after alternatives have been explored with the child care agency and documented by licensing staff.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (f) of Paragraph (1) of Rule 1240-4-6-.07, Staff, is amended by deleting the subparagraph in its entirety and by substituting the following new subparagraph (f) so that, as amended, subparagraph (f) shall read as follows:

- (f) Criminal history and abuse registry background checks; appeals; exemptions.
 - 1. Each person:
 - (i) Applying to work with children as a paid employee, a director, or manager of a child care agency;
 - (ii) Applying to work as a new substitute who works more than thirty-six (36) hours per calendar year. For purposes of this subparagraph a "substitute" shall mean paid or unpaid staff who are replacements of regular staff; provided, however, persons serving 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;
 - (iii) Who seeks to operate (an "operator") a child care agency as defined TCA § 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an "operator" shall be an individual who is an owner or administrator of a child care agency or a child care system; or
 - (iv) Fifteen (15) years of age or older who resides in a child care agency shall:
 - (I) Complete a criminal history disclosure form as approved by the Department;
 - (II) Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation, and shall submit to a fingerprint based criminal history check to be conducted by the Tennessee Bureau of Investigation;

- (III) Submit to a review of their status on the Department of Health's vulnerable persons registry under title 68, chapter 11, part 10 of the Tennessee Code Annotated.
 - (IV) Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.
2. The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.
 3. The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation.
 4. Pending outcome of the fingerprint background check and the Department of Health's vulnerable person's registry the applicant for employment, for a license or for operator or for a substitute services position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of part 7 shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be an operator who has significant contact with the children in the agency's care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.
 5. A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health's vulnerable persons registry shall be maintained in the child care agency's records for review by the Department of Human Services.
 6. The child care agency shall immediately review the report 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 part 7, the child care agency shall immediately exclude from access such person. Failure to do so will result in immediate suspension of the child care agency's license.
 7. Exclusions from access to children based upon criminal history or other status.
 - (i) No person shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, or director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency; nor shall a person who is a resident in a child care agency have access to children in a child care agency, who has
 - (I) any pending warrant, indictment or presentment;
 - (II) been convicted, pled guilty to or pled no contest to any crime or charge, or

- (III) any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:
 - I. Any crime, including a lesser included offense derived from any crime, involving a child; or
 - II. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or
 - III. Any crime involving or lesser included offenses derived from any crime involving the manufacture, sale, distribution or possession of any drug; or
 - IV. A violation of TCA §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.
 - (ii) No person whose name is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to children in a child care agency.
 - (iii) No person shall be employed, work as a caregiver or have access to or contact with children in the child care program who is:
 - (I) Known to the management of a child care agency as a perpetrator of child abuse or child sexual abuse; or
 - (II) Identified to the child care agency's management by the Department of Human Services or the Department of Children's Services as a validated or indicated perpetrator of abuse of a child; and
 - I. who is associated in providing care or ancillary services in any manner within a child care program; or
 - II. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or
 - III. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.
 - (iv) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services pursuant to a report of harm, 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.
8. Appeals of exclusions.

- (i) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.
 - (ii) If timely appealed, the department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the department pursuant to Part 9.
 - (iii) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.
9. Exemptions from exclusions.
- (i) The Department will consider the granting of exemptions from the prohibitions under subparts (i) and (ii) under part 7. The exemptions may be granted for persons who have disclosed their criminal history or juvenile status on the disclosure form required by this paragraph or whose background check reveals a criminal history that excludes such person from access to children in the child care agency.
 - (ii) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request
 - (iii) Advisory group to review exemption requests.
 - (I) The Department will establish an advisory group composed of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.
 - (II) The advisory group may review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.
 - (III) Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.
 - (iv) Appeal of exemption decision.

- (I) The Department shall notify the person making the request in writing of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.
- (II) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolle or has resulted in an acquittal.

10. Alternate and Supplementary Criminal Background Checks.

- (i) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this subparagraph or any other provisions of law to undergo a criminal history background check and may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.
- (ii) The Department may require such individuals to complete a disclosure form as required by part 1 and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.
- (iii) Status Pending Background Check.
 - (I) Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.
 - (II) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subparagraph, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.
- (iv) As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA §§ 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in part 1, a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may

require such person to agree to release all records involving the person relating criminal history of such person.

- (v) The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to subparts (i) and (ii).
 - (vi) All provisions of part 7 including, but not limited to, the exclusion of individuals from providing care, being licensed for the care of children or having access to children upon determination of the criminal background of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds as determined by the processes established this part.
 - (vii) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in part 8.
 - (viii) Nothing in this subparagraph shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this subparagraph for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.
11. Nothing in this subparagraph shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of part 10 are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

Authority: T.C.A. §§4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (e) of paragraph (3) of Rule 1240-4-6-.07, Staff, is amended by deleting subparagraph (e) in its entirety and by substituting instead the following new subparagraph so that, as amended, the subparagraph shall read as follows:

- (e) Director of Child Care Center.
 1. The director shall have graduated from an accredited four-year college and have completed one year of full-time documented work experience with young children in a group setting; or
 2. The director shall have sixty (60) semester hours (two (2) years) of college training. At least thirty (30) hours shall be in business or management, child or youth development, early childhood education or related field. In addition, the director (in this category) shall have two (2) years of full-time documented work experience with young children in a group setting; or
 3. The director shall have earned a high school diploma or its equivalent and four (4) years of full-time documented work experience with young children in a group setting.

4. Effective January 1, 2001, the director shall complete four (4) hours of pre-employment training, which is offered or approved by the Department, that includes, but is not limited to, training in interviewing and evaluating caregivers for service in an agency and in working effectively with parents. If the Department determines that the director has received specific training meeting the requirements of this part within three (3) years prior to employment, the requirement of this part may be waived by the Department.
5. Effective January 1, 2001, no child care agency licensed under these rules shall receive a license unless the child care agency director shall have, at a minimum:
 - (i) received a Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of orientation training; or
 - (ii) received comparable training approved by the Department, and has four (4) years of full-time work experience with young children in a group setting; or
 - (iii) meets the requirements of parts 1 or 2; or
 - (iv) is employed as an on-site child care director or a child care agency owner as of July 1, 2000.
6. Prior to issuance of its first annual license, owners and directors shall complete a child care orientation course sponsored by the Department of Human Services. New directors shall complete orientation within three (3) months of assuming their position.
7. Effective January 1, 2001, during the first year of employment, a new director shall have evidence of receiving at least thirty-six (36) hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. At least six (6) hours shall be in administration, management or supervisory training. This rule applies to new hire situations where the person has not been employed in child care during the last three (3) years. Persons with a B.A. or Associates degree in child development or early childhood education are exempted from this rule.
8. After the first year of employment, the director shall have evidence of receiving at least eighteen (18) clock hours annually of in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. At least six (6) hours shall be in administration, management or supervisory training. After the first year, no more than two (2) hours for required training, such as CPR or Child and Adult Care Food Program (CACFP) shall be included. Up to four (4) hours credit may be earned by conducting training.

Authority: *T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).*

Subparagraph (f) of paragraph (3) of Rule 1240-4-6-.07, Staff, is amended by deleting subparagraph (f) in its entirety and by substituting instead the following new subparagraph so that, as amended, the new subparagraph shall read as follows:

- (f) Caregivers.
 1. Each caregiver (with the exception of #3 below) shall be at least eighteen (18) years of age. At least one (1) caregiver who is present in each group shall be able to read and write English.
 2. Each group shall have at least one caregiver present who has a high school diploma or its equivalent, a Department-recognized credential, or a diploma from a state area vocational school.

3. When sixteen (16) and seventeen (17) year old vocational child care students are counted in the adult:child ratio, they shall be supervised by an adult.
4. New Caregiver Training.
 - (i) During the first year, new caregivers shall have evidence of receiving at least eighteen (18) clock hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. This rule applies to new hire situations where the person has not been employed in child care during the last three (3) years. Persons with a Bachelor of Arts or Associates degree in child development or early childhood education are exempted from this rule.
 - (ii) New caregivers shall complete two (2) clock hours of pre-service orientation training offered by the Department and shall complete an additional six (6) hours of the required training within the first six (6) months of employment. For purposes of this rule, "pre-service" orientation shall mean that such orientation occurs within the first thirty (30) days of employment with the agency. Pending completion of the orientation training, the caregiver's status is conditional. Failure of the caregiver to complete the required two (2) hours of pre-service orientation and/or failure to complete the required six (6) hours of training within the first six (6) months shall require that the employee be removed from any caregiver duties for children until completion of the training.
 - (iii) The remaining ten (10) hours of the required training for new caregivers must be completed before the end of the first year of employment.
 - (iv) The requirements of this part shall be effective January 1, 2001.
5. After the first year of employment, caregivers shall have evidence of receiving at least twelve (12) clock hours annually in workshops or in-service training in child development, early childhood education, health/safety or other related field. After the first year, no more than two (2) hours for required training such as CPR or Child and Adult Care Food Program (CACFP), shall be included. Six (6) hours shall be obtained out of the child care agency. Up to four (4) hours credit may be earned by conducting training.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (f) of paragraph (4) of Rule 1240-4-6-.07, Staff, is amended by deleting the subparagraph in its entirety and by substituting instead the following, so that, as amended the subparagraph shall read as follows:

- (f) Adult:Child Ratios and Group Sizes.
 1. Please refer to Chapter 1240-4-3-.03, subparagraph (f) of paragraph (4) for charts containing the adult:child ratios and group size requirements for child care centers serving school-age children effective until July 1, 2002.
 2. Effective July 1, 2002, the following charts and the group sizes and adult:child ratios contained in those charts shall become effective.
 - (i) Single-Age Grouping and Adult:Child Ratio Chart (Effective July 1, 2002).

	Maximum Group Size and Adult: Child Ratio						
Single-Age Grouping	8	12	14	18	20	No Max	
Infants: 6 wks. - 12 mos.	1:4						
Toddlers (13 mos. - 23 mos.)		1:6					
2 years (24 mos. - 35 mos.)			1:7				
3 years				1:9			
4 years					1:13		
5 years					1:16		
School-Age (K and above)						1:20	

- (ii) Multi-Age Grouping and Adult:Child Ratio Charts (Effective July 1, 2002).

	Maximum Group Size and Adult: Child Ratio						
Multi-Age Grouping	10	16	18	20	22	24	No Max
Infants/Toddlers: 6 wks. - 23 mos.	1:5						
2-4 years		1:8					
2 1/2 - 3 years (30 - 47 mos.)			1:9				
2 1/2 - 5 years				1:11			
2 1/2 - 12 years	1:10						
3 - 5 years (includes 3 - 4 years)					1:13		
4 - 5 years						1:16	
School-Age (K - 12 years)							1:20

- (iii) Any number of children in excess of the listed adult:child ratios in subparts (i) or (ii) requires a second adult.
- (iv) Section 504 and ADA guidelines shall be consulted for care of children with disabilities relative to the number of caregivers which a reasonable accommodation of the child's disability may require.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

**DEPARTMENT OF HUMAN SERVICES - 1240
COMMUNITY AND FIELD SERVICES DIVISION**

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of new rules pursuant to *T.C.A. §§71-3-501 et seq.* and Senate Bill 3107/House Bill 3035 (2000). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, Section 4-5-204* and will take place in Conference Room A, 7th Floor, State Office Building, 531 Henley Street, Knoxville, Tennessee 37902 at 6:30PM Eastern Time on Tuesday, August 22, 2000; and in the 2nd Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30PM Central Time on Thursday, August 24, 2000; and in the 2nd Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Tuesday, August 29, 2000.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting dates, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Shirley Gaudin, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

**SUBSTANCE OF PROPOSED RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

CHAPTER 1240-4-3

LICENSURE RULES FOR CHILD CARE CENTERS SERVING PRE-SCHOOL CHILDREN

AMENDMENTS

Rule 1240-4-3-.02, Definitions, is amended by adding the following language as new paragraph (25) and by re-numbering the existing paragraph (25) as paragraph (26) so that, as amended, new paragraph (25) shall read as follows:

- (25) Substitute- Paid or unpaid persons who are replacement for regular staff. Substitutes shall meet the same requirements as regular staff for physical examinations as required by 1240-4-3-.10(3)(a). Their utilization shall be recorded in the staff personnel records of the center comply with the orientation requirements of 1240-4-3-.07(3)(c) and (d). Substitutes acting as caregivers shall meet the training requirements of 1240-4-3-.07(3)(f)5 if they have acted as caregivers for two hundred (200) or more hours in the previous calendar year. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-4-3-.07(1)(f).

Authority: *T.C.A. §§4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).*

Rule 1240-4-3-.02, Definitions, is amended by adding the following language as new paragraph (27) and by re-numbering existing paragraph (26) as paragraph (28) so that, as amended, new paragraph (27) shall read as follows:

- (27) Volunteer- A person who provides services for a child care center without payment and who is used to supplement

regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. Utilization of volunteers shall be recorded in the staff personnel records of the center.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (f) of paragraph (4) of Rule 1240-4-3-.03, Basis for Approval for Licensing, is amended by deleting the language preceding the charts in subparagraph (f) and by substituting the following language, so that, as amended, the language in subparagraph (f) preceding the charts shall read, as follows:

(f) Adult:Child Ratios.

1. The following adult/child ratios and group sizes are required. (Adult/child ratios and group sizes may exceed requirements up to 10%, rounded to the nearest whole number, for no more frequently than three days per week.) Exception: Infant and toddler groups must never exceed the group size and ratio required.
2. Notwithstanding the provisions of part 1, the following charts shall remain applicable to the adult:child ratios for Licensure Rules for Child Care Centers Serving School-Age Children as referenced in Rule 1240-4-6-.07(4)(f) until further modified by the Department, but the adult:child ratios and group sizes applicable to Child Care Centers Serving Pre-School Children are now contained at Rule 1240-4-3-.07(4)(e), and are effective as stated in parts 1-6 of Rule 1240-4-3-.07(4)(e).

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Paragraph (3) of Rule 1240-4-3-.06, Organization and Administration, is amended by deleting paragraph (3) in its entirety and by substituting instead the following language so that, as amended, the paragraph shall read as follows:

(3) Finances.

- (a) Adequate financing of the agency's operation shall be maintained. An annual operating budget (either projected or actual), including a statement of income and expenditures, shall be available to the licensing counselor upon request.
- (b) Liability and Accident Insurance.
 1. General liability and accident insurance coverage shall be maintained on the operations of the vehicles and facilities owned, operated or leased by the child care agency.
 2. Vehicle liability coverage shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000). General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000).
 3. Accident insurance for medical payments shall be maintained in a minimum amount of Twenty-Five Thousand Dollars (\$25,000) and accidental death and dismemberment insurance shall be maintained in a minimum amount of Ten Thousand Dollars (\$10,000).
 4. The requirements of this subparagraph 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).

5. Documentation that the necessary insurance is in effect, or that the governmental entity is self-insured, shall be maintained in the records of the child care agency and shall be available to the Department's licensing staff.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subpart (ii) of Part 1 of subparagraph (a) of paragraph (8) of Rule 1240-4-3-.06, Organization and Administration, is amended by deleting subpart (ii) in its entirety and by substituting instead the following language so that, as amended, subpart (ii) shall read as follows:

- (ii) Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the child care agency, shall carry vehicle liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-3-.06(3).

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (i) of paragraph (8) of Rule 1240-4-3-.06, Organization and Administration, is amended by deleting the subparagraph in its entirety and by substituting instead the following language so that, as amended, the subparagraph shall read as follows:

- (i) Limits on Time Children Are Transported/Transportation Waivers.
 1. Children shall not spend more than sixty (60) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
 2. If extended transportation beyond the limits in part 1 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 director and approved by the Department's licensing counselor after alternatives have been explored with the child care agency and documented by licensing staff.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (f) of Paragraph (1) of Rule 1240-4-3-.07, Staff, is amended by deleting the subparagraph in its entirety and by substituting the following new subparagraph (f) so that, as amended, subparagraph (f) shall read as follows:

- (f) Criminal history and abuse registry background checks; appeals; exemptions.
 1. Each person:
 - (i) Applying to work with children as a paid employee, a director, or manager of a child care agency;
 - (ii) Applying to work as a new substitute who works more than thirty-six (36) hours per calendar year. For purposes of this subparagraph a "substitute" shall mean paid or unpaid staff who are replacements of regular staff; provided, however, persons serving 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;

- (iii) Who seeks to operate (an “operator”) a child care agency as defined TCA § 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an “operator” shall be an individual who is an owner or administrator of a child care agency or a child care system; or
 - (iv) Fifteen (15) years of age or older who resides in a child care agency shall:
 - (I) Complete a criminal history disclosure form as approved by the Department;
 - (II) Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation, and shall submit to a fingerprint based criminal history check to be conducted by the Tennessee Bureau of Investigation;
 - (III) Submit to a review of their status on the Department of Health’s vulnerable persons registry under title 68, chapter 11, part 10 of the Tennessee Code Annotated.
 - (IV) Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.
2. The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.
 3. The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation.
 4. Pending outcome of the fingerprint background check and the Department of Health’s vulnerable person’s registry the applicant for employment, for a license or for operator or for a substitute services position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of part 7 shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be an operator who has significant contact with the children in the agency’s care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.
 5. A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health’s vulnerable persons registry shall be maintained in the child care agency’s records for review by the Department of Human Services.
 6. The child care agency shall immediately review the report 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 part 7, the child care agency shall immediately exclude from access such person. Failure to do so will result in immediate suspension of the child care agency’s license.

7. Exclusions from access to children based upon criminal history or other status.
- (i) No person shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, or director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency; nor shall a person who is a resident in a child care agency have access to children in a child care agency, who has
 - (I) any pending warrant, indictment or presentment;
 - (II) been convicted, pled guilty to or pled no contest to any crime or charge, or
 - (III) any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:
 - I. Any crime, including a lesser included offense derived from any crime, involving a child; or
 - II. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or
 - III. Any crime involving or lesser included offenses derived from any crime involving the manufacture, sale, distribution or possession of any drug; or
 - IV. A violation of *T.C.A. §§39-13-213; 55-10-101; 55-10-102 or 55-10-401* or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.
 - (ii) No person whose name is listed on the abuse registry maintained by the Department of Health pursuant to *Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated* shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to children in a child care agency.
 - (iii) No person shall be employed, work as a caregiver or have access to or contact with children in the child care program who is:
 - (I) Known to the management of a child care agency as a perpetrator of child abuse or child sexual abuse; or
 - (II) Identified to the child care agency's management by the Department of Human Services or the Department of Children's Services as a validated or indicated perpetrator of abuse of a child; and
 - I. who is associated in providing care or ancillary services in any manner within a child care program; or
 - II. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or

- (III) Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.
 - (iv) Appeal of exemption decision.
 - (I) The Department shall notify the person making the request in writing of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of *T.C.A. §§ 4-5-301 et seq.*
 - (II) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolle or has resulted in an acquittal.
10. Alternate and Supplementary Criminal Background Checks.
- (i) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this subparagraph or any other provisions of law to undergo a criminal history background check and may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.
 - (ii) The Department may require such individuals to complete a disclosure form as required by part 1 and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.
 - (iii) Status Pending Background Check.
 - (I) Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.
 - (II) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subparagraph, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.

- (iv) As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA §§ 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in part 1, a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating criminal history of such person.
 - (v) The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to subparts (i) and (ii).
 - (vi) All provisions of part 7 including, but not limited to, the exclusion of individuals from providing care, being licensed for the care of children or having access to children upon determination of the criminal background of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds as determined by the processes established this part.
 - (vii) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in part 8.
 - (viii) Nothing in this subparagraph shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this subparagraph for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.
11. Nothing in this subparagraph shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of part 10 are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (e) of paragraph (3) of Rule 1240-4-3-.07, Staff is amended by deleting subparagraph (e) in its entirety and by substituting instead the following new subparagraph so that, as amended, the new subparagraph shall read as follows:

- (e) Director of Child Care Center.

1. The director shall have graduated from an accredited four-year college and have completed one year of full-time documented work experience with young children in a group setting; or
2. The director shall have sixty (60) semester hours (two (2) years) of college training. At least thirty (30) hours shall be in business or management, child or youth development, early childhood education or related field. In addition, the director (in this category) shall have two (2) years of full-time documented work experience with young children in a group setting; or
3. The director shall have earned a high school diploma or its equivalent and four (4) years of full-time documented work experience with young children in a group setting.
4. Effective January 1, 2001, the director shall complete four (4) hours of pre-employment training, which is offered or approved by the Department, that includes, but is not limited to, training in interviewing and evaluating caregivers for service in an agency and in working effectively with parents. If the Department determines that the director has received specific training meeting the requirements of this part within three (3) years prior to employment, the requirement of this part may be waived by the Department.
5. Effective January 1, 2001, no child care agency licensed under these rules shall receive a license unless the child care agency director shall have, at a minimum:
 - (i) received a Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of orientation training; or
 - (ii) received comparable training approved by the Department, and has four (4) years of full-time work experience with young children in a group setting; or
 - (iii) meets the requirements of parts 1 or 2; or
 - (iv) is employed as an on-site child care director or a child care agency owner as of July 1, 2000.
6. Prior to issuance of its first annual license, owners and directors shall complete a child care orientation course sponsored by the Department of Human Services. New directors shall complete orientation within three (3) months of assuming their position.
7. Effective January 1, 2001, during the first year of employment, a new director shall have evidence of receiving at least thirty-six (36) hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. At least six (6) hours shall be in administration, management or supervisory training. This rule applies to new hire situations where the person has not been employed in child care during the last three (3) years. Persons with a B.A. or Associates degree in child development or early childhood education are exempted from this rule.
8. After the first year of employment, the director shall have evidence of receiving at least eighteen (18) clock hours annually of in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. At least six (6) hours shall be in administration, management or supervisory training. After the first year, no more than two (2) hours for required training, such as CPR or Child and Adult Care Food Program (CACFP) shall be included. Up to four (4) hours credit may be earned by conducting training.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (f) of paragraph (3) of Rule 1240-4-3-.07, Staff, is amended by deleting subparagraph (f) in its entirety and by adding the following new subparagraph so that, as amended, the new subparagraph shall read as follows:

- (f) Caregivers.
1. Each caregiver (with the exception of #3 below) shall be at least eighteen (18) years of age. At least one (1) caregiver who is present in each group shall be able to read and write English.
 2. Each group shall have at least one caregiver present who has a high school diploma or its equivalent, a Department-recognized credential, or a diploma from a state area vocational school.
 3. When sixteen (16) and seventeen (17) year old vocational child care students are counted in the adult:child ratio, they shall be supervised by an adult.
 4. New Caregiver Training.
 - (i) During the first year, new caregivers shall have evidence of receiving at least eighteen (18) clock hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field. This rule applies to new hire situations where the person has not been employed in child care during the last three (3) years. Persons with a Bachelor of Arts or Associates degree in child development or early childhood education are exempted from this rule.
 - (ii) New caregivers shall complete two (2) clock hours of pre-service orientation training offered by the Department and shall complete an additional six (6) hours of the required training within the first six (6) months of employment. For purposes of this rule, "pre-service" orientation shall mean that such orientation occurs within the first thirty (30) days of employment with the agency. Pending completion of the orientation training, the caregiver's status is conditional. Failure of the caregiver to complete the required two (2) hours of pre-service orientation and/or failure to complete the required six (6) hours of training within the first six (6) months shall require that the employee be removed from any caregiver duties for children until completion of the training.
 - (iii) The remaining ten (10) hours of the required training for new caregivers must be completed before the end of the first year of employment
 - (iv) The requirements of this part shall be effective January 1, 2001.
 5. After the first year of employment, caregivers shall have evidence of receiving at least twelve (12) clock hours annually in workshops or in-service training in child development, early childhood education, health/safety or other related field. After the first year, no more than two (2) hours for required training such as CPR or Child and Adult Care Food Program (CACFP), shall be included. Six (6) hours shall be obtained out of the child care agency. Up to four (4) hours credit may be earned by conducting training.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (e) of paragraph (4) of Rule 1240-4-3-.07, Staff, is amended by adding the following as a new subparagraph (e), so that, as amended, the subparagraph shall read as follows:

- (e) Beginning July 1, 2001, the group size and adult:child ratios in the charts contained in part 1 and part 2 shall become effective for the ages and group sizes stated therein. Except as modified by either the changes made by part 1 and part 2 on July 1, 2001 or by further rule of the Department, the group sizes and adult:child ratios in the charts contained in part 3 and part 4 remain in effect. Effective July 1, 2002, the group sizes and adult child ratios in part 5 and 6 shall become effective and shall supersede the provisions of parts 1-4 regarding group sizes and adult:child ratios. The groups shall comply with the definition in Section .02. The following adult:child ratios and group sizes as listed in the Single-Age Grouping Chart and the Multi-Age Grouping Chart are required both indoors and outside on the play-ground:

7. Any number of children in excess of the listed adult:child ratios in parts 1-6 requires a second adult.
8. Section 504 and ADA guidelines shall be consulted for care of children with disabilities relative to the number of caregivers which a reasonable accommodation of the child's disability may require.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

Subparagraph (m) of paragraph (4) of Rule 1240-4-3-.07, Staff, is amended by deleting part 1 in its entirety and by substituting instead the following language so that, as amended, part 1 shall read as follows:

1. When children are swimming, the number of adults must be double the requirement on the chart in subparagraph (e), and one adult must have a current certificate in Advanced Lifesaving Skills. On field trips off premises, the number of adults must be double the requirement on the chart.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-32)

**TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
ADMINISTRATIVE PROCEDURES DIVISION**

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of new rules pursuant to TCA §§ 71-3-501 et seq. and Senate Bill 3107/House Bill 3035 (2000). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A, 7th Floor, State Office Building, 531 Henley Street, Knoxville, Tennessee 37902 at 6:30PM Eastern Time on Tuesday, August 22, 2000; and in the 2nd Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30PM Central Time on Thursday, August 24, 2000; and in the 2nd Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Tuesday, August 29, 2000.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting dates, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Shirley Gaudin, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

SUBSTANCE OF PROPOSED RULES

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES ADMINISTRATIVE PROCEDURES DIVISION

CHAPTER 1240-5-13

CHILD CARE AGENCY BOARD OF REVIEW

NEW RULES

TABLE OF CONTENTS

1240-5-13-.01 Purpose and Scope	1240-5-13-.05 Hearing Procedures
1240-5-13-.02 Definitions	1240-5-13-.06 Probation and Restricted Licenses
1240-5-13-.03 Composition and Duties of Board Periods	1240-5-13-.07 Waiver of Reapplication Waiting
1240-5-13-.04 Recording Secretary	

1240-5-13-.01 PURPOSE AND SCOPE.

- (1) These rules shall apply to:
 - (a) The procedures for the determination by the Child Care Agency Board of Review of the status of licenses for the operation of child care agencies issued by either the Department of Children's Services pursuant to TCA § 37-5-501 et seq. or for the operation of a child care agency by the Department of Human Services pursuant to TCA § 71-3-501 et seq., and for determining the status of any civil penalties imposed by Department of Human Services .
 - (b) Any conflict between these rules and the rules governing the individual class of child care agency licensed by the Department of Children's Services or by the Department of Human Services shall be governed by the these rules. Any conflict between these rules and the licensing law are governed by the licensing law.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

1240-5-13-.02 DEFINITIONS.

- (1) Applicant-The person or entity seeking an initial annual license or the issuance or renewal of any annual or ex-

tended license from the Department of Children's Services or the Department of Human Services.

- (2) Application- The form for, and the process of, applying for a license from the Departments of Children's Services or Human Services.
- (3) Child Care Agency Board of Review-The entity established by TCA §§ 71-3-510 and 37-5-515 to hear the appeals of the denial, revocation, or limitation of child care agency licenses, other than summary suspensions, issued by the Departments of Children's Services and Human Services, and for the adjudication of civil penalties imposed by the Department of Human Services against a child care agency under its jurisdiction.
- (4) Child care agency or agency -The person or entity providing child care as defined by the licensing law in TCA §§ 37-5-501 et seq. and 71-3-501 et seq. and the rules, respectively, of the Departments of Children's Services and Human Services.
- (5) Civil penalty- A financial sanction imposed by the Department against a child care agency that has violated a licensing regulation.
- (5) Commissioner-The executive head of the Department of Children's Services or Human Services, as the context requires.
- (6) Denial-The decision of the Department not to issue a license.
- (7) Department-As the context requires, the term "Department", without further description, refers to either the Department of Children's Services or the Department of Human Services and, in such case, is dependent upon which class of child care agency is under consideration by the Department with licensing authority over the child care agency or which class of child care agency governed by the applicable Department is under consideration by the Child Care Agency Board of Review.
- (8) Hearing Official- 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.
- (9) Law-The statutory or regulatory provisions affecting the operation of a child care agency.
- (10) License- A permit issued by the Department of Children's Service or the Department of Human Services 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 Departments of Children's Services or Human Services.
- (11) Probation-The process used by the Child Care Agency Board of Review or a panel of the Board as part of the hearing of the appeal by a child care agency to permit a child care agency to continue operation under conditions set by the Board or panel which may allow the Board to determine if the agency can provide adequate care for children under its supervision consistent with the licensing law and regulations governing that class of child care agency.
- (12) Licensee-The person, agency, group, or entity to whom or to which a license to operate a child care agency is issued by the Departments of Children's Services or Human Services.
- (13) Reapplication-Application for a new license following denial or revocation of a license.
- (14) 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 Departments of Children's Services or Human Services 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 issued 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 by either Department.

(15) Revocation-The permanent removal of an existing license.

(16) Temporary license:

- (a) A permit issued by the Department of Children's Services or the Department of Human Services to a new child care agency allowing and authorizing the temporary licensee, unless otherwise prohibited by law, 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 ninety (90) days for a Department of Children's Services temporary license, or one hundred twenty (120) days for a Department of Human Services temporary license 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 ninety (90) or 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.
- (d) The denial of a temporary license may be appealed to the Board of Review as provided in this chapter.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

1240-5-13-.03 COMPOSITION AND DUTIES OF THE BOARD.

- (1) The Board membership shall be composed of the Commissioners of Health and Education or their designees, the Executive Director of the Commission on Children and Youth or designee, and a member from one (1) current or previous standards committee from the Departments of Children's Services and Human Services. Four (4) persons shall be selected from a pool of up to twelve (12) representatives at-large to be selected by the five (5) members designated above as follows:
 - (a) Four (4) shall be selected to serve for one (1) year;
 - (b) Four (4) shall be selected to serve for two (2) years; and
 - (c) Four (4) shall be selected to serve for three (3) years.
 - (d) Thereafter, each at-large representative shall be selected to serve for terms of three (3) years or until their successors are selected.
- (2) In reviewing licensing actions under this Chapter, the Board of Review shall consist of nine (9) persons selected from the Board's membership.

- (3) A quorum of the Board shall consist of five (5) persons.
- (4) In establishing a quorum for the board to conduct its review of the licensing actions of the departments, the chair shall randomly select the names of the at-large members of the board for the board's current licensing review action from the pool of twelve (12) persons selected pursuant to paragraph (1) until the nine (9) member composition is reached, or, if that is not possible, until a quorum is reached.
- (5) Until a Chair is selected by the Board, the Commissioner of Education or the Commissioner's designee shall serve as the Chair of the Board. The Board shall elect a Vice-Chair who shall serve in the absence of the Chair. If the Chair resigns, is unable to perform the duties of the Chairperson is removed or the Chair's term on the Board expires, the Commissioner of Education shall appoint a new Chair until the Board can elect a Chair. The Vice-Chair shall have authority to sign all orders of the Board in the absence or inability to act by the Chair, and can sign orders for actions of the panels pursuant to paragraph (6).
- (6) In order to complete the work of the Board, the Chair may appoint one or more panels of the Board with a quorum of five (5) members, at least two (2) of whom shall be randomly selected at-large members selected by the Chair. The Chair of the Board shall appoint the Chair of the panel. The panel shall have complete authority to hear any case under the Board's jurisdiction and shall have complete authority to enter any necessary orders concerning licensing actions conducted before the Board. Any orders of the panel shall be signed by the Chair of the panel, or in the absence or inability to act by the panel chair, by the Board Chair or Vice-Chair.
- (7) Consistent with the licensing laws and regulations governing the child care agency, it is the duty of the Board to consider impartially the status of the licenses of all child care agencies whose cases are presented to the Board.
- (8) In rendering its decisions, the Board, consistent with the provisions of paragraph (7), shall be guided at all times by the best interests of the children in the care of the child care agency.
- (9) The Board may receive legal advice on its operations and procedures from the Office of General Counsel of the Departments of Children's Services or Human Services, consistent with the provisions of TCA § 4-5-301 et seq.
- (10) The Board shall meet quarterly, and more often as necessitated by the Board's duties. It shall receive periodic training in its duties and procedures for the conduct of Board hearings from the program and legal staff of the Department of Human Services, in consultation and with the assistance of similar staff from the Department of Children's Services.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

1240-5-13-.04 RECORDING SECRETARY.

- (1) The Board shall have a Recording Secretary who shall be a member of the professional staff of the Department of Human Services based upon an inter-agency agreement between the Departments of Children's Services and Human Services. In the Recording Secretary's absence or inability to act, a member of the Department of Human Services' professional staff may carry out the Recording Secretary' duties.
- (2) The Recording Secretary shall be responsible for maintaining the records of the Board, setting hearings with the Administrative Procedures Division of the Secretary of State's Offices, filing any necessary documents with the Administrative Procedures Division of the Secretary of State's Offices involving the initiation of licensing actions before the Board by the Departments, arranging for the attendance of Board members at the hearings, arranging the facilities to conduct the hearings before the Board, arranging hearing dates with parties and notification of parties

of the times, dates and places of hearings or any continuances or re-scheduling of hearings, and such other duties as may be necessary to accommodate the business of the Board.

- (3) Notices of licensing actions under the Board's jurisdiction shall be filed by the appropriate Department with the Recording Secretary at the time the notice is sent to the licensee. The Recording Secretary shall keep a log of such actions and shall maintain the records of such actions. The Recording Secretary may dispose of any records of licensing actions that are not appealed unless the right to appeal is contested in which case the record shall be maintained until resolution of the appeal.
- (3) Timely appeals received by the Commissioner's office shall be sent within two (2) business days to the Recording Secretary. The Recording Secretary shall keep a log of all such appeals and the date received in the Recording Secretary's office.
- (4) Upon receipt of the timely filed appeal, the Recording Secretary shall contact the Administrative Procedures Division of the Secretary of State's Office within one (1) business day to docket the appeal and to make any other arrangements for the hearing of the case. Within three (3) business days, the Recording Secretary shall file a copy of the appeal request, and a copy of the notice of licensing action by the Department which resulted in the appeal, with the Administrative Procedure's Division of the Secretary of State's Office.

Authority: *T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).*

1240-5-13-.05 HEARING PROCEDURES.

- (1) Hearing Dates, Continuances and Substitute Administrative Law Judge.
 - (a) Hearing Date and Continuances.
 1. The hearing upon a timely filed appeal regarding the denial, revocation, or other limitation of a child care agency license imposed by the Department, other than the summary suspension of the license or the placement of a child care agency on probation by the Department, shall be heard by the Board of Review within thirty (30) days of the date of service of the notice of denial, revocation or limitation, unless, for good cause, the hearing date is continued. Summary suspensions of licenses shall be heard as provided in the rules or procedures of the Department.
 2. A hearing regarding the imposition of a civil penalty imposed by the Department of Human Services shall be heard within ninety (90) days of the notice of penalty. The Department shall not attempt recovery of a civil penalty until the time for appeal or, if appealed, the appeal process before the Board, has been exhausted.
 3. For good cause as stated in an order entered on the record, the Board or the Administrative Law Judge may continue the hearing. Prior to the case being heard by the Board, the Administrative Law Judge may issue the continuance order. In order to protect the children in the care of the agency from any risk posed to their health, safety and welfare, the Board or Administrative Law Judge shall re-set the hearing at the earliest date that circumstances permit.
 - (b) Substitute Administrative Law Judges.
 1. Substitutes in Department of Human Services Cases.

- (i) If the Administrative Procedures Division of the Office of the Secretary of State certifies by letter to the Recording Secretary of the Board that the Division's contested case docket prevents the scheduling of a hearing on the appeal of the denial or revocation, or other limitation of a license other than a summary suspension of license or the review of a civil penalty imposed by the Department, before the Board within the initial timeframes set forth in this part, then the Department of Human Services shall have the authority to obtain an attorney who shall act as the Administrative Law Judge to conduct the proceedings before the Board. The substitute Administrative Law Judge may be obtained by contract with a private attorney or by contract or agreement with another state agency.
 - (ii) The substitute Administrative Law Judge shall have the same authority as an Administrative Law Judge of the Department of State. The hearing may be continued by order of the Board for the purpose of obtaining a substitute Administrative Law Judge. The continuance order in such case may be entered by the Board, the panel Chair, or the Vice-Chair of the Board.
2. Substitute Administrative Law Judges in Department of Children's Services Cases.
- (i) If the Administrative Procedures Division of the Office of the Secretary of State certifies by letter to the Recording Secretary of the Board that the Division's contested case docket prevents the scheduling of a hearing on the appeal of a denial or revocation or a license, or other limitation of a license other than a summary suspension of a license, before the Board within the initial timeframes set forth in this part, then the Department of Children's Services shall have authority to appoint a Hearing Officer from the Department to conduct the proceedings before the board.
 - (ii) The substitute hearing officer shall have the same authority as an Administrative Law Judge of the Department of State. The hearing may be continued by order of the Board for the purpose of obtaining a substitute Hearing Officer. The continuance order in such case may be entered by the Board or panel chair of the Vice-Chair of the Board.
 - (2) If timely appeal was made to the appropriate Department, then, pending the hearing upon the denial or revocation, the child care agency may continue to operate prior to the decision of the Board or panel unless the license is summarily suspended as provided by the rules of the appropriate Department.
- (3) A summary suspension order entered by the appropriate Department may be lifted or modified by that Department following its entry by that Department, before, or after, a case is docketed, without further approval of the Board or panel.
- (4) After a case is docketed and prior to a hearing before the Board, any settlement or dismissal of the case involving the denial, revocation or other limitation of a license other than a summary suspension, or, any settlement involving the imposition of a civil penalty by the Department of Human Services, shall be approved by an order of the Board Chair or panel Chair, or in the Chair's absence or inability to act by the Vice-Chair of the Board, or, in the absence or inability to act by the panel Chair, by the Board Chair or Vice-Chair.
- (5) Hearing procedures.
- (a) Hearings shall be conducted pursuant to the provisions of the Administrative Procedures Act in Title 4, Chapter 5, Part 3, of the Tennessee Code Annotated.
 - (b) Any party may be represented by counsel of the party's choice.
 - (c) Hearing testimony may be taken by telephone in a manner that allows all parties present to hear the testimony, if approved by the hearing official.

- (d) Decisions of the Board shall be based upon a majority vote of the Board or panel members present and shall be based upon a preponderance of the evidence. The decisions shall be based upon a consideration of the seriousness of the violations of the licensing regulations by the child care agency, the effect of the violations on the care of children by the child care agency, the relevant history of violations of licensing regulations by the agency, the corrective measures taken by the child care agency to remedy the violations, and the willingness and ability of the licensee to correct any violations or to maintain compliance with the Department's regulations.
- (e) Content of Board Orders, Entry, Filing and Record of Board Orders.
 - 1. An order of the Board or panel shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness of the Board's or panel's order. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings, and a reference, if appropriate, to the exhibits entered in the case.
 - 2. The final order, initial order or decision must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order. An initial order or decision shall include a statement of any circumstances under which the initial order or decision may, without further notice, become a final order.
 - 3. Any orders resulting from hearings before the Board or a panel of the Board shall be prepared by the party designated by the Board or panel and shall be signed by the Board or panel Chair, or Vice-Chair of the Board in the absence or inability of the Board Chair to act, or by the Board Chair or Vice-Chair in the absence or inability of the panel Chair to act. The orders shall be delivered to the Recording Secretary following signature and shall be filed by the Recording Secretary with the Administrative Procedures Division of the Office of the Secretary of State within five (5) business days following signature by the appropriate Chair. Copies of the signed orders shall be provided by the Recording Secretary to all parties.
 - 4. The Recording Secretary shall maintain copies of all orders in the records of the Board.

Authority: T.C.A. §§4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

1240-5-13-.06 BOARD PROBATION AND RESTRICTED LICENSES.

- (a) The Board or panel, as part of its decision regarding the status of the license, may direct that the child care agency be allowed to operate on a probationary or conditional status, and may grant or continue the license with any restrictions or conditions on the agency's authority to provide care.
- (b) Such restrictions or conditions on the agency's authority to provide care may include, but are not limited to, limitations on the agency's ability to provide transportation or food service, enrollment of the 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 that the Board or panel determines should be restricted or modified in order to protect the children in the care of the agency.
- (c) The specific limitations shall be set forth in the Board's or panel's order.
- (d) No probationary or conditional status may be continued for more than six (6) months without further review by the Board or panel.

- (e) If the Board or panel issues a restricted or conditional license containing limits or conditions for the agency's operations, the licensee may on motion made after thirty (30) days from entry of the Board or panel's order restricting or placing conditions on the license, seek removal of the restrictions. If satisfied that circumstances no longer warrant further restrictions or conditions on the license, the Board may remove any or all of the restrictions or conditions.
- (f) The Board or panel may, at anytime, modify or remove the restrictions on the license.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

1240-5-13-.07 WAIVER OF REAPPLICATION WAITING PERIODS.

- (a) Subject to the waiting periods required prior to reapplication set forth in TCA §§ 37-5-514(f) and 71-3-509(g), a licensee may request at the hearing on the denial or revocation of the agency's license a waiver from the Board or a panel from the waiting period for first and second denials or revocations of licenses. A former licensee may also request a separate subsequent hearing before the Board or a panel in a written request made to the Commissioner for such a hearing unless the Commissioner elects to conduct the review.
- (b) No waiver may be requested by the licensee or granted by the Board or a panel, or by the Commissioner, following a third denial or revocation of the agency's license.
- (c) 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.
- (d) The decision of the Board or panel, or the Commissioner, shall be reduced to an order, which shall be a final order pursuant to Title 4, Chapter 5, Part 3, and may be appealed pursuant to § TCA 4-5-322.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-30)

**TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
ADMINISTRATIVE AND FIELD SERVICES DIVISION
AND
COMMUNITY AND FIELD SERVICES DIVISION**

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of new rules pursuant to TCA §§ 71-3-501 et seq. and Senate Bill 3107/House Bill 3035 (2000). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A, 7th Floor, State Office Building, 531 Henley Street, Knoxville, Tennessee 37902 at 6:30PM Eastern Time on Tuesday, August 22, 2000; and in the 2nd Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30PM Central Time on Thursday, August 24, 2000; and in the 2nd Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Tuesday, August 29, 2000.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting date, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Shirley Gaudin, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

SUBSTANCE OF PROPOSED RULES

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES ADMINISTRATIVE PROCEDURES DIVISION

CHAPTER 1240-5-11 PROCEDURES AFFECTING LICENSES OF CHILD WELFARE AGENCIES

REPEALS

Chapter 1240-5-11, Procedures Affecting Licenses of Child Welfare Agencies is repealed and the Chapter is reserved for future use.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

CHAPTER 1240-4-5 PROCEDURES AFFECTING LICENSES OF CHILD CARE AGENCIES

NEW RULES

TABLE OF CONTENTS

1240-4-5-.01	Purpose and Scope	1240-4-5-.04	Violations of Licensing Regulations
1240-4-5-.02	Definitions	1240-4-5-.05	Restricted Licenses for Child Care Agencies
1240-4-5-.03	Licensing Process	1240-4-5-.06	Reapplication Periods

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.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(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 license from the Department of Children's Services or 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 -The entity established by TCA §§ 71-3-510 and 37-5-515 to hear the appeals of the denial, revocation, or the 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.
- (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 a license.
- (9) Department-The Tennessee Department of Human Services.
- (10) Extended license-A license issued following completion of at least one (1) year as a licensee for two (2) or three (3) years 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) 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) Law-The statutory or regulatory provisions affecting the operation of a child care agency.
- (13) 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) 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) Reapplication-Application for a new license following denial or revocation of a license.
- (16) 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 pose the potential of such risk.
- (17) 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.
- (19) Temporary license:
- (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.

Authority: T.C.A. §§4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(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 any other regulations governing the specific class of child care agency, may be the basis for placing the child care agency on probation, for or 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. All costs and expenses arising from or related to 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 for technical assistance to child care agencies, and for the training of child caregivers.

- (3) If a licensee is denied the renewal of a license, or if a license is revoked, 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 or for Renewal of an Existing License.
 - (a) Application for a 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 Renewal of 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.
 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.
 3. A licensee seeking renewal of a license must demonstrate satisfactory compliance with all health and safety requirements applicable to its operations.
- (5) Temporary License.
 - (a) If the Department determines that the applicant for a license, which is not the renewal of an existing 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.
 - (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 demonstrate to the Department that it has 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 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.
- (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) 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.

(8) License Information.

- (a) 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.

(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.

(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(4) 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(4), 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 appeal the denial or restriction as provided in § 71-3-509 and other applicable 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 other applicable 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) 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 the transferee has made application for, and is granted, a temporary license, 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) 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 other applicable rules governing the Child Care Agency Board of Review.
- (c) 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.
- (d) If the current licensee dies, 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.

- (e) 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) 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
(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: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

1240-4-5-.04

VIOLATIONS OF LICENSING REGULATIONS.

(1) 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, the Department determines that the violation 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. The 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 provisions of this paragraph 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.
- (2) Civil Penalties.
- (a) 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.
 - (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 the 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) up to Five Hundred Dollars (\$500.00). 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 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) Lack of proper supervision of children;
 - (IV) Failure to properly dispense or store medications;
 - (V) 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) Failure to properly store hazardous items such as, but not limited to, cleaning products, pesticides, hazardous chemicals, or other poisonous items; and
 - (VII) 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) 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 the civil penalty that it may impose 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.

- (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.
 - (g) Remedies for Failure to Pay Final 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 a final civil penalty in full 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.
- (3) 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 of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, which notice is consistent with the safety of the children in the care of the child care agency, 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 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, annual, or extended 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, 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 (4).

(4) Summary Suspension of Licenses.

- (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.
- (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 notify the licensee of the opportunity for an informal hearing before an administrative law judge or before a hearing officer who is not an employee of the Department 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 delivered by any authorized representative of the Department by personal delivery 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 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. 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.
 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 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 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 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: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

1240-4-5-.05

RESTRICTED LICENSES FOR CHILD CARE AGENCIES.

- (1) 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. 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) If the licensee does not appeal the issuance of a restricted license, it may petition the Department thirty (30) days after the effective date of issuance of the restricted license to request that the restrictions be removed or altered.
- (4) The Department may, at any time, modify or remove the restrictions on the license.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(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), a license would have expired during the time a case 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 or revocation of the license, the licensee must apply for 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 Child Care Agency Board of Review or panel chair or vice-Chair of the Child Care Agency Board of Review.

Authority: T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq.; Senate Bill 3107/House Bill 3035(2000).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-29)

**TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
COMMUNITY AND FIELD SERVICES DIVISION**

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of new rules pursuant to TCA §§ 71-3-501 et seq. and Senate Bill 3107/House Bill 3035 (2000). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A, 7th Floor, State Office Building, 531 Henley Street, Knoxville, Tennessee 37902 at 6:30PM Eastern Time on Tuesday, August 22, 2000; and in the 2nd Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30PM Central Time on Thursday, August 24, 2000; and in the 2nd Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Tuesday, August 29, 2000.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting dates, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Shirley Gaudin, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

**SUBSTANCE OF PROPOSED RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

CHAPTER 1240-4-4

STANDARDS FOR FAMILY DAY CARE HOMES

AMENDMENTS

Paragraph (5) of Rule 1240-4-4, Introduction, is amended by adding the following language as new subparagraph (x) and by redesignating the existing subparagraph (x) as subparagraph (y) so that, as amended, the new subparagraph (x) shall read as follows:

- (x) Substitute. Paid or unpaid persons who are replacement for regular staff. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-4-4-.03(1)(a)6.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Paragraph (5) of Rule 1240-4-4, Introduction, is amended by adding the following language as new subparagraph (z), so that, as amended, new subparagraph (z) shall read as follows:

- (z) 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. Utilization of volunteers shall be recorded in the staff personnel records of the agency.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Subpart (ii) of part 1 of subparagraph (h) of paragraph (7) of Rule 1240-4-4-.02, Ownership and Administration, is amended by deleting subpart (ii) in its entirety and by substituting instead the following language so that, as amended, subpart (ii) shall read as follows:

- (ii) Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the child care agency shall carry vehicle liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-4-.02(8).

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Rule 1240-4-4-.02, Ownership and Administration, is amended by adding the following new paragraph so that, as amended, the new paragraph shall read as follows:

- (8) Liability and Accident Insurance.
 - (a) General liability and accident insurance coverage shall be maintained on the operations of the vehicles and facilities owned, operated or leased by the child care agency.
 - (b) Vehicle liability coverage shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000). General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000).
 - (c) Accident insurance for medical payments shall be maintained in a minimum amount of Twenty-Five Thousand Dollars (\$25,000) and accidental death and dismemberment insurance shall be maintained in a minimum amount of Ten Thousand Dollars (\$10,000).
 - (d) 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).
 - (e) Documentation that the necessary insurance is in effect, or that the governmental entity is self-insured, shall be maintained in the records of the child care agency and shall be available to the Department's licensing staff.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Part 6 of subparagraph (a) of paragraph (1) of Rule 1240-4-4-.03, Staff, is amended by deleting the part in its entirety and by substituting the following new Part 6 so that, as amended, part 6 shall read as follows:

- 6. Criminal history and abuse registry background checks; appeals; exemptions.
 - (i) Each person:
 - (I) Applying to work with children a paid employee, a director, or manager of a child care agency;

- (II) Applying to work as a new substitute who works more than thirty-six (36) hours per calendar year. For purposes of this subparagraph a “substitute” shall mean paid or unpaid staff who are replacements of regular staff; provided, however, persons serving 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;
- (III) Who seeks to operate (an “operator”) a child care agency as defined TCA § 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this item, an “operator” shall be an individual who is an owner or administrator of a child care agency or a child care system; or
- (IV) Fifteen (15) years of age or older who resides in a child care agency shall:
 - I. Complete a criminal history disclosure form as approved by the Department;
 - II. Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation, and shall submit to a fingerprint based criminal history check to be conducted by the Tennessee Bureau of Investigation;
 - III. Submit to a review of their status on the Department of Health’s vulnerable persons registry under title 68, chapter 11, part 10 of the Tennessee Code Annotated.
 - IV. Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.
- (ii) The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.
- (iii) The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation.
- (iv) Pending outcome of the fingerprint background check and the Department of Health’s vulnerable person’s registry the applicant for employment, for a license or for operator or for a substitute services position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of subpart (vii) shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be an operator who has significant contact with the children in the agency’s care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.
- (v) A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health’s vulnerable persons registry shall be maintained in the child care agency’s records for review by the Department of Human Services.

- (vi) The child care agency shall immediately review the report 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 subpart (vii), the child care agency shall immediately exclude such person from employment, substitute services, or if a resident, from access to children in the child care agency. Failure to do so will result in immediate suspension of the child care agency's license.
- (vii) Exclusions from access to children based upon criminal history or other status.
 - (I) No person shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, or director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency; nor shall a person who is a resident in a child care agency have access to children in a child care agency, who has
 - I. any pending warrant, indictment or presentment;
 - II. been convicted, pled guilty to or pled no contest to any crime or charge, or
 - III. any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:
 - A. Any crime, including a lesser included offense derived from any crime, involving a child; or
 - B. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or
 - C. Any crime involving or lesser included offenses derived from any crime involving the manufacture, sale, distribution or possession of any drug; or
 - D. A violation of TCA §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.
 - (II) No person whose name is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to children in a child care agency.
 - (III) No person shall be employed, work as a caregiver or have access to or contact with children in the child care program who is:
 - I. Known to the management of a group child care home as a perpetrator of child abuse or child sexual abuse; or

- II. Identified to the group child care home's management by the Department of Human Services or the Department of Children's Services as a validated or indicated perpetrator of abuse of a child; and
 - A. who is associated in providing care or ancillary services in any manner within a child care program; or
 - B. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or
 - C. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.
 - (IV) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services pursuant to a report of harm, 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.
- (viii) Appeals of exclusions.
- (I) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.
 - (II) If timely appealed, the department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the department pursuant to subpart (ix).
 - (III) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.
- (ix) Exemptions from exclusions.
- (I) The Department will consider the granting of exemptions from the prohibitions under items (I) and (II) under subpart (vii). The exemptions may be granted for persons who have disclosed their criminal history or juvenile status on the disclosure form required by this paragraph or whose background check reveals a criminal history that excludes such person from access to children in the child care agency.
 - (II) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request.

- (III) Advisory group to review exemption requests.
 - I. The Department will establish an advisory group composed of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.
 - II. The advisory group may review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.
 - III. Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.

- (IV) Appeal of exemption decision.
 - I. The Department shall notify the person making the request in writing of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.
 - II. The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolleed or has resulted in an acquittal.

- (x) Alternate and Supplementary Criminal Background Checks.
 - (I) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this part or any other provisions of law to undergo a criminal history background check and may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.
 - (II) The Department may require such individuals to complete a disclosure form as required by subpart (i) and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.

(III) Status Pending Background Check.

- I. Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.
 - II. The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this part, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.
- (IV) As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA §§ 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in subpart (i), a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating criminal history of such person.
- (V) The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to items (I) and (II) above.
- (VI) All provisions of subpart (vii) including, but not limited to, the exclusion of individuals from providing care, being licensed for the care of children or having access to children upon determination of the criminal background of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds as determined by the processes established by this subpart.
- (VII) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in subpart (viii) above.
- (VIII) Nothing in this part shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this chapter or from having access to a child in a child caring situation if a criminal or juvenile proceeding background is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this part for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.

- (xi) Nothing in this part shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of subpart (x) are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

Authority: *T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-34)

**THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
DIVISION OF FAMILY ASSISTANCE**

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to *Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12)*. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, § 4-5-204* and will take place in the 15th Floor, Puett Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 10:00 a.m. CDT on Tuesday, August 22, 2000.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date or the date the party intends to review such filings, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services' ADA Coordinator, Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5570.

For a copy of this notice of rulemaking hearing, contact: Phyllis Simpson, Assistant General Counsel, Department of Human Services, Tennessee Tower, 312 8th Avenue North, 26th Floor, Nashville, TN 37243, telephone number (615) 741-9534.

**SUBSTANCE OF PROPOSED RULES
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-1-50
STANDARD OF NEED/INCOME**

AMENDMENTS

Rule 1240-1-50-.20 is amended by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-1-50-.20 Standard Of Need/Income. The following table shows the maximum income level, consolidated standard of need, and the possible standard payment amounts and differential grant payment amounts (maximum payment per assistance group size) to be used in the Families First program to determine eligibility and amount of payment.

(1) Families First Standards

- (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).
- (b) Gross Income Standard (GIS). This standard is set by federal law at 185% of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the AG is not eligible for Families First.
- (c) Standard Payment Amount (SPA). Tennessee does not meet 100% of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on funds available, is paid, except in the instances specified in subparagraph
- (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets any one of the criteria for exemption from Time Limited Assistance as specified in 1240-1-51-.01(4)(a) through (d), will be eligible for a grant based on the Differential Grant Payment Amount (DGPA), which is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph
- (e) Family Benefit Cap
 - 1. No additional benefits will be issued due to the birth of a child when the birth occurs more than ten (10) calendar months after the later of:
 - (i) the date of application for Families First, or
 - (ii) the date of implementation of the Families First program (September 1, 1996), as provided by Public Chapter 950 (1996), unless
 - (I) the child was conceived as the result of verified rape or incest;
 - (II) the child is the firstborn (including all children in the case of a multiple birth) of a minor included in the Families First grant who becomes a first-time minor parent;
 - (III) the child does not reside with his/her parent;
 - (IV) the child was conceived in a month the AG was not receiving Families First;
 - (V) the child was already born prior to the later of the date of application for Families First or the date of implementation of Families First, and the child has entered or returned to the home; or

(VI) when a Families First case is closed, through a deliberate action, without good cause, and the family reapplies within ninety (90) days.

2. The additional child will be included in the need standard for the purpose of determining Families First eligibility. The income of the child, including child support, will be applied against the need standard in determining the Families First payment amount for the family. The child will be considered a Families First recipient for all other purposes, including Medicaid/TennCare coverage.
3. The family benefit cap will not apply to a subsequent period of eligibility for families who reapply for Families First subsequent to receipt for an eighteen (18) month eligibility period during which the child was born, as long as the reason for prior case closure was other than a failure to comply with work or child support enforcement requirements or other Personal Responsibility Plan provisions, and the parent/caretaker had cooperated with the Department as defined in departmental policies for the Families First program.

(f) An assistance payment is determined as follows:

1. If the assistance group's net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, the assistance group is not eligible.
2. If the assistance group's net income is less than their consolidated need, the monthly grant amount is the smaller of a maximum payment amount by family size (SPA or DGPA, as appropriate) or the deficit if it is ten dollars (\$10) or more. If the deficit is one dollar (\$1) - nine dollars (\$9), the AG is eligible for Medicaid (TennCare) only, and is deemed to be a Families First recipient group.

In the case of an AG receiving Families First because one or both parents are unemployed, if the Principal Wage Earner (PWE) receives Unemployment Compensation (UC) the UC benefit is deducted from the grant amount determined after deducting all other countable income from the CNS, to determine the actual amount of Families First payment for the AG.

3. The minimum monthly grant which can be paid is ten dollars (\$10).

(g) Families First Need/Payment Standards

1. Tables

TABLE I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	910	1310	1554	1624	1944	1978	2140	2168	2383	2405
Consolidated Need Standard	492	708	840	878	1051	1069	1157	1172	1288	1300
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2488	2559	2623	2681	2731	2775	2816	2851	2882	2910
Consolidated Need Standard	1345	1383	1418	1449	1476	1500	1522	1541	1558	1573
Maximum Payment (SPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

TABLE II

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	910	1310	1554	1624	1944	1978	2140	2168	2383	2405
Consolidated Need Standard	492	708	840	878	1051	1069	1157	1172	1288	1300
Maximum Payment (DGPA)	140	192	232	242	291	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2488	2559	2623	2681	2731	2775	2816	2851	2882	2910
Consolidated Need Standard	1345	1383	1418	1449	1476	1500	1522	1541	1558	1573
Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 22.0% of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 27.6% of the consolidated need for an assistance group of that size. The payments for groups composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentences which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 1999-2000.

Authority: TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-151—71-3-165, 71-3-154(i); 71-3-155(e)- (g); Senate Bill 2977/House Bill 2790 (2000); 42 USCA 601 et seq.; 45 CFR 233.20; 42 USCA § 1315.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-19)

**DEPARTMENT OF HUMAN SERVICES - 1240
COMMUNITY AND FIELD SERVICES DIVISION**

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of new rules pursuant to *TCA §§ 71-3-501 et seq.* and Senate Bill 3107/House Bill 3035 (2000). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, Section 4-5-204* and will take place in Conference Room A, 7th Floor, State Office Building, 531 Henley Street, Knoxville, Tennessee 37902 at 6:30PM Eastern Time on Tuesday, August 22, 2000; and in the 2nd Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30PM Central Time on Thursday, August 24, 2000; and in the 2nd Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Tuesday, August 29, 2000.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting dates, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Shirley Gaudin, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

**SUBSTANCE OF PROPOSED RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

CHAPTER 1240-4-1

STANDARDS FOR GROUP DAY CARE HOMES

AMENDMENTS

Paragraph (5) of Rule 1240-4-1-.01, Introduction, is amended by adding the following language as new subparagraph (w) and by re-designating the existing subparagraph (w) as subparagraph (x) so that, as amended, the new subparagraph (w) shall read as follows:

- (w) Substitute. Paid or unpaid persons who are replacement for regular staff. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-4-1-.03(1)(a)6.

Authority: *T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).*

Paragraph (5) of Rule 1240-4-1-.01, Introduction, is amended by adding the following language as new subparagraph (y), so that, as amended, new subparagraph (y) shall read as follows:

- (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. Utilization of volunteers shall be recorded in the staff personnel records of the agency.

Authority: *T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).*

Subpart (ii) of part 1 of subparagraph (h) of paragraph (7) of Rule 1240-4-1-.02, Ownership and Administration, is amended by deleting subpart (ii) in its entirety and by substituting instead the following language so that, as amended, subpart (ii) shall read as follows:

- (ii) Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the child care agency shall carry vehicle liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-1-.02(8).

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Rule 1240-4-1-.02, Ownership and Administration, is amended by adding the following new Paragraph so that, as amended, the new Paragraph shall read as follows:

- (8) Liability and Accident Insurance.
 - (a) General liability and accident insurance coverage shall be maintained on the operations of the vehicles and facilities owned, operated or leased by the child care agency.
 - (b) Vehicle liability coverage shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000). General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000).
 - (c) Accident insurance for medical payments shall be maintained in a minimum amount of Twenty-Five Thousand Dollars (\$25,000) and accidental death and dismemberment insurance shall be maintained in a minimum amount of Ten Thousand Dollars (\$10,000).
 - (d) 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).
 - (e) Documentation that the necessary insurance is in effect, or that the governmental entity is self-insured, shall be maintained in the records of the child care agency and shall be available to the Department's licensing staff.

Authority: T.C.A . §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).

Part 6 of subparagraph (a) of paragraph (1) of Rule 1240-4-1-.03, Staff, is amended by deleting the Part in its entirety and by substituting the following new part 6 so that, as amended, part 6 shall read as follows:

- 6. Criminal history and abuse registry background checks; appeals; exemptions.
 - (i) Each person:
 - (I) Applying to work with children a paid employee, a director, or manager of a child care agency;
 - (II) Applying to work as a new substitute who works more than thirty-six (36) hours per calendar year. For purposes of this subparagraph a "substitute" shall mean paid or unpaid staff who are replacements of regular staff; provided, however, persons serving 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;

(III) Who seeks to operate (an “operator”) a child care agency as defined TCA § 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this item, an “operator” shall be an individual who is an owner or administrator of a child care agency or a child care system; or

(IV) Fifteen (15) years of age or older who resides in a child care agency shall:

- I. Complete a criminal history disclosure form as approved by the Department;
- II. Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation, and shall submit to a fingerprint based criminal history check to be conducted by the Tennessee Bureau of Investigation;
- III. Submit to a review of their status on the Department of Health’s vulnerable persons registry under title 68, chapter 11, part 10 of the Tennessee Code Annotated.
- IV. Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.

- (ii) The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.
- (iii) The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation.
- (iv) Pending outcome of the fingerprint background check and the Department of Health’s vulnerable person’s registry the applicant for employment, for a license or for operator or for a substitute services position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of subpart (vii) shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be an operator who has significant contact with the children in the agency’s care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.
- (v) A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health’s vulnerable persons registry shall be maintained in the child care agency’s records for review by the Department of Human Services.
- (vi) The child care agency shall immediately review the report 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 subpart (vii), the child care agency shall immediately exclude such person from employment, substitute services, or if a resident, from access to children in the child care agency. Failure to do so will result in immediate suspension of the child care agency's license.

- (vii) Exclusions from access to children based upon criminal history or other status.
- (I) No person shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, or director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency; nor shall a person who is a resident in a child care agency have access to children in a child care agency, who has
- I. any pending warrant, indictment or presentment;
 - II. been convicted, pled guilty to or pled no contest to any crime or charge, or
 - III. any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:
 - A. Any crime, including a lesser included offense derived from any crime, involving a child; or
 - B. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or
 - C. Any crime involving or lesser included offenses derived from any crime involving the manufacture, sale, distribution or possession of any drug; or
 - D. A violation of *T.C.A. §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401* or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.
- (II) No person whose name is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated shall be employed, or otherwise act, as a caregiver for children, work as a paid employee, substitute, director in a child care agency, or provide services within the child care agency's program, or act as an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to children in a child care agency.
- (III) No person shall be employed, work as a caregiver or have access to or contact with children in the child care program who is:
- I. Known to the management of a group child care home as a perpetrator of child abuse or child sexual abuse; or
 - II. Identified to the group child care home's management by the Department of Human Services or the Department of Children's Services as a validated or indicated perpetrator of abuse of a child; and
 - A. who is associated in providing care or ancillary services in any manner within

a child care program; or

- B. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or
 - C. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.
- (IV) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services pursuant to a report of harm, 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.

(viii) Appeals of exclusions.

- (I) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.
- (II) If timely appealed, the department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the department pursuant to subpart (ix).
- (III) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.

(ix) Exemptions from exclusions.

- (I) The Department will consider the granting of exemptions from the prohibitions under items (I) and (II) under subpart (vii). The exemptions may be granted for persons who have disclosed their criminal history or juvenile status on the disclosure form required by this paragraph or whose background check reveals a criminal history that excludes such person from access to children in the child care agency.
- (II) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request.
- (III) Advisory group to review exemption requests.
 - I. The Department will establish an advisory group composed of law enforcement per-

sonnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.

- II. The advisory group may review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.
- III. Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.

(IV) Appeal of exemption decision.

- I. The Department shall notify the person making the request in writing of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.
- II. The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolle or has resulted in an acquittal.

(x) Alternate and Supplementary Criminal Background Checks.

- (I) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this part or any other provisions of law to undergo a criminal history background check and may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.
- (II) The Department may require such individuals to complete a disclosure form as required by subpart (i) and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.
- (III) Status Pending Background Check.
 - I. Pending the outcome of the background check, if required, the applicant for employ-

ment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.

- II. The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this part, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.
- (IV) As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA §§ 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in subpart (i), a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating criminal history of such person.
- (V) The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to items (I) and (II) above.
- (VI) All provisions of subpart (vii) including, but not limited to, the exclusion of individuals from providing care, being licensed for the care of children or having access to children upon determination of the criminal background of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds as determined by the processes established by this subpart.
- (VII) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in subpart (viii).
- (VIII) Nothing in this part shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this chapter or from having access to a child in a child caring situation if a criminal or juvenile proceeding background is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this part for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.
- (xi) Nothing in this part shall be construed to mean that any other law which mandates that criminal

background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of subpart (x) are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

Authority: *T.C.A. §§4-5-201 et seq; 71-1-105; 71-3-501 et seq; Senate Bill 3107/House Bill 3035(2000).*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-33)

BOARD OF NURSING - 1000

There will be a hearing before the Tennessee Board of Nursing to consider the promulgation of amendments to rules pursuant to *T.C.A. §§ 4-5-202, 4-5-204, and 63-7-207*. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, Section 4-5-204* and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 24th day of August, 2000.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

1000-1-.01, Licensure by Examination, is amended by deleting paragraph (3) in its entirety and renumbering the remaining paragraphs accordingly.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-7-105, and 63-7-207.*

1000-1-.04, Discipline of Licensees, Unauthorized Practice of Professional Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs, is amended by adding the following language as new subparagraphs 4) (d) and (4) (e):

- (4) (d) Any member of the Board may grant or deny a petition for reconsideration of a final order, as provided in rule 1360-4-1-.18 (1) (b).
- (4) (e) Any member of the Board may, if adequate public notice is given, schedule a hearing on a petition for a stay, as provided in rule 1360-4-1-.18 (2).

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-312, 4-5-316, 4-5-317, 63-7-115, 63-7-116, and 63-7-207.

Rule 1000-1-.11, Definitions is amended by adding the following language as new paragraph (6) and renumbering the remaining paragraphs accordingly:

- (6) Continued Competence: Means the application of nursing knowledge and the interpersonal, decision-making, and psychomotor skills expected for the nursing practice role pursuant to T.C.A. § 63-7-103, within the context of the public health, safety, and welfare.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-101, 63-7-103, and 63-7-207.

Rule 1000-1-.14, Standards of Nursing Competence, is amended by adding the following introductory sentences and is further amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new introductory sentences and the new paragraphs (1), (2), and (3) shall read:

1000-1-.14 Standards of Nursing Competence. The Board encourages nurses to strive toward full and effective participation in the improvement of health care delivery. While the improvement of health care delivery is not always measurable as a competency issue, the Board considers such participation as an indicator of good nursing practice.

- (1) Standards of Nursing Practice for the Registered Nurse
 - (a) Standards Related to the Registered Nurse's Responsibility to Implement the Nursing Process - The Registered Nurse shall:
 1. Conduct and document nursing assessments of the health status of individuals and groups by:
 - (i) collecting objective and subjective data from written records in an accurate and timely manner.
 - (ii) accurately sorting, selecting, reporting and recording the data.
 - (iii) validating, refining and modifying the data by utilizing available resources including interactions with the client, family, significant others, and health team members.
 2. Establish and document nursing diagnoses which serve as the basis for the strategy of care.
 3. Develop the plan of care based on assessment and nursing diagnosis.
 4. Implement the plan of care by writing nursing orders, providing safe direct care, and delegating care.

5. Evaluate the responses of individuals or groups to nursing interventions and revise the plan of care where appropriate. Evaluation shall involve the client, family, significant others and health team members.
- (b) Standards Related to the Registered Nurse's Responsibilities as a Member of the Nursing Profession - The Registered Nurse shall:
1. Have knowledge of the statutes and regulations governing nursing and function within the legal and ethical boundaries of nursing practice.
 2. Accept personal responsibility for currency of practice and individual nursing actions.
 3. Obtain instruction and supervision as necessary when implementing nursing techniques or practices.
 4. Consult with nurses and other health team members and make referrals as necessary.
 5. Report unsafe nursing practice and unsafe practice conditions to recognized legal authorities and to the Board where appropriate.
 6. Delegate to another only those nursing measures which that person is prepared or qualified to perform.
 7. Supervise others to whom nursing activities are delegated.
 8. Retain professional accountability for nursing care when delegating nursing interventions.
 9. Conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference, national origin, handicap or disease.
 10. Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.
 11. Respect the client's right to privacy by protecting confidential information unless obligated by law to disclose the information.
 12. Respect the property of clients, family, significant others and the employer.
- (2) Nurses inactive in Nursing for more than five (5) years - A licensee or an applicant for licensure by endorsement who has not been engaged in the practice of nursing for five (5) years shall submit an application and evidence of nursing competence with documentation in one (1) of the following areas:
- (a) Completion of a two (2) week Board-approved nursing refresher program.
 - (b) Completion of a two (2) week Board-approved comprehensive orientation program offered by a prospective nursing employer.
 - (c) Enrollment in a program leading to licensure as a Registered Nurse or to an advanced degree in nursing.
 1. The individual must have satisfactorily completed two (2) hours of nursing credits or equivalent during the past five (5) years.
 2. An official transcript verifying the completion of nursing courses shall be submitted with the renewal, reactivation, or endorsement application.

(d) Current certification in an appropriate nursing specialty area.

(3) Notwithstanding paragraph (2) of this rule, and because of the biennial renewal of licenses required by T.C.A. § 63-7-114, on January 1, 2002 the Board shall begin to notify applicants for renewal of continued competence requirements as provided in T.C.A. § 63-7-207 (16). Beginning January 1, 2004 all applicants for licensure, renewal of license, or reactivation of license must demonstrate continued competence.

(a) New licensees - For new licensees, successfully completing the requirements of Rule .01 or .02, as applicable, shall be considered proof of sufficient competence to constitute compliance with this rule.

(b) Renewing licensees - For renewing or reactivating licensees who are practicing full or part-time, attesting to be currently practicing competent nursing or attesting to having practiced competent nursing in the past five (5) years (where indicated on the renewal application) shall be considered proof of sufficient competence to constitute compliance with this rule. Such attestation may include, but not be limited to:

1. Having had a satisfactory employer evaluation.
2. Having had a satisfactory peer evaluation
3. Having a satisfactory patient/client relationship.
4. Having a contract renewal or re-appointment.
5. Having completed any of the requirements of subparagraphs (3) (c) or (3) (d) of this rule.

(c) Renewing licensees - For renewing or reactivating licensees who are not or have not been practicing full or part time during the past five (5) years, attesting to any of the following shall be considered proof of sufficient competence to constitute compliance with this rule.

1. Having performed Board-approved activities including, but not limited to:
 - (i) Satisfactory volunteer work in a position using nursing knowledge, skills, and abilities. Examples are:
 - (I) The Red Cross.
 - (II) Homeless clinics.
 - (III) Parish nursing.
 - (ii) Service on local, state, or national boards, commissions, foundations, or agencies that use the expertise of a Registered Nurse.
2. Having taught in a program leading to licensure as a Registered Nurse or to an advanced degree in nursing.
3. Having completed any of the requirements of subparagraph (3) (d) of this rule.

(d) Nurses inactive in Nursing for more than five (5) years - An individual requesting renewal or reactivation of a license or an applicant for licensure by endorsement who has not maintained an active nursing

license for more than five (5) years shall submit the appropriate application and one (1) of the following as evidence of nursing continued competence:

1. Proof of successful completion of five (5) contact hours of Board-approved continuing education for each year of inactivity.
 2. Proof of having had an article published during the period of inactivity in a professional journal acceptable to the Board.
 3. Proof of successful completion of a two (2) week Board-approved nursing refresher program.
 4. Proof of successful completion of a two (2) week Board-approved comprehensive orientation program offered by a prospective nursing employer.
 5. Proof of enrollment in an approved/accredited nursing program leading to licensure as a Registered Nurse or to an advanced degree in nursing.
 - (i) The individual must have satisfactorily completed two (2) hours of nursing credits or equivalent during the past five (5) years.
 - (ii) An official transcript verifying the completion of nursing courses shall be submitted with the renewal, reactivation, or endorsement application.
 6. Proof of current certification in an appropriate nursing specialty area.
 7. Proof of retaking and successfully completing the examinations required in Rule .01 of this chapter.
- (e) Documentation of compliance
1. Each licensee must retain documentation of completion of all continued competence requirements of this rule for a period of four (4) years from when the requirements were completed. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.
 2. The individual must, within thirty (30) days of a request from the Board, provide evidence of continued competence activities.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-101, 63-7-103, 63-7-114, and 63-7-207.

Rule 1000-1-.15, Scope of Practice, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the new rule 1000-1-.15, Scope of Practice, shall read:

1000-1-.15 Scope of Practice. Universal Precautions for the Prevention of HIV Transmission - The Board adopts, as if fully set out herein, rules 1200-14-3-.01 through 1200-14-3-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

Authority: T.C.A. §§4-5-202, 4-5-204, and 63-7-207.

Rule 1000-2-.01, Licensure by Examination, is amended by deleting paragraphs (4) and (5) in their entirety.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-110 and 63-7-207.

1000-2-.04, Discipline of Licensees, Unauthorized Practice of Practical Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs, is amended by adding the following language as new subparagraphs 4) (d) and 4) (e):

- (4) (d) Any member of the Board may grant or deny a petition for reconsideration of a final order, as provided in rule 1360-4-1-.18 (1) (b).
- (4) (e) Any member of the Board may, if adequate public notice is given, schedule a hearing on a petition for a stay, as provided in rule 1360-4-1-.18 (2).

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-312, 4-5-316, 4-5-317, 63-7-115, 63-7-116, and 63-7-207.

Rule 1000-2-.11, Definitions is amended by adding the following language as new paragraph (6) and renumbering the remaining paragraphs accordingly:

- (6) Continued Competence: Means the application of nursing knowledge and the interpersonal, decision-making, and psychomotor skills expected for the nursing practice role pursuant to T.C.A. § 63-7-103, within the context of the public health, safety, and welfare.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-101, 63-7-103, and 63-7-207.

Rule 1000-2-.14, Standards of Nursing Competence, is amended by adding the following introductory sentences and is further amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new introductory sentences and the new paragraphs (1), (2), and (3) shall read:

1000-2-.14 Standards of Nursing Competence. The Board encourages nurses to strive toward full and effective participation in the improvement of health care delivery. While the improvement of health care delivery is not always measurable as a competency issue, the Board considers such participation as an indicator of good nursing practice.

- (1) Standards of Nursing Practice for the Licensed Practical Nurse.
 - (a) Standards Related to the Licensed Practical Nurse's Contribution to and Responsibility for the Nursing Process - The Licensed Practical Nurse shall:
 1. Contribute to the nursing assessment by collecting, reporting and recording objective and subjective data in an accurate and timely manner.
 2. Participate in the development of the plan of care in consultation with other nursing personnel.
 3. Participate in the assisting and giving of safe direct care.
 4. Contribute to the evaluation of the responses of individuals or groups to nursing interventions and participate in revising the plan of care where appropriate.

- (b) Standards Relating to the Licensed Practical Nurse's Responsibilities as a Member of the Health Team - The Licensed Practical Nurse shall:
1. Have knowledge of the statutes and regulations governing nursing and function within the legal and ethical boundaries of practical nursing practice.
 2. Accept personal responsibility for individual nursing actions and currency of competence.
 3. Consult with Registered Nurses and/or other health team members and seek guidance as necessary.
 4. Obtain instruction and supervision as necessary when implementing nursing techniques or practices.
 5. Report unsafe nursing practice and unsafe practice conditions to recognized legal authorities and to the Board where appropriate.
 6. Conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference national origin, handicap, or disease.
 7. Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.
 8. Respect the client's right to privacy by protecting confidential information, unless obligated by law to disclose such information.
 9. Respect the property of clients, family, significant others, and the employer.
- (2) Nurses inactive in Nursing for more than five (5) years - A licensee or an applicant for licensure by endorsement who has not been engaged in the practice of nursing for five (5) years shall submit an application and evidence of nursing competence with documentation in one (1) of the following areas:
- (a) Completion of a two (2) week Board-approved nursing refresher program.
 - (b) Completion of a two (2) week Board-approved comprehensive orientation program offered by a prospective nursing employer.
 - (c) Enrollment in a program leading to licensure as a Registered or Practical Nurse or to an advanced degree in nursing.
 1. The individual must have satisfactorily completed two (2) hours of nursing credits or equivalent during the past five (5) years.
 2. An official transcript verifying the completion of nursing courses shall be submitted with the renewal, reactivation, or endorsement application.
 - (d) Current certification in an appropriate nursing specialty area.
- (3) Notwithstanding paragraph (2) of this rule, and because of the biennial renewal of licenses required by T.C.A. § 63-7-114, on January 1, 2002 the Board shall begin to notify applicants for renewal of continued competence requirements as provided in T.C.A. § 63-7-207 (16). Beginning January 1, 2004 all applicants for licensure, renewal of license, or reactivation of license must demonstrate continued competence.

- (a) New licensees - For new licensees, successfully completing the requirements of Rule .01 or .02, as applicable, shall be considered proof of sufficient competence to constitute compliance with this rule.
- (b) Renewing licensees - For renewing or reactivating licensees who are practicing full or part time, attesting to be currently practicing competent nursing or attesting to having practiced competent nursing in the past five (5) years (where indicated on the renewal application) shall be considered proof of sufficient competence to constitute compliance with this rule. Such attestation may include, but not be limited to:
 - 1. Having had a satisfactory employer evaluation.
 - 2. Having had a satisfactory peer evaluation
 - 3. Having a satisfactory patient/client relationship.
 - 4. Having a contract renewal or re-appointment.
 - 5. Having completed any of the requirements of subparagraphs (3) (c) or (3) (d) of this rule.
- (c) Renewing licensees - For renewing or reactivating licensees who are not or have not been practicing full or part time during the past five (5) years, attesting to any of the following shall be considered proof of sufficient competence to constitute compliance with this rule.
 - 1. Having performed Board-approved activities including, but not limited to:
 - (i) Satisfactory volunteer work in a position using nursing knowledge, skills, and abilities. Examples are:
 - (I) The Red Cross.
 - (II) Homeless clinics.
 - (III) Parish nursing.
 - (ii) Service on local, state, or national boards, commissions, foundations, or agencies that use the expertise of a Practical Nurse.
 - 2. Having taught in a program leading to licensure as a Registered or Practical Nurse or to an advanced degree in nursing.
 - 3. Having completed any of the requirements of subparagraph (3) (d) of this rule.
- (d) Nurses inactive in Nursing for more than five (5) years - An individual requesting renewal or reactivation of a license or an applicant for licensure by endorsement who has not maintained an active nursing license for more than five (5) years shall submit the appropriate application and one (1) of the following as evidence of nursing continued competence:
 - 1. Proof of successful completion of five (5) contact hours of Board-approved continuing education for each year of inactivity.
 - 2. Proof of having had an article published during the period of inactivity in a professional journal acceptable to the Board.

3. Proof of successful completion of a two (2) week Board-approved nursing refresher program.
 4. Proof of successful completion of a two (2) week Board-approved comprehensive orientation program offered by a prospective nursing employer.
 5. Proof of enrollment in an approved/accredited program leading to licensure as a Registered or Practical Nurse or to an advanced degree in nursing.
 - (i) The individual must have satisfactorily completed two (2) hours of nursing credits or equivalent during the past five (5) years.
 - (ii) An official transcript verifying the completion of nursing courses shall be submitted with the renewal, reactivation, or endorsement application.
 6. Proof of current certification in an appropriate nursing specialty area.
 7. Proof of retaking and successfully completing the examinations required in Rule .01 of this chapter.
- (e) Documentation of compliance
1. Each licensee must retain documentation of completion of all continued competence requirements of this rule for a period of four (4) years from when the requirements were completed. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.
 2. The individual must, within thirty (30) days of a request from the Board, provide evidence of continued competence activities.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-101, 63-7-103, 63-7-114, and 63-7-207.

Rule 1000-2-.15, Scope of Practice, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the new rule 1000-2-.15, Scope of Practice, shall read:

1000-2-.15 SCOPE OF PRACTICE.

Universal Precautions for the Prevention of HIV Transmission - The Board adopts, as if fully set out herein, rules 1200-14-3-.01 through 1200-14-3-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

Authority: T.C.A. §§4-5-202, 4-5-204, and 63-7-207.

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of June, 2000. (06-09)

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS - 1020

There will be a hearing before the Tennessee Board of Examiners for Nursing Home Administrators to consider the promulgation of amendments to rules pursuant to *T.C.A. §§ 4-5-202, 4-5-204, and 63-16-103*. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, Section 4-5-204* and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 30th day of August, 2000.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES**AMENDMENTS**

Rule 1020-1-.06, Preceptors, Administrator In Training and Administrator in Training Program, is amended by deleting subparagraph (2) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (a) shall read:

- (2) (a) To remain certified as a preceptor a licensee must, on or before December 31st of every year after initial certification, successfully complete nine (9) clock hours of Board approved continuing education within the calendar year in addition to the continuing education hours required for licensure renewal pursuant to rule 1020-1-.12. Credit for six (6) hours of continuing education per year shall be given to a preceptor upon the successful completion of an A.I.T. program.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-16-103, and 63-16-107.*

Rule 1020-1-.11, Licensure Renewal, is amended by deleting subparagraph (2) (d) in its entirety.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-16-103, and 63-16-107.*

Rule 1020-1-.12, Continuing Education, is amended by deleting subparagraph (1) (d) and paragraph (2) in their entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Documentation of Compliance:
 - (a) The due date for completion of the annual clock hours required in subparagraph (1) (a) of this rule is December 31st of each year.

- (b) Each licensee must retain proof of attendance and completion of all continuing education requirements of this rule and subparagraph (2) (a) of rule 1020-1-.06. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the board during its verification process. The board will not maintain continuing education files.
- (c) The individual must, within thirty (30) days of a request from the board, provide evidence of continuing education activities. Certificates verifying the individual's attendance or original letters from course providers are such evidence.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-16-103, and 63-16-107.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of June, 2000. (06-10)

TENNESSEE REGULATORY AUTHORITY - 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of amendment of rules pursuant to *Tennessee Code Annotated, Section 65-2-102* and Public Chapter 729 of 2000. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, Section 4-5-204* and will take place in the Hearing Room of the Tennessee Regulatory Authority Building, 460 James Robertson Parkway, Nashville, Tennessee at 9:00 a.m. CDST on the 18th day of August 2000.

Any individuals with disabilities who wish to participate in these proceedings should contact the Tennessee Regulatory Authority to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the agency's ADA Coordinator at 460 James Robertson Parkway Nashville, TN 37243-0505, and (615) 741-2904.

For a copy of this notice of rulemaking hearing, contact K. David Waddell, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN, and (615) 741-2904.

SUBSTANCE OF PROPOSED RULES**AMENDMENTS****CHAPTER 1220-4-11
TELEPHONE SOLICITATION REGULATIONS - DO NOT CALL REGISTER**

Paragraph (9) of rule 1220-4-11-.01 Definitions is amended by adding the definition of “Registrant” to the end of the first sentence, so that as amended the paragraph shall read:

- (9) “Do Not Call Register” or “Register” means a list of telephone numbers of residential telephone subscribers who have properly enrolled with the Authority or a Federal agency, that their telephone numbers not be solicited by telephone solicitors. “Registrant” means a telephone solicitor who has made application and properly enrolled with the Authority to be provided the register.

Authority: *T.C.A. §§ 68-25-105 and 4-5-201 et. seq.*

Paragraph (15) of rule 1220-4-11-.01 Definitions is amended by adding the word “parent” in the second line and the definitions of “Principal Solicitor” and “Independent Contractor” to the end of the paragraph, so that as amended the paragraph shall read:

- (15) “Telephone solicitor” means any natural person, firm, organization, partnership, association or corporation, or a parent, subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephone solicitation, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person.
- (a) “Principal Solicitor” means a telephone solicitor that enters into an agreement with an independent contractor as defined herein for the purposes of providing telephone solicitation.
- (b) “Independent Contractor” means a telephone solicitor who has entered into an agreement with a principal Solicitor, as defined herein, to perform telephone solicitation under the indirect supervision of the principal solicitor. An independent contractor does not include an affiliate or subsidiary.

Authority: *T.C.A. §§ 68-25-105 and 4-5-201 et. seq.*

Rule 1220-4-11-.02 General Telephone Solicitation Regulations is deleted in its entirety and amended such that the amended rule reads:

- (1) No telephone solicitor shall place a telephone call to a residential telephone subscriber at any time other than between the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party’s location) without the residential telephone subscriber’s prior express invitation or permission.
- (2) All telephone solicitors must institute procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of telephone solicitors in compliance with this Chapter, and 47 C.F.R. ‘ 64, and 16 C.F.R. ‘ 310.
- (3) All telephone solicitations to residential telephone subscribers shall, at the beginning of such call, state clearly the identity of the person initiating the call and entity or organization such person represents, and shall further meet the following requirements:

- (a) Within the first twenty-five (25) seconds of the call and at the conclusion of the call, ADAD messages must clearly state the name and telephone number of the person or organization initiating the call. The telephone number given must be answered when telephone solicitations are being made. The person answering the telephone must be willing and able to provide information concerning the automated call.
 - (b) Live telephone solicitors must provide a telephone number that will be answered when telephone solicitations are being made. The person answering the telephone must be willing and able to provide information concerning the solicitation call.
- (4) Telephone solicitors are prohibited from knowingly using telephone equipment or telecommunications network elements to block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone equipment of the called party.
 - (5) Local exchange companies and interexchange carriers are prohibited from providing any network element or service to telephone solicitors that would block or otherwise interfere with on a per line basis, the display of the telephone solicitor's name and telephone number on the residential subscriber's caller ID equipment. Local exchange companies and interexchange carriers shall modify their tariffs to reflect the requirements of this Chapter within sixty (60) days of its effective date.
 - (6) After notice and hearing, and upon finding that a telephone solicitor is in violation of this Chapter, the Authority may issue an order prohibiting local exchange companies and/or interexchange carriers from providing telecommunications service to such telephone solicitor.
 - (7) It is the duty of principal solicitors to ensure that its independent contractors conducting telephone solicitations comply with the regulations of this Chapter.
 - (8) Violations of this Chapter can result in civil actions prescribed by law, which include fines payable to the Authority.
 - (9) Telephone solicitors must adhere to state and federal statutes regarding telephone solicitation practices, including, but not limited to, the Tennessee Consumer Protection Act.
 - (10) After receipt of a complaint forwarded by the Authority, telephone solicitors shall, within ten (10) working days, file a written response with the Authority.

Authority: *T.C.A. §§ 68-25-105 and 4-5-201 et. seq.*

Rule 1220-4-11-.04 Telephone Solicitors Access to the Tennessee Do Not Call Register is deleted in its entirety and amended such that the amended rule reads:

- (1) It is the duty of any telephone solicitor engaging in the solicitation of Tennessee residential telephone subscribers to purchase the Register from the Authority. Telephone solicitors shall submit an application in writing to the Authority. The application must contain the telephone solicitor's name, address, telephone number and name of the agent for service of process along with a notarized statement from an officer of the company affirming the company will comply with the provisions of this Chapter.
- (2) A principal solicitor is permitted to share its copy of the Register with its independent contractors under the following conditions:

- (a) The principal solicitor submits in its application all the necessary information as required by the Division regarding its independent contractors, including, but not limited to, verification that the independent contractor will comply with the regulations of this Chapter;
 - (b) Confirmation that the principal solicitor and independent contractor agree to be joint and severally liable for any violations of these Rules or T.C.A. §65-4-402 et. seq.; and
 - (c) Principal solicitors will assume the responsibility to provide to each of its independent contractors an up to date copy of the Register.
- (3) Access to the following information will be provided to approved telephone solicitors:
- (a) The Register of telephone numbers of Tennessee residential telephone subscribers who have elected not to receive telephone solicitations.
 - (b) The Do Not Call Register shall be provided, with unlimited access, via the Internet or other electronic means to telephone solicitors. It is the duty of telephone solicitors to ensure they have the latest version of the Register prior to soliciting residential telephone subscribers.
 - (c) Paper copies of the Register will be available to telephone solicitors at the current per page rate as set by the Tennessee secretary of state pursuant to T.C.A. §65-1-212.
- (4) Telephone solicitors not utilizing the services of an independent contractors, doing business in the state, and subject to the control and jurisdiction of this Chapter shall pay to the Authority, on or before May 1st of each year, an annual fee of \$500 for access to the Do Not Call Register.
- (5) Principal solicitors having independent contractors shall pay the Authority in accordance with 1220-4-11-.04(4) a group rate fee of \$1000.00 along with a \$50.00 fee for each independent contractor for electronic access to the Register. Such annual fee shall cover the time period from the following July 1st through June 30th or any part thereof.

Authority: *T.C.A. §§68-25-105 and 4-5-201 et. seq.*

Rule 1220-4-11-.07 Violation of the Tennessee Do Not Call Register is deleted in its entirety and amended such that the amended rule reads:

- (1) It is a violation of *T.C.A. 65-4-401 et seq.* and this Chapter for a telephone solicitor to knowingly make or cause to be made any telephone solicitation to any telephone number that appeared in the copy of an updated Register that was in effect sixty (60) days prior to the time the telephone solicitation was made.
- (2) Principal solicitors are responsible for violations of this Chapter by its independent contractors and will assume the liability of an assessed penalty by the Authority.
- (3) Violators of this Chapter are subject to a civil penalty, payable to the Authority, of an amount not to exceed Two-Thousand Dollars (\$2000) for each violation. In addition, the Authority may seek additional relief in any court of competent jurisdiction.
- (4) It shall be a defense in any proceeding brought under this Chapter that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this Chapter.

- (5) Violations shall be calculated in a liberal manner in order to protect the public interest and deter similar violations.
- (6) Any local exchange company violating any provisions of this Chapter is subject to the penalties prescribed in T.C.A. §65-4-120.

Authority: *T.C.A. §§68-25-105 and 4-5-201 et. seq.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-35)

**THE TENNESSEE DEPARTMENT OF STATE - 1360
DIVISION OF BUSINESS SERVICES**

There will be a hearing before the Tennessee Department of State, Division of Business Services, to consider the promulgation of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 47-9-526. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §4-5-204 and will take place on the 8th floor of the William R. Snodgrass Tower, located at 312 Eighth Avenue North, Nashville, TN 37243 at 9:00 A.M. CST on the 15th day of September, 2000.

Any individuals with disabilities who wish to participate in these should contact the Tennessee Department of Business Services, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the department to determine how it may reasonably provide such aid or service. Initial contact may be made with the department's ADA Coordinator on the 7th floor of the William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN 37243 and 615-741-7411.

For a copy of this notice of rulemaking hearing, contact Bob Grunow, Director of Business Services, Department of State, 6th Floor, William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN 37243, and (615)-741-0584.

SUMMARY OF PROPOSED RULES

**CHAPTER 1360-8-1
UCC: GENERAL PROVISIONS**

Chapter 1360-8-1 is organized according to the following structure:

1360-8-1-.01 Policy statement – States general policies relating to the functions of the filing office in UCC administration.

1360-8-1-.02 Definitions – Definitional section for terms commonly used in Chapter 1360-8.

1360-8-1-.03 Singular and plural forms – Describes treatment of singular and plural nouns.

- 1360-8-1-.04 Place to file – Defines the type of UCC documents filed in the filing office.
- 1360-8-1-.05 Filing office identification – Describes the manner in which the location of the filing office is identified.
- 1360-8-1-.06 Office hours – Describes the office hours of the filing office.
- 1360-8-1-.07 UCC document delivery – Specifies the manner in which UCC documents may be tendered for filing at the filing office.
- 1360-8-1-.08 Search request delivery – Specifies the manner in which UCC search requests may be delivered to the filing office.
- 1360-8-1-.09 Document form requirements – Specifies form requirements for UCC documents.
- 1360-8-1-.10 Search request form requirements – Specifies form requirements for UCC search requests.
- 1360-8-1-.12 Filing fees – Specifies the filing fees for UCC documents and search requests.
- 1360-8-1-.14 Methods of payment – Specifies the methods of payment for UCC filings and search requests.
- 1360-8-1-.15 Overpayment and underpayment policies – Describes policies related to overpayment and underpayment of filing fees and recording taxes.
- 1360-8-1-.16 Public records services – Describes methods of access to UCC records.
- 1360-8-1-.17 Fees for public records services – Specifies fees for public records services.
- 1360-8-1-.18 New practices and technologies – Authorizes the filing office to develop new practices and technologies.
- 1260-8-1-.19 Effective date – Establishes an effective date of 7/1/2001 for the rules.

CHAPTER 1360-8-2

UCC: ACCEPTANCE AND REFUSAL OF DOCUMENTS

Chapter 1360-8-2 is organized according to the following structure:

- 1360-8-2-.01 Policy statement – States general policies related to ministerial role of filing office.
- 1360-8-2-.02 Duty to file – Describes duty of filing office to file and process acceptable documents.
- 1360-8-2-.03 Grounds for refusal of UCC document – Specifies the grounds upon which a filing office can refuse to file a UCC document.
- 1360-8-2-.04 Grounds not warranting refusal – Identifies grounds that do not warrant refusal to file a UCC document.
- 1360-8-2-.05 Time limit – Specifies the time period in which the filing office must file and process a UCC document.
- 1360-8-2-.06 Procedure upon refusal – Describes the procedure used by the filing office when rejecting a UCC document for filing.

1360-8-2-.07 Acknowledgment – Describes the procedure used by the filing office to acknowledge the filing of a UCC document.

1360-8-2-.08 Other notices – Provides for additional communications between the remitter and filing office.

1360-8-2-.09 Refusal errors – Describes the procedure used by the filing office to correct filing errors.

CHAPTER 1360-8-3 UCC: INFORMATION MANAGEMENT SYSTEM

Chapter 1360-8-3 is organized according to the following structure:

1360-8-3-.01 Policy statement – States general policies related to the UCC information management system.

1360-8-3-.02 Primary data elements – Describes the primary data elements used in the UCC information management system.

1360-8-3-.03 Names of debtors who are individuals – Specifies the manner in which names of individual debtors are entered in the information management system.

1360-8-3-.04 Names of debtors that are organizations – Specifies the manner in which names of organization debtors are entered in the information management system.

1360-8-3-.05 Estates – Specifies the manner in which names of estate debtors are entered in the information management system.

1360-8-3-.06 Trusts – Specifies the manner in which the names of trust debtors are entered in the information management system.

1360-8-3-.07 Initial financing statement – Describes the status of parties and financing statement upon the filing of an initial financing statement.

1360-8-3-.08 Amendment – Describes the status of parties and financing statement upon the filing of an amendment.

1360-8-3-.09 Assignment of powers of secured party of record – Describes the status of parties and financing statement upon the filing of an assignment.

1360-8-3-.10 Continuation – Describes the status of parties and financing statement upon the filing of a continuation.

1360-8-3-.11 Termination – Describes the status of parties and financing statement upon the filing of a termination.

1360-8-3-.12 Correction statement – Describes the status of parties and financing statement upon the filing of a correction statement.

1360-8-3-.13 Procedure upon lapse date – Describes the procedure for lapsing a financing statement.

1360-8-3-.40 EDI definitions – Definitional section for terms used in this section.

1360-8-3-.41 EDI authorized – Authorizes the use of electronic data interchange (EDI).

1360-8-3-.42 ANSI standard adopted – Adopts the format for EDI transmission.

1360-8-3-.43 Implementation guide – Provides for the publication of a guide describing use of the ANSI standard for EDI transmissions.

1360-8-3-.44 Collateral codes – Provides for the adoption and publication of collateral codes for use in connection with EDI transmissions.

1360-8-3-.45 Document types – Specifies the manner of identifying EDI documents in paper form.

1360-8-3-.46 Identification of secured party – Specifies the manner of identifying EDI secured parties in paper form.

1360-8-3-.47 Refusal of EDI document – Describes the procedure for refusal of an EDI document.

1360-8-3-.48 Acceptance and archives – Describes the procedure for acceptance of an EDI document.

1360-8-3-.49 EDI UCC search requests – Describes the procedure for EDI UCC search requests.

CHAPTER 1360-8-4 **UCC: FILING AND DATA ENTRY PROCEDURES**

Chapter 1360-8-4 is organized according to the following structure:

1360-8-4-.01 Policy statement – State general policies related to filing and data entry procedures.

1360-8-4-.02 Document indexing and other procedures before archiving – Describes in general terms the filing and data entry procedures.

1360-8-4-.03 Filing date – Defines and explains the application of a filing date to a UCC document.

1360-8-4-.04 Filing time – Indicates that the filing time is determined by Section 1360-8-1-.07.

1360-8-4-.05 Lapse date and time – Defines and explains the application of a lapse date and time to a UCC document.

1360-8-4-.06 Errors of the filing officer – Describes the procedure for correcting filing officer errors.

1360-8-4-.07 Errors other than filing office errors – Describes the procedure for correcting filer errors.

1360-8-4-.08 Data entry of names – designated fields – Establishes rules for data entry of names.

1360-8-4-.09 Data entry of names – no designated fields – Establishes rules for data entry of names when the document fails to specify whether the debtor is an individual or organization.

1360-8-4-.10 Verification of data entry – Identifies the methods used by the filing office for verification of data entry.

1360-8-4-.11 Initial financing statement – Describes the information maintained in the information management system related to an initial financing statement.

1360-8-4-.12 Amendment – Describes the information maintained in the information management system related to an amendment.

1360-8-4-.13 Correction statement – Describes the information maintained in the information management system related to a correction statement.

1360-8-4-.14 Global filings – Describes the procedure for accepting and processing global filings.

1360-8-4-.15 Archives – general – Describes the retention of optically imaged documents by the filing office.

1360-8-4-.16 Archives – data retention – Describes the retention of data in the information management system.

1360-8-4-.17 Archival searches – Describes the procedure for archival searches.

1360-8-4-.18 Notice of bankruptcy. – Describes the impact on the filing process of notices of bankruptcy.

CHAPTER 1360-8-5 UCC: SEARCH REQUESTS AND REPORTS

Chapter 1360-8-5 is organized according to the following structure:

1360-8-5-.01 General requirements – Describes the filing office’s search function.

1360-8-5-.02 Search requests – Specifies the information required in a search request.

1360-8-5-.03 Optional information – Identifies additional information that may be contained in a search request.

1360-8-5-.04 Rules applied to search requests – Identifies the rules applied by the filing office to conduct searches.

1360-8-5-.05 Search responses – Describes the procedures for responding to a search request.

For a copy of the entire text of this notice of rulemaking hearing contact: Bob Grunow, Director of Business Services, Department of State, 6th Floor, William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN 37243, (615) 741-0584.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-20)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules and amendments of rules pursuant to *Tennessee Code Annotated, Section 70-1-206*. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *Tennessee Code Annotated, Section 4-5-204* and will take place at Paris Landing State Park, commencing at 9:00 A.M. CDT on the 23rd day of August, 2000.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Tennessee Wildlife Resources Agency to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Tennessee Wildlife Resources Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Wildlife Resources Agency ADA Coordinator, Donna Woodward, Room 229, Tennessee Wildlife Resources Agency Building, Ellington Agricultural Center, Nashville, Tennessee 37204 and telephone number (615)781-6594.

For a copy of this notice of rulemaking hearing, contact: Sheryl Holtam, Attorney, Tennessee Wildlife Resources Agency, P. O. Box 40747, Nashville, TN 37204, telephone number 615, 781-6606.

SUBSTANCE OF PROPOSED RULES

AMENDMENT

Rule 1660-2-7-.21 Boone Lake is amended by adding new paragraph (5) five, to read as follows:

- (5) Vessels being operated on Boone Lake at Bluff City Access Area (SFHRM 34.3L) as delineated by a line of informational buoys or signs, shall operate at a "Slow, No-Wake speed."

Authority: *T.C.A. §§70-1-206, 69-10-209.*

AMENDMENT

Paragraph (1) of rule 1660-1-2-.02 Migratory Bird Hunting is amended by adding the words "Haynes Bottom" to the list of wildlife management areas so that as amended, the paragraph shall read:

- (1) The following regulations apply only to Woods Reservoir of A.E.D.C., Barkley Units I and II, Cheatham Lake, Land Between the Lakes-Bear Creek Unit, Old Hickory-Units I and II, Camden-Units I and II, Big Sandy, Cordell Hull, Gooch-Unit A, New Hope, Lick Creek, Harmon's Creek, Haynes Bottom, Reelfoot and Tigrett Wildlife Management Areas, except for portions of Barkley and Cheatham Lake Wildlife Management Areas as noted in paragraph (3) of these Rules and Regulations:

Subparagraph (a) of Paragraph (1) of rule 1660-1-2-.02 Migratory Bird Hunting is amended by adding the words "Haynes Bottom" to the list of wildlife management areas so that, as amended, the subparagraph shall read as follows:

- (1)(a) No waterfowl hunting on Barkley, Camden-Unit I, Cheatham Lake, Cordell Hull, Gooch-Unit A, Land between the Lakes-Bear Creek Unit, Old Hickory-Units I and II, Haynes Bottom, and Woods Reservoir of A.E.D.C. Wildlife Management Areas during the late waterfowl seasons, except from fixed (floating or post type) blinds registered with the Tennessee Wildlife Resources Agency except as provided for in proclamation and as exempted in subparagraphs (f) and (g) below. Permanent and temporary blinds must be within five (5) feet of designated stakes.

Authority: T.C.A. §70-1-206.

AMENDMENT

Subparagraph (a) of paragraph (6) of rule 1660-1-8-.05 Permit Applications and Drawings is amended by adding the words “Haynes Bottom” to the list of wildlife management areas so that as amended, the subparagraph shall read:

- (6)(a) Permanent blind sites will be allocated by hand-held drawings for the wildlife management areas: Barkley-Units I and II, Big Sandy (including Gin Creek Unit), Camden-Units I and II, Cheatham Reservoir, Cordell Hull, Gooch-Unit A, Harmon’s Creek, Haynes Bottom, LBL-Bear Creek Unit, Old Hickory-Units I and II, Reelfoot (except as provided in Rule 1660-1-2-.02), Tigrett, and Woods Reservoir of A.E.D.C.

Authority: T.C.A. §70-1-206.

AMENDMENTS

Rule 1660-1-26-.02 Rules - Fish Farming is amended by deleting the language in subparagraph (g) of paragraph (2) and by substituting in lieu thereof, the following new language so that as amended subparagraph (g) of paragraph (2) shall read as follows:

- (g) Blue tilapia (*Oreochromis aureus*)

Rule 1660-1-26-.02 Rules - Fish Farming is further amended by adding a subparagraph (h) to paragraph (2) to read as follows:

- (h) Nile tilapia (*Oreochromis nilotica*)

Rule 1660-1-26-.02 Rules - Fish Farming is further amended by adding a subparagraph (i) to paragraph (2) to read as follows:

- (i) Mozambique tilapia (*Oreochromis mossambica*)

Rule 1660-1-26-.02 Rules - Fish Farming is further amended by adding a subparagraph (j) to paragraph (2) to read as follows:

- (j) Other species, approved by the Executive Director of the TWRA, may be used as specified in the letter of approval.

Rule 1660-1-26-.04 Rules - Bait Dealer is amended by adding a paragraph (2) to read as follows:

- (2) The taking and possession of crayfish from Mill Creek and its tributaries in Davidson and Williamson Counties, Tennessee is prohibited.

Authority: T.C.A. §§70-1-206, 70-2-221.

AMENDMENT

Paragraph (5), subparagraph (a) of Rule 1660-1-17-.01 General Provisions for Commercial Use is amended by adding the words “; except in Mill Creek and its tributaries in Davidson and Williamson Counties.” so that, as amended, paragraph (5), subparagraph (a) shall read, as follows:

- (a) Crayfish may be taken for bait; except in Mill Creek and its tributaries in Davidson and Williamson Counties.

Authority: *T.C.A. §§70-1-206 and 70-4-107.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of June, 2000. (06-28)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 00-5

PROCLAIMING NORTH CHICKAMAUGA CREEK WILDLIFE MANAGEMENT AREA

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, Section 70-1-206, the Tennessee Wildlife Resources Commission hereby proclaims the following area a wildlife management area to be known as the North Chickamauga Creek Wildlife Management Area.

That area of Hamilton County, Tennessee, lying generally along North Chickamauga Creek, as posted, being the same land owned by Tennessee Wildlife Resources Agency. A more complete description may be found on file in the office of Tennessee Wildlife Resources Agency in Nashville, Tennessee.

Proclamation No. 00-05 received and recorded this 20th day of June, 2000.

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 00-6

PROCLAIMING LAND BETWEEN THE LAKES WILDLIFE MANAGEMENT AREA

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, Section 70-1-206, the Tennessee Wildlife Resources Commission hereby proclaims the following area a wildlife management area to be known as the Land Between the Lakes Wildlife Management Area.

That area of Stewart County, Tennessee, lying generally between Barkley Lake and Kentucky Lake and the Tennessee-Kentucky State Line and U.S. Highway 79, as posted, being the same land owned by the United States Forest Service. A more complete description may be found on file in the office of Land Between the Lakes in Golden Pond, Kentucky.

Proclamation No. 00-06 received and recorded this 20th day of June, 2000. (06-51)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**PROCLAMATION 00-7
MANNER AND MEANS OF HUNTING, TAKING, AND TRAPPING****STATEWIDE AND ON WILDLIFE MANAGEMENT AREAS AND STATE REFUGES**

Pursuant to the authority granted by Tennessee Code Annotated, Section 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the manner and means of hunting, taking, and trapping, effective August 1, 2000.

NOTE: All sections contained herein apply to statewide and management area hunting. Special restrictions may apply on some wildlife management areas. Legislative Private Acts also apply in some counties.

SECTION I. ILLEGAL WEAPONS

- (1) Shotguns using ammunition loaded with shot larger than Number four (4) are prohibited for hunting all wildlife except beavers, coyotes and waterfowl.
- (2) Shotguns loaded with single ball or rifled slug ammunition are prohibited for hunting all wildlife except deer, bear, and boar, except as follows: Coyotes, feral hogs¹ and bobcats may be taken by big game hunters while hunting big game with any legal big game weapon or ammunition.
- (3) Rifles or handguns loaded with military or other full metal jacketed type of ammunition are prohibited.

¹ Feral hogs are defined as any wild hog found in Tennessee, except on Catoosa, South Cherokee, Chilhowee Mountain, Cove Mountain, and Foothills WMAs.

- (4) Rifles or handguns loaded with center-fire ammunition are prohibited for all hunting between 30 minutes after sunset and 30 minutes before sunrise.
- (5) Rifles or handguns loaded with center-fire ammunition are prohibited during all deer, bear or boar seasons for hunting any wildlife except deer, bear, or boar. Coyotes, crows, groundhogs, beaver, feral hogs and bobcats may be taken by big game hunters while hunting big game with any legal big game weapon or ammunition as provided in the Big Game Season Proclamation.
- (6) Any arrow with poisoned or chemically treated tip or explosive head is illegal for hunting. The crossbow or any bow drawn or held by a mechanical device is prohibited (except as specified in Section III (d) below).
- (7) Weapons capable of fully automatic fire are prohibited for hunting of all wildlife.
- (8) Firearms or archery equipment with any device utilizing an artificial light capable of locating wildlife.

SECTION II. PROHIBITED ACTS

- (1) The use or possession of predator calls while night hunting of any species is prohibited.
- (2) The use or possession and/or the accompanying of anyone using or possessing raccoon calls, squallers, weapons, ammunition, or climbers while training dogs is prohibited during training season, except raccoon calls may be used during authorized field trials.
- (3) The use of dogs in taking or attempting to take deer is prohibited. Taking or attempting to take deer being pursued by dog, or dogs, is prohibited.
- (4) The use or possession of a pod arrow, any pod-type device for holding drugs or chemicals on an arrow, or any drugs or chemicals used in pod arrows while archery hunting is prohibited.
- (5) Quota hunt permits are not transferable. Anyone found hunting on a borrowed quota permit shall be deemed guilty of hunting in closed season.
- (6) Juveniles under the age of eighteen (18) are prohibited from using handguns for the purpose of hunting.
- (7) Hunting prohibited over a site where bait has been placed to feed or attract wildlife unless the bait has been removed at least ten days prior to hunting.
- (8) Evidence of species or sex of big game animals shall not be destroyed or removed prior to a permanent kill tag being issued at a checking station. (Normal field dressing is permitted)
- (9) Possession of firearms prohibited while chasing coyote, fox, and bobcat with dogs from the first Saturday in November through the end of the deer season.
- (10) Use or possession of electronic light amplifying night vision scopes is prohibited when in possession of a firearm or archery tackle between sunset and sunrise.

SECTION III. LEGAL WEAPONS

- (1) Turkey Hunting

- (a) Shotguns 20 gauge or larger using ammunition loaded with number 4 shot or smaller.
 - (b) Longbows and compound bows.
 - (c) Weapons may be equipped with sighting devices except those devices utilizing an artificial light capable of locating wildlife.
- (2) Deer, Bear and Boar Hunting
- (a) Shotguns using ammunition loaded with single solid ball or rifled slugs.
 - (2) Rifles, except those described in Section I. (3) above, using center- fire ammunition of .24 caliber or larger, in all counties except where regulated by legislative acts.
 - (3) Muzzle-loading percussion cap or flintlock rifles, handguns or shotguns of .40 caliber (.40") minimum. These muzzle-loading firearms are legal during any gun season or hunt unless otherwise specified. Muzzleloading firearms are defined as those blackpowder firearms which are incapable of being loaded from the breech.
 - (4) Longbows and compound bows. Crossbows with hunting bolts and other bows drawn or held by a mechanical device may be used by hunters with disabilities during any season when archery tackle is legal. As used herein a hunter with a disability is defined to include any person who is incapable of pulling a conventional or compound bow as determined by a licensed physician. A current statement from a licensed physician, on a special form obtained from TWRA, must be in the possession of the hunter with a disability while he or she is hunting with a crossbow.
 - (e) Hunting arrows and bolts shall be of a barbless design and shall have sharpened blades.
 - (f) Center-fire handguns .24 caliber or larger having a barrel length of four (4) inches or more, in all counties except where regulated by legislative acts.
 - (7) Weapons may be equipped with sighting devices except those devices utilizing an artificial light capable of locating wildlife.
- (3) Small Game Hunting
- (1) Shotguns and handguns using ammunition loaded with Number Four (4) or smaller shot are legal for all small game hunting.
 - (2) Shotguns using ammunition loaded with BBB (0.19 inch diameter) or smaller shot are legal for hunting coyotes and beaver except during big game seasons.
 - (3) Shotguns loaded with nontoxic shot approved by the U. S. Fish and Wildlife Service are legal for hunting waterfowl.
 - (4) Rifles and handguns using .22 caliber rim-fire ammunition and air rifles are legal for hunting small game except migratory birds.
 - (5) Rifles and handguns using center-fire ammunition are legal for hunting beaver, bobcat, coyotes, feral hogs, groundhogs, and crows, except during deer, bear or boar seasons. Rifles and handguns using center-fire ammunition prohibited for hunting all small game species on wildlife management areas (except as specified in Section I.(2)and(5) above)

- (f) Muzzle-loading firearms (rifles, handguns, and shotguns).
 - (g) Longbows and compound bows.
 - (h) Falcons and Falconry - Subject to Tennessee Code Annotated Section 70-4-414.
 - (i) Gigs and angling equipment are also legal for taking bullfrogs.
- (10) Weapons may be equipped with sighting devices except those devices utilizing an artificial light capable of locating wildlife.

SECTION IV. LEGAL TRAPPING DEVICES AND DEFINITIONS

- (1) Leg-hold traps with a jaw spread of 7 2 inches or less are legal for all furbearer species during the legal trapping season.
- (2) Instant-kill traps with jaw measurements no greater than 10 x 10 inches and smaller are legal for all furbearer species during the legal trapping season.
- (3) Live traps are legal for taking any species of wildlife listed as having a trapping season. Live traps are defined as those traps that act as a cage after capture.
- (4) Steel cable snares having a minimum cable diameter of 5/64 inch and a maximum cable diameter of 3/32 inch are legal for all legal furbearer species during the legal trapping season. All snares shall have affixed a tag bearing the name of the owner. Spring activated snares prohibited.
- (5) Cushion-hold traps are legal for all furbearer species during the legal trapping season. The Woodstream Soft-Catch, Duke Rubber Jaw Trap, Butera Cushion Catch traps, and any legal sized offset jawed traps equipped with AHumane Hold@ universal pads by KG Enterprises meet the definition of ACushion-hold trap” as provided in TCA 70-1-101 which may be used in accordance with TCA 70-4-120.
- (6) The following species specific traps - Egg Traps, Coon Cuffs, and Duffer=s Raccoon Trap, are legal for furbearers during the legal trapping season.
- (7) For trapping purposes “water set” is defined to mean traps set in water adjacent to and part of streams, ponds, lakes, wetlands or other water courses and includes floating sets.

SECTION V. AMMUNITION

- (1) Possession of ammunition except that as specifically authorized is prohibited on all wildlife management areas, state refuges and public hunting areas.
- (2) Possession or use of buckshot is specifically prohibited while hunting all species, except in those counties where authorized by Private Acts.
- (3) Possession of shotgun ammunition loaded with more than one solid ball is specifically prohibited while hunting deer, bear, or boar, except in those counties where legal by Private Act.

- (4) Possession of shot larger than No. 4 is prohibited when hunting all wildlife except waterfowl, coyotes and beaver.
- (5) Possession of rifled slugs is prohibited except while hunting deer, bear, and boar.
- (6) Possession or use of any loose shot other than non-toxic or any shotgun shell loaded with shot other than non-toxic is prohibited while hunting waterfowl, coots, gallinules, Virginia rails, and sora rails.

SECTION VI. POSSESSION OF LIVE ANIMALS

Every game animal, wounded or unwounded by hunting and/or trapping and taken into possession by the hunter or trapper, shall be immediately slain and become part of the daily bag limit. No person shall, at any time, or by any means, possess or transport live animals taken under the authority of hunting season proclamations.

SECTION VII. LEGAL HUNTING HOURS

- (1) All big game and small game species (except bullfrogs, raccoons, opossums, migratory birds, and the chasing of foxes) daylight hours only (30 minutes before official sunrise and until 30 minutes after official sunset) except turkey open only until official sunset.
- (2) Hunting of bullfrogs, raccoons, opossums, the chasing of foxes and the trapping of furbearers is permitted day or night unless restricted by Proclamation.
- (3) Migratory birds - To comply with federal regulations for migratory birds, unless restricted by proclamation.

SECTION VIII. MISCELLANEOUS MIGRATORY BIRD REGULATIONS

- (1) Federal regulations relative to baiting, firearms, bag and possession limits, wanton waste, tagging, and methods of hunting are hereby adopted and will be applicable to hunting and/or taking of species listed.
- (1) No person shall hunt migratory game birds with a shotgun of any description capable of holding more than three (3) shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells.
- (2) All persons who hunt migratory game birds are required to have in their possession a valid Tennessee Migratory Bird Permit (TMBP) in addition to other required Tennessee licenses and permits, with the following exceptions:
 - C disabled veterans
 - C landowners hunting on their own land
 - C lifetime license holders
 - C residents of Tennessee under 13 years of age
 - C residents of Tennessee who are 65 or older

Military personnel on leave or furlough will be required to possess the TMBP when hunting migratory game birds even though they are not required to possess a hunting and fishing license.
- (4) Refer to federal regulations 50 CFR Ch. 1 (21.41 and 21.43) for conditions and restrictions applicable to the taking of crows in certain depredation or health hazard situations outside of the crow sport hunting season.

SECTION IX. REPEAL OF PRIOR PROCLAMATION

This proclamation repeals Proclamation No. 99-9, dated May 27, 1999. Proclamation No. 00-7 received and recorded the 20th day of June, 2000. (06-45)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

**PROCLAMATION 00-8
OPENING**

HATCHIE, LOWER HATCHIE, REELFOOT, LAKE ISOM, CROSS CREEKS, CHICKASAW, AND TENNESSEE NATIONAL WILDLIFE REFUGES TO HUNTING

Pursuant to the authority granted by Tennessee code annotated sections, 70-4-107, 70-5-108 and 70-5-111 thereof, the Tennessee Wildlife Resources Commission, after making a survey of Hatchie, Lower Hatchie, Reelfoot, Lake Isom, Cross Creeks, Chickasaw, and Tennessee national wildlife refuges and finding that the supply of game is sufficient to allow hunting thereof as hereinafter described without the danger of extinction or depletion hereby proclaims the following regulations for the 2000-2001 season, effective August 1, 2000.

A federal permit required for all hunts. Quota permits are required for quota hunts and special federal regulations apply as specified. A signed refuge brochure serves as the permit for non-quota hunts.

All deer taken count in Unit A Bag Limit, unless otherwise noted as Bonus deer.

SECTION I. HATCHIE NATIONAL WILDLIFE REFUGE

	Seasons	Bag & Possession Limit
Dove, Opossum*, Quail, Rabbit, Raccoon*, Snipe, Squirrel, Woodcock	Same as statewide (except closed during deer hunts) (Non-toxic shot only)	Same as statewide regulations
Deer (Archery) (No Quota)	September 23-Oct. 8, 2000	Four Deer-Either Sex (No more than two antlered) Unit A Bag
Deer (Gun-Archery) (Quota)**	Oct. 21-22, 2000 (Hunter Quota 225 plus 4 wheel-chair bound hunters & their aides)	Two Deer-Either Sex (Bonus)
Deer (Gun-Archery) (Quota)**	Oct. 28-29, 2000 (Hunter Quota 225 plus 4 wheel-chair bound hunters & their aides)	Two Deer-Either Sex (Bonus)
Ducks and Coots only *** (Porter Trach Only)*** No geese may be taken	Tues, Thursday and Saturday of both the early and regular statewide seasons (Hunting until 12:00 noon only).	In accordance with statewide regulations

- * Opossum and raccoon - hunting hours from sunset to one hour before sunrise. Beaver and coyote may be taken on any hunt. Non-toxic shot only.
- ** Deer taken on quota gun hunts must be checked out at the refuge check station.
- *** Only portable blinds or blinds of native vegetation may be used. Blinds and decoys must be removed each day.
- **** Porter Tract is that portion of the refuge that lies at the extreme east end of the refuge lying east of Richland Creek and the Big Eddy Road.

SECTION II. CHICKASAW AND LOWER HATCHIE NATIONAL WILDLIFE REFUGES AND SUNK LAKE PUBLIC USE MANAGEMENT AREA (NORTHERN UNIT ONLY)

All small game and waterfowl hunting seasons and bag limits in accordance with statewide regulations. Squirrel, rabbit, quail, dove, woodcock, and snipe hunting is closed during all gun deer hunts. All hunting blinds will be portable and nothing of a permanent nature will be constructed. No axes or saws allowed on raccoon hunts. Waterfowl hunting until 12:00 Noon only. Temporary blinds and decoys must be removed at the end of each day's hunt. Non-toxic shot only. No geese may be taken.

Beaver and coyote may be taken during any scheduled hunt with any weapon legal for the hunt.

	Season	Bag & Possession Limit
Deer (Archery)	Sept. 23-Oct. 29, 2000	Four deer - either-sex *
Deer (Gun-Archery) (Young Sportsman)	Nov. 4-5, 2000	One deer - either-sex *
Deer (Gun-Archery)	Nov. 18-Dec. 3, 2000	Two deer - buck only *. UN
Deer (Muzzleloader-Archery)	Nov. 6-12, 2000	One deer - either sex *
Deer (Muzzleloader-Archery)	Dec. 4-10, 2000	Two deer - either sex *

* All deer harvested count against Unit A bag limit.

SECTION III. TENNESSEE NATIONAL WILDLIFE REFUGE

(Except designated closed areas)

	Hunter Quota for Each Hunt	Bag and Possession Limit
Quota Deer Hunts	Big Sandy Peninsula - 50 Duck River Bottoms Unit - 75 Duck River Uplands Unit - 50 Britton Ford Peninsula - 25 Busseltown Unit - 50	All deer taken on quota hunts count as Bonus deer
	Season	Possession and Bag Limit
Deer (Archery)	Two 2-day hunts Sept. 16-17, 23-24, 2000	Two deer- either sex
Deer-Youth (Muzzleloader/Shotgun)*	Sept. 30 - Oct. 1, 2000	Two deer- either sex

Deer (Muzzleloader/Shotgun)*	Oct. 7-8, 2000	Two deer- antlerless only
Deer (Muzzleloader/Shotgun)*	Oct. 14-15, 2000	Two deer- antlerless only
*Note-Modern rifles may be used on all hunts except on Britton Ford and Duck River Bottoms Units.		
Deer (Muzzleloader/Shotgun)*	Oct. 21-22, 2000	Two deer- (one must be antlerless)
Deer (Muzzleloader/Shotgun)*	Oct. 28-29, 2000	Two deer- (one must be an antlerless)

Non-quota Deer Hunts

Deer (Archery)	Sept. 25-Oct. 31, 2000 (open weekdays only) Closed during quota hunts	Deer counts in Unit A Bag Limit
Squirrel	Aug. 26-Oct. 31, 2000 Closed during quota hunts	In accordance with statewide regulations
Quota Raccoon Hunts	Hunter Quota for Each Hunt Duck River Unit - 50 Big Sandy Unit - 50 Busseltown Unit - 20	In accordance with statewide regs

**Note -Beaver and coyote may be taken on a scheduled hunt for other species with any weapon legal for the hunt.

SECTION IV. REELFOOT AND LAKE ISOM NATIONAL WILDLIFE REFUGES

Squirrel regulations	Aug. 19-Sept. 28, and Oct. 14-29,2000	Seasons Bag & Possession Limit In accordance with statewide
Raccoon*	Oct. 13-28, 2000	No No limit

* Hunting hours-7:00pm until midnight only. Hunters must check out all raccoons for tagging.

Deer (Archery)	Sept. 23- Nov. 3, and Nov. 6-12, 2000	Four deer – no more than two antlered (counts as Bonus deer)
Deer (Gun/Archery) (Reelfoot Refuge Only)	Nov. 4-5, 2000 (75 per hunt unit)	Two deer- no more than one antlered Deer must be checked out a refuge check station. (Bonus deer)

SECTION V. CROSS CREEKS NATIONAL WILDLIFE REFUGE
(North Cross Creeks Section Only)

	Seasons	Bag & Possession Limit
Squirrel	Aug. 26- Oct. 31, 2000	In accordance with statewide regulations
Deer (Archery)	Sept. 23-Oct. 31, 2000	Counts in Unit A Bag Limit

SECTION VI. GENERAL REGULATIONS FOR HUNTING REFUGES

- (1) Vehicles must remain on established roads. Roads may be closed due to adverse weather conditions. Park vehicles in a manner that will not interfere with the normal flow of traffic.
- (2) Camping and fires are prohibited except in designated areas.
- (3) It is unlawful to drive a nail, spike, or other metal object into any tree or to hunt from any tree in which a nail, spike, or other metal object has been driven.
- (4) Dogs are prohibited except when used during the small game and migratory bird hunts.
- (5) Designated areas of refuges will be closed to all public entry to provide sanctuaries for waterfowl.
- (6) Small game hunters may only possess and use shotgun shells containing non-toxic shot in areas designated as high waterfowl use areas.
- (7) Hunters must possess a signed refuge brochure/permit.

SECTION VII. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals proclamation No. 99-10 dated May 27, 1999.

Proclamation 00-8 received and recorded this 20th day of June, 2000. (06-46)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**PROCLAMATION 00-9
DOVE , WOODCOCK, SNIPE, CROW, AND SEPTEMBER WATERFOWL REGULATIONS**

Pursuant to the authority granted by, Tennessee Code Annotated, Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the following migratory bird hunting regulations effective August 1, 2000.

Season dates and limits are pending in lieu of federal frameworks.

SECTION I. SEASON AND DAILY BAG LIMITS

Species	Opens	Closes	Daily Bag
Dove 1st segment	1st day of Sept.	Sept. 26	15
2nd segment	2nd Sat. in Oct.	5 th Sun. in Oct.	
3rd segment	Dec. 16	Jan. 2	
Woodcock	Maximum days allowed by federal regulations beginning the last Saturday in October		Maximum bag limit allowed by federal regulations
Wilson Snipe	107 consecutive days ending Feb. 28		8
Crow	Fridays, Saturdays and Sundays only from June 1 - end of February		No limit
Wood Duck/Teal	2nd Sat. in Sept. and continues for five consecutive days		4 ¹
Canada Goose			
Middle Tennessee Zone ²	Sept. 1	Sept. 10	3
East Tennessee Zone ³	Sept. 1	Sept. 15	5

¹ In aggregate not to exceed 2 wood ducks.

² Houston, Humphreys, Montgomery, Perry, and Wayne counties east of Hwy. 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Sumner, Trousdale, Williamson, and Wilson, counties.

³ All counties east of and including Clay, Smith, DeKalb, Warren, Grundy, and Marion.

SECTION II. SHOOTING HOURS

Shooting hours same as federal frameworks.⁴

SECTION III. POSSESSION LIMITS

The possession limit for all species listed herein is twice the daily bag limit except opening day when it shall be the same as the daily bag limit.

Section IV. Repeal of Prior Proclamation

This proclamation repeals Proclamation No. 99-11, dated May 27, 1999.

Proclamation No. 00-9 received and recorded this 20th day of June, 2000. (06-47)

⁴ Except for dove hunting on opening day when shooting hours will begin at 12:00 noon.

TENNESSEE WILDLIFE RESOURCES COMMISSION PROCLAMATION - 1660

**STATEWIDE SMALL GAME HUNTING AND FURBEARER HUNTING
AND TRAPPING SEASONS AND BAG LIMITS
(EXCLUSIVE OF WILDLIFE MANAGEMENT AREAS AND REFUGES)**

Pursuant to the authority granted by Tennessee Code Annotated, Section 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the statewide small game hunting and furbearer hunting and trapping seasons and bag limits effective August 1, 2000.

SECTION I. SMALL GAME HUNTING

Species	Opens	Closes	Daily Bag
Squirrel	4th Saturday in August	Last day in February	10
	2nd Saturday in May	2nd Sunday in June	10
Grouse ¹	2nd Saturday in October	Last day in February	3
Rabbit	2nd Saturday in November	Last day in February	5
Quail	2nd Saturday in November	Last day in February	8
Armadillo	Year-round		No limit

SECTION II. FURBEARERS

A. Hunting

Species	Opens	Closes	Daily Bag
Groundhog, Coyote, Nutria, Striped Skunk	Year-round		No Limit
Fox, Mink, Muskrat, Spotted Skunk, Weasel	Friday before Thanksgiving	Feb. 15	No Limit
Bobcat	Friday before Thanksgiving	Feb. 15	1
Beaver	That portion of Tennessee west of and including Scott, Morgan, Roane, Loudon, McMinn, and Polk counties.		
	Opens Year-round	Closes	Daily Bag No Limit

¹ Grouse hunting season closed west of Interstate 65.

Remainder of the state

Opens Friday before Thanksgiving	Closes Feb. 15	Daily Bag No Limit
-------------------------------------	-------------------	-----------------------

Hunting: Raccoon, Opossum²

Western Unit

That portion of Tennessee west of and including Scott, Morgan, Roane, Meigs, and Bradley counties.

	Opens	Closes	Daily Bag
Taking Season	Sunset 3 rd Friday in September	Sunrise Feb. 15	2 per person per night ³
Training Season	Year-round except where regulated by Private Act		No Taking Permitted

Eastern Unit

That portion of Tennessee east of Scott, Morgan, Roane, Meigs, and Bradley counties.

	Opens	Closes	Daily Bag
Taking Season	Sunset 1 st Friday in November	Sunrise Feb. 15	1 per person per night ³
Training Season	Year-round except where regulated by Private Act		No Taking Permitted

B. Trapping

Species	Opens	Closes	Daily Bag
Groundhog, Coyote, Nutria	Year-round		No Limit
Bobcat, Fox, Mink, Muskrat, Opossum, Raccoon, Spotted Skunk, Striped Skunk, Weasel	Friday before Thanksgiving	Feb. 15	No Limit

Beaver

That portion of Tennessee west of and including Scott, Morgan, Roane, Loudon, McMinn, and Polk counties.

Opens	Closes	Daily Bag
Year-round		No Limit

² No limit on opossum

Remainder of the state	Friday before Thanksgiving	Feb. 15	No Limit
------------------------	----------------------------	---------	----------

River Otter⁴
 That portion of Tennessee south and west of Kentucky Lake and Pickwick Lake.

	Opens	Closes	Daily Bag
	Friday before Thanksgiving	Feb. 15	No Limit

The following counties are included in the statewide fox hunting and trapping seasons, after determining a need for the opening thereof:

Blount	Johnson	Overton
Carter	Knox	Pickett
Clay	Loudon	Putnam
Cocke	Macon	Rhea
Fentress	McMinn	Robertson
Hamblen	Meigs	Sevier
Haywood	Monroe	White
Jefferson		

SECTION III. CONTROLLED AND COMMERCIAL SHOOTING PRESERVES
 (by special Commission Permit only)

	Opens	Closes	Daily Bag
Upland Game Birds and Waterfowl	Year-round		No Limit
Big Game - (Feral Hogs and Exotic Species only, excluding Exotic Cats and all species of Bear)	Year-round		No Limit
Small Game Mammals (fenced enclosures only)	Year-round		No Limit
Bobcat specifically prohibited			

³ Night defined as one 24-hour period commencing at sunset.

⁴ All river otter harvested must be tagged by harvester with Tennessee US CITES Tags.

SECTION IV. UNPROTECTED ANIMALS

	Opens	Closes	Daily Bag
English Sparrow, Starling	Year-round		No Limit

SECTION V. BULLFROG HUNTING

	Opens	Closes	Daily Bag
Bullfrog	Year-round		20 per person per night ⁵

Only domestically raised or legally imported bullfrogs or parts thereof may be sold.

Waters Open: All waters of the state are open except: (1) Waters within state and federal wildlife refuges. (2) Special Season applies on TWRA lakes (June 1-June 30).

NOTE: The use of firearms for the taking of bullfrogs in wildlife management areas and TWRA lakes is prohibited. Also, the taking of bullfrogs is defined as hunting. Permit not required on wildlife management areas.

SECTION VI. POSSESSION LIMITS

The possession limit for all species listed herein is twice the daily bag limit except opening day when it shall be the same as the daily bag limit.

SECTION VII. REPEAL OF PRIOR PROCLAMATION

This proclamation repeals Proclamations No. 99-12, dated May 27, 1999.

Proclamation No. 00-10, received and recorded this 20th day of June, 2000. (-648)

⁵ Night defined as one 24-hour period commencing at sunset.

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**PROCLAMATION 00-11****STATEWIDE BIG GAME HUNTING SEASONS AND BAG LIMIT
(EXCLUSIVE OF WILDLIFE MANAGEMENT AREAS AND REFUGES)**

Pursuant to the authority granted by Tennessee Code Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the statewide big game seasons and bag limits, effective August 1, 2000.

SECTION I. WHITE-TAILED DEER**A. White-tailed Deer Hunting Seasons**

For the purpose of these hunting regulations and better wildlife management, the State of Tennessee is hereby divided into two (2) deer units, as follows:

Unit

A.

Bedford, Benton, Bledsoe, Bradley, Cannon, Carroll, Cheatham, Chester, Clay, Coffee, Crockett, Davidson, Decatur, Dekalb, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Grundy, Hamilton, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, McMinn, McNairy, Macon, Madison, Marion, Marshall, Maury, Meigs, Montgomery, Moore, Obion, Overton, Perry, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Sequatchie, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Van Buren, Warren, Wayne, Weakley, White, Williamson, Wilson.

B. Anderson, Blount (that area west of Hwy. 411 and east of Hwy. 129 is archery/muzzleloader equipment only), Campbell, Carter, Claiborne, Cocke, Cumberland, Fentress, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Monroe, Morgan, Pickett, Scott, Sevier, Sullivan, Unicoi, Union, Washington.

Deer Unit A ¹	Season Opens	Season Closes
Deer (Archery)	Sept. 23, 2000	Nov. 3, 2000
	Nov. 13, 2000	Nov. 17, 2000
	Dec. 11, 2000	Dec. 15, 2000
Deer (Muzzleloader-Archery)	Nov. 6, 2000	Nov. 12, 2000
Deer (Gun-Muzzleloader-Archery)	Nov. 18, 2000	Dec. 3, 2000
	Dec. 16, 2000	Jan. 7, 2001
Deer (Muzzleloader-Archery)	Dec. 4, 2000	Dec. 10, 2000

¹ Dates inclusive.

Deer Unit B ¹	Season Opens	Season Closes
Deer (Archery)	Sept. 23, 2000 Nov. 13, 2000	Nov. 3, 2000 Nov. 17, 2000
Deer (Muzzleloader-Archery)	Nov. 6, 2000	Nov. 12, 2000
Deer (Gun-Muzzleloader-Archery)	Nov. 18, 2000 Dec. 16, 2000	Nov. 26, 2000 Jan. 1, 2001
Deer (Muzzleloader-Archery)	Dec. 8, 2000	Dec. 10, 2000

B. White-tailed Deer unit bag limits

On statewide hunts including the November Young sportsman hunt, no more than 2 antlered deer may be taken by gun; no more than 2 antlered deer may be taken by muzzleloader; no more than 2 antlered deer may be taken by archery. However, the total number of antlered deer taken may not exceed 3 per year. No more than 1 antlered deer may be taken per day.

Unit	Archery Season Bag
A	4 Deer - Either Sex
B	2 Deer - Either Sex except antlered only after Oct. 22
Unit	Gun-Muzzleloader-Archery Season Bag
A	2 Deer - Antlered Only
B	2 Deer - Antlered Only
Unit	Muzzleloader-Archery Season Bag
A	2 Deer - No more than 1 antlered—first segment—except 1 Deer either sex in Bledsoe, Bradley, Dekalb, Grundy, Hamilton, McMinn, Marion, Meigs, Polk, Rhea, Roane, Sequatchie, Van Buren and White. 2 Deer - No more than 1 antlered—second segment—except buck only in Bledsoe, Bradley, Dekalb, Grundy, Hamilton, McMinn, Marion, Meigs, Polk, Rhea, Roane, Sequatchie, Van Buren and White.

⁵ Dates inclusive.

COUNTY	Quota Hunts				Non-quota Hunts		Nov 29-Dec 3
	Nov 18-Nov 19	Nov 20-Nov 23	Nov 24-Nov 28	Nov 29-Dec 3	Nov 24-Nov 28	Nov 29-Dec 3	
Dec 16-Dec 23	Dec 24-Dec 31	Jan 1-Jan 7					
Bedford*	525	525	525	525	X	X	X
Benton							X
Cannon		300	300	300	X	X	X
Carroll					X	X	X
Cheatham	250		350	350	X	X	X
Chester					X	X	X
Clay			250	250			X
Coffee	700		700	700	X	X	X
Davidson*	300		300	300	X	X	X
Decatur						X	X
Dickson	200		600	600	X	X	X
Fayette**	1000	1000	1000	1000	X	X	X
COUNTY	Nov 18-Nov 19	Nov 20-Nov 23	Nov 24-Nov 28	Nov 29-Dec 3			
Dec 16-Dec 23	Dec 24-Dec 31	Jan 1-Jan 7					
Franklin	200	200	200	200	X	X	X
Gibson (E of 45W)							X
Giles**	1250	1250	1250	1250	X	X	X
Hardeman**	1300	1300	1300	1300	X	X	X
Hardin			400	400	X	X	X
Hawkins ²							
Hawkins (Holston Army Plant Only) ³							
Haywood					X	X	X
Henderson	400				X		X
Henry	1050	1050	1050	1050	X	X	X
Hickman	1100	1100	1100	1100	X	X	X
Houston						X	X
Humphreys	575		575	575	X	X	X
Lawrence	600	600	600	600	X	X	X
Lewis	500		500		X	X	X
Lincoln**	900	900	900	900	X	X	X
McNairy					X	X	X
Macon	500	500	500	500	X	X	X
Madison	600	600	600	600	X	X	X
Marshall**	400	400	400	400	X	X	X
Maury**	1200	1200	1200	1200	X	X	X
Montgomery*	500	500	500	500	X	X	X
Moore**	200	200	200	200	X	X	X
Obion							X
Overton				300			X
Perry					X	X	X
Robertson	400		400	400	X	X	X

² Hawkins County quota hunt on Dec. 30-31. 650 Hunter Quota

³ Holston Army Plant quota hunts on Nov. 18, Nov. 19, Nov. 26 and Dec. 9. Each hunt 80 Hunter Quota. Bag limit 2 deer per permit.

Rutherford*	600	600	600	600	X	X	X
Shelby (south of I-40)							X
Smith			500	500	X	X	X
Stewart					X	X	X
Sumner	400	400	400	400	X	X	X
Trousdale			200	200	X	X	X
Wayne			500		X	X	X
Weakley	500	500	500	500	X	X	X
Williamson**	750	750	750	750	X	X	X
Wilson*	700	700	700	700	X	X	X

* - Indicates bag limit of 2 deer per permit for quota hunts

** - Indicates bag limit of 3 deer per permit for quota hunts

D. Special Regulations

1. Big Game Tagging - Upon harvesting the first big game animal of the day, except for feral hogs, the hunter must punch the date of harvest on the temporary kill tag and attach it to the animal immediately. The hunter may continue to big game hunt until he reaches the big game bag limit for that season, to the conclusion of the hunt or until the end of legal hunting time for that day, whichever comes first. All animals harvested must be accompanied by one tagged animal and must be taken together to the nearest big game checking station by the most reasonably direct route where one new temporary kill tag will be issued. The permanent harvest tag is a legal document and must be signed by the hunter. By signing the permanent harvest tag, the hunter is affirming that the information, as it appears on the permanent tag, is correct and valid. The permanent game tag must remain with each carcass until final processing. Persons legally hunting without a license are also required to take any big game animal harvested to a check station. After receiving a temporary harvest tag from checking in their first kill, these persons must comply with all tagging regulations. All big game taken to a taxidermist to be mounted must be accompanied by documentation showing the permanent game tag number, checking station number, and date of kill.

SECTION II. FERAL HOG

Feral Hogs⁴

Feral hogs are defined as any wild hog found in Tennessee except on Catoosa, South Cherokee, Chilhowee Mtn, Cove Mtn, and Foothills WMA's. Feral hogs are considered big game but are not required to be tagged or checked in at big game checking stations.

Private lands (Public Hunting Areas are considered private land)

Year round season, except inholdings on Catoosa WMA and

No limit -either sex

⁴ No dog hunting allowed.

⁵ Dates inclusive.

South Cherokee where season is open with statewide deer seasons with no dogs.

Public lands

Open during scheduled white-tailed deer hunts unless otherwise specified.

No limit -either sex

In the Following Counties Dogs May Be Used For Feral Hog Hunting On The Dates Indicated⁵:

Monroe

Gun-Muzzleloader-Archery Oct. 9-18, 2000
(Dogs Permitted) No limit-Either Sex

Blount and Sevier

Gun-Muzzleloader-Archery Sept. 23-Oct. 2, 2000
(Dogs Permitted) No limit-Either Sex

Cocke (South of I-40)

Gun-Muzzleloader-Archery Sept. 23-29, 2000 No limit-Either Sex
(Dogs Permitted)

Blount, Cocke, Monroe, Sevier

Gun-Muzzleloader-Archery Nov. 30-Dec.13, 2000 No limit-Either Sex
(Dogs Permitted)

SECTION III. BEAR.

The Following Counties Are Open For Bear Hunting⁶:

Blount, Cocke, Greene, Monroe, Polk (that portion north of Hwy. 64), Sevier, Unicoi, and Washington (that portion East of Hwy. 81 and South of Hwy. 67).

Gun-Muzzleloader-Archery Nov. 30-Dec.13, 2000 1 per year-either sex.
(Dogs Permitted)

Carter, Johnson, and Sullivan (that portion east of I-81)

Gun-Muzzleloader-Archery Nov. 30-Dec. 4, 2000 1 per year-either sex.
(Dogs Permitted)

⁶ Dates inclusive.

Blount, Cocke (South of I-40), and Sevier

Gun-Muzzleloader-Archery (Dogs Permitted)	Sept. 23-29, 2000	1 per year-either sex.
--	-------------------	------------------------

Blount and Sevier

Archery Only (No Dogs)	Oct. 14-22, 2000	1 per year-either sex
---------------------------	------------------	-----------------------

The Following Counties Are Open For A Bear Dog Training Season:

Cocke, Greene, and Sevier Counties.

Sept. 5-20, 2000. No bears may be taken. No weapons may be possessed. Daylight hours only.

Special Bear Hunting Regulations:

1. The limit of bears for any person participating in the statewide or managed hunts or both shall not exceed one (1) bear per calendar year.
2. Cubs or female bears with cubs at side may not be taken at any time. A cub is defined as any bear weighing seventy-five (75) pounds or less.
3. All bears must be checked out at an official bear checking station designated by TWRA.
4. The reproductive sex organs shall remain attached to each bear harvested at least until the bear has been officially checked out at an official bear checking station.

SECTION IV. FALL TURKEY (SHOTGUN/ARCHERY)

The following counties are open for fall turkey hunting on Oct. 27-29 as specified below. Special quota permit required. Bag limit-one turkey either sex per permit.

Bedford	300 Hunter Quota
Cannon	200 Hunter Quota
Cheatham	150 Hunter Quota
Claiborne	100 Hunter Quota
Cocke	100 Hunter Quota
Coffee	100 Hunter Quota
Dekalb	50 Hunter Quota
Dickson	250 Hunter Quota
Franklin	300 Hunter Quota
Giles	235 Hunter Quota
Grainger	100 Hunter Quota
Greene	100 Hunter Quota
Hancock	100 Hunter Quota
Hardeman	50 Hunter Quota

Hardin	50 Hunter Quota
Hawkins	100 Hunter Quota
Hickman	300 Hunter Quota
Humphreys	100 Hunter Quota
Lincoln	750 Hunter Quota
McNairy	50 Hunter Quota
Macon	200 Hunter Quota
Marshall	200 Hunter Quota
Maury	150 Hunter Quota
Montgomery	200 Hunter Quota
Moore	200 Hunter Quota
Rutherford	650 Hunter Quota
Smith	200 Hunter Quota
Stewart	100 Hunter Quota
Sumner	150 Hunter Quota
Trousdale	100 Hunter Quota
Wayne	100 Hunter Quota
Wilson	200 Hunter Quota

SECTION V. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals Proclamation No. 99-13 and 99-15, dated June 24, 1999. (06-49)

Proclamation No. 00-11 received and recorded this 20th day of June, 2000. (06-49)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**PROCLAMATION 00-12****WILDLIFE MANAGEMENT AREAS
HUNTING SEASONS, LIMITS, AND MISCELLANEOUS REGULATIONS**

Pursuant to the authority granted by Tennessee Code Annotated Sections 70-4-107, and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the wildlife management areas hunting seasons, limits, and miscellaneous regulations, effective August 1, 2000.

Note: Migratory Bird Season Dates and Limits are Pending in Lieu of Federal Frameworks.

SECTION I. GENERAL**A. Hunting Season**

1. Management areas open on dates shown and as otherwise indicated.
2. Small game hunting and dog training closed at sunset on the day before and during scheduled big game hunts on the following Wildlife Management Areas, unless special exception indicated: A.E.D.C., Bridgestone/Firestone Conservation Area, Buffalo Springs, Catoosa, Chuck Swan, Cove Creek, Cumberland Springs, Eagle Creek, Foothills, Laurel Hill, Prentice Cooper, Rankin, Reelfoot, the Thief Neck Island Unit of Watts Bar, and Williamsport.
3. Coyote may be taken on any hunt, except on Bridgestone/Firestone Conservation Area WMA.
4. Season open on groundhog, fox, and skunk on all wildlife management areas during any scheduled small game hunt unless special exception is indicated. Crow may be taken on small game hunt days that coincide with statewide crow season.
5. Raccoon and opossum hunting is from sunset of the date shown to sunrise of the next day.
6. Bobcat may be taken on any big game or small game hunt that coincides with the statewide bobcat season, except Oak Ridge WMA and Bridgestone/Firestone Conservation Area WMA.
7. Falconry open with statewide falconry seasons.
8. Small game (except raccoon) and retriever field trials permitted year-round with approval of the Area Manager unless otherwise specified.
9. Raccoon hound field trials permitted Sept. 1-Apr. 30 unless prohibited.
10. Dog training Sept. 1-Mar. 15 unless otherwise indicated.
11. Spring squirrel season May 12 - June 10, 2001, except closed on the following areas: Cherokee, Chilhowee Mountain,

Edgar Evins, Fall Creek Falls, Flintville Hatchery, Foothills, Forks of the River, Gallatin Steam Plant, Haley-Jaqueth, Henderson Island, Hermitage, Kingston Refuge, Kyker Bottoms Refuge, Lick Creek Bottoms, Nathan Bedford Forrest, Oak Ridge, Paint Rock Refuge, Rankin, Shelby Forest, and Tellico Lake (McGhee-Carson and Niles Ferry Units only). Daily bag limit is 10 squirrels and the possession limit is 20. No hunting with dogs permitted.

12. Waterfowl hunting from temporary blinds-no blinds or decoys left overnight unless otherwise specified by rule or proclamation.
13. Feral hogs¹ may be taken during any big game or small game hunt on wildlife management areas or refuges, unless otherwise specified. Wild boar seasons are open as indicated.
14. All game killed or crippled shall be retrieved if possible and retained in the custody of the hunter in the field. No game may be discarded on the premises of the management area.

B. Bag and Possession Limits

1. One deer may be taken on each managed hunt where a permit is required except as otherwise indicated. Deer taken on buck-only hunts must have antlers a minimum of three inches (3") in length.
2. Statewide bag and possession limits shall apply unless special exception is indicated.

C. Miscellaneous Regulations

1. Muzzleloading weapons legal on all Gun-Archery hunts except where indicated.
2. Possession of shotgun ammunition loaded with more than one solid ball is specifically prohibited while hunting deer, bear or boar.
3. Dogs allowed for small game hunting. Special regulations apply where indicated.
4. On all "Young Sportsman Hunts" Youths must be 10-16 years of age and be accompanied by an adult. Adults must comply with fluorescent orange regulations, as specified for legal hunters when accompanying young sportsmen on "Young Sportsman Big Game Hunts". Adults may not hunt or carry a weapon on any "Young Sportsman Hunt" except as indicated.
5. If WMAs are designated as being open with the statewide season, then deer harvested count towards the statewide bag limit. If a specific hunt date and bag limit are listed, the deer are considered bonus deer and are not counted against the statewide bag limit unless otherwise noted. WMA bag limits listed are per hunt.

¹ Feral hogs are defined as any wild hog found in Tennessee, except on Catoosa, South Cherokee, Chilhowee Mountain, Cove Mountain, and Foothills WMAs.

6. The placement or depositing of any type of food to feed or attract wildlife on WMA's is prohibited.

SECTION II. WILDLIFE MANAGEMENT AREAS AND REFUGES - SEASON AND BAG LIMITS

The following areas or units are open to hunting as set out in the statewide seasons:

Alpine Mountain	New Hope (9)(22)
Bark Camp Barrens	Normandy
Barkley Unit II (22)	Obion River (22)
Bean Switch Refuge (10)(11)(18)	Perryville (4)
Big Sandy (5)(6)(9)(22)	Pickett
Camden Unit II (9)(22)	Standing Stone (2)
Cedar Hill Swamp (8)	Tigrett (1)(22)
Chickasaw (22)(26)	Watts Bar (7) (14) (16)(17)
Chilhowee Mountain (3)(12)(23)(24)	West Sandy (1)(6)(9)(22)
Cove Creek (3)	White Lake Refuge (10)(11)(18)
Cove Mountain (3)(12)(23)(24)	White Oak (4)(6)(9)(13)(19)(22)
Doe Mountain (3)(12)(25)	Whites Mill Refuge (12) (15)(20)(21)
Harmon Creek (9)(22)	
Hop-In Refuge (10)(11)(18)	
Horns Bluff Refuge (10)(11)	
Jarrell Switch Refuge (10)(11)	
Keyes-Harrison	
Lick Creek (22)	
M.T.S.U	
Mt.Roosevelt	

1. Waterfowl hunting shall close at 3:00 P.M. (CST) each day of the regular statewide waterfowl seasons, except the last day of the duck seasons and remaining goose seasons when hunting shall close at sunset.
2. No fox taking.
3. Season closed March 1- August 25, except during turkey and spring squirrel season(s) where applicable. Dog training Sept. 1-Mar. 1.
4. Retriever field trials permitted year-round.
5. Hunting of waterfowl during the late duck and goose seasons permitted only on Wednesday, Thursday, Saturday, Sunday, Monday, and the first and last day of each segment of the late duck and goose seasons. During the late duck season, all activities are prohibited in the sub-impoundments when waterfowl hunting is closed.
6. All activities are prohibited in the subimpoundments six days prior to the opening day(s) of the statewide duck season.
7. Thief Neck Island Unit - Same as statewide deer season (Archery tackle only). Young sportsman hunts on Oct. 14-15, Nov. 4-5. No hunter quota. One deer, either sex.

8. Firearms prohibited for deer hunting.
9. Dove hunting to begin at 12 noon each day of the first segment of the statewide season.
10. Closed to all hunting and dog training Nov. 1-Mar. 1.
11. Closed to waterfowl hunting.
12. Dog training prohibited.
13. Waterfowl hunting closes at 1:00 p.m. (CST) during the late duck season(s) and all types of water traffic prohibited after 2:00 p.m. (CST).
14. Paint Rock Refuge is closed to all forms of public use, including all forms of trespass, from Oct. 15 through Feb. 1, except as otherwise indicated. Public entry and fishing is permitted while on the main river channel passing through the refuge. Paint Rock Refuge is open to Canada goose hunting Sept. 1-8; bag limit of 5 geese per day.
15. Closed to all forms of public use, including all forms of trespass, from Sept. 1 through the last day of February, except as otherwise indicated. Horseback riding prohibited.
16. Long Island Unit - Archery equipment and shotguns only.
17. Dog training (daylight hours only) Sept. 1-Oct. 14, Feb. 2-Mar. 15 on Paint Rock Refuge.
18. No dove hunting.
19. Closed to deer hunting the second segment of Unit A Gun-Archery season.
20. Open to dog training Feb. 15-28.
21. Open to bullfrog hunting July 1-Aug. 31, gigs only.
22. Young Sportsman deer (Gun-Archery) hunt on Oct. 14-15. No hunter quota. One deer, either sex. Statewide archery season closed on these areas during this hunt.
23. Wild boar hunts (dogs permitted) will be held on Sept. 23-Oct. 2 and Nov. 30-Dec. 13. No hunter quota. One boar, either sex. No feral hog seasons.
24. Young Sportsman deer-boar (Gun-Archery) hunt Oct. 28-29. No hunter quota. One deer, buck only; one boar, either sex.
25. Young Sportsman deer (Gun-Archery) hunt Oct. 28-29. No hunter quota. One deer, buck only.
26. Closed to county special season antlerless quota hunts.

² Wheelchair bound hunters are defined as hunters who are totally and permanently confined to a wheelchair as certified by a physician. Each permittee must be accompanied by a non-hunting assistant (age 16 or older).

AEDC and Woods Reservoir Refuge

Beaver, Grouse, Quail, Opossum, Rabbit,
Raccoon, Snipe, Squirrel, Woodcock,

Same as statewide season, except that beaver may be taken only during other small game hunts. Woods Reservoir Refuge--small game hunting closed Dec. 1-Jan. 31.

Dove

Same as statewide season except opens at noon each day during the first segment of the dove season.

Deer (Archery)

Two 3-day hunts. Sept. 22-24, Sept. 29-Oct. 1. Hunter quota 1500. One deer, either sex.

Deer (Gun-Archery)(Young Sportsman)

One 2-day hunt. Oct. 7-8. Hunter quota 850. One deer, either sex.

Deer (Gun-Archery)

One 2-day hunt. Oct. 11-12. Hunter quota 300. One deer, either sex. Hunting allowed in the National Guard Training Area, and Rifle Range Safety Zone only. Scouting days: Oct. 9-10.

Deer (Gun-Archery)
only.

One 2-day hunt. Oct. 21-22. Hunter quota 700. One deer, antlerless

Deer (Gun-Archery)

One 2-day hunt. Oct. 28-29. Hunter quota 400. One deer, either sex.

Deer (Gun-Archery)

Two 2-day hunts. Nov. 4-5, Nov. 25-26. Hunter quota 750. One deer, either sex.

Deer (Archery)

One 3-day hunt. Dec. 1-3. No hunter quota. One deer, either sex. Waterfowl hunting permitted during deer hunt.

Deer (Gun-Archery)
(Wheelchair Bound Only 2)

Two 2-day hunts. Nov. 4-5, Nov. 25-26. No hunter quota. One deer, either sex. "Wheelchair Bound Hunter Zone" only.

Wheelchair Bound Hunter Zone

Wheelchair bound hunters only in the old "Camp Forrest" area of A.E.D.C. (north of Wattendorf Hwy., west of Rifle Range Rd., and south of the railroad track) during the following hunts: Nov. 4-5, Nov. 25-26.

Dog Training (Daylight hours only)

Sept. 1-Mar. 15

Waterfowl

Hunting from registered blind sites only on Woods Reservoir except during the early duck season; also, Canada goose hunting is allowed outside of blinds upstream from Morris Ferry bridge except during the duck season. Same as statewide seasons except open on Wednesday, Thursday, Saturday and Sunday of the late duck season and the first and last day of each segment of the late duck season. Waterfowl hunting allowed on Woods Reservoir during deer hunts when waterfowl season is open.

² Wheelchair bound hunters are defined as hunters who are totally and permanently confined to a wheelchair as certified by a physician. Each permittee must be accompanied by a non-hunting assistant (age 16 or older).

	During the September and October waterfowl seasons, hunting is permitted outside of registered blinds on Woods Reservoir except 150 yards out from the bank beginning at the Pumping Station and going west to Arnold Village slough and beginning at the Famcamp slough and going west to the Rowlands Creek causeway. On youth waterfowl hunting day, hunting on Woods Reservoir allowed outside blinds upstream from Morris Ferry Bridge. Downstream from Morris Ferry registered blind sites only.
Arms and Ammunition	Shotguns and archery equipment. Muzzleloading rifles on deer gun hunts only.
Closure	Public use of Woods Reservoir Refuge, including all forms of trespass, is prohibited Dec. 1-Jan. 31, except as otherwise indicated.
Anderson-Tully	
Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Woodcock, Waterfowl	Same as statewide seasons, except closed during Young Sportsman deer hunts. All waterfowl hunting to end at noon.
Deer	Same as statewide seasons, except closed during second segment of Unit A Gun-Archery season, and the deer archery season is closed on this area during the Young Sportsman deer hunt on Oct. 14-15.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Oct. 14-15. No hunter quota. One deer, either sex.
Retriever trials	Permitted year-round.
Barkley Reservoir	
UNIT I - (Hwy 79 downstream to River Mile 85)	
Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Waterfowl, Woodcock	Same as statewide seasons except that waterfowl hunting is permitted only on Wednesday, Thursday, Saturday, Sunday, Monday and the first and last day of each segment of the late statewide duck and goose season. All activities are prohibited in the unit six (6) days prior to the opening day(s) and on Tuesdays and Fridays of the late duck season. Fishing and hunting of all species other than waterfowl prohibited in the sub-impoundments during the late duck season.
Dog training permitted	Sept. 1 - Mar. 15 except closed during the late duck season.
Deer	Same as the statewide seasons, except closed to statewide archery during the Young Sportsman hunt on Oct. 14-15, and during six (6) days prior to the opening day(s) and on Tuesdays and Fridays of the late duck season.

Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Oct. 14-15. No hunter quota. One deer, either sex.
Black Bayou Refuge	
Rabbit (Quota Hunt)	Four 1-day hunts. Oct. 14, 15, 21, 22. Six parties per hunt. Six hunters per party. Six dogs per party. Five rabbits per hunter. Nontoxic shot approved by the U. S. Fish & Wildlife Service only. Sign-up for hunt will be at the Reelfoot Lake WMA office parking lot at Reelfoot Lake, Sept. 16, between the hours of 9:00am and 12:00 noon. A drawing for permits will be held immediately following the sign-up period.
Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Woodcock	Same as statewide seasons, except closed to all hunting after Nov.14.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Nov. 4-5. No hunter quota. One deer, either sex.
Deer (Archery) deer, either sex.	Two hunts. Sept. 23 - Nov. 3 and Nov. 6 - 14. No hunter quota. Three deer, either sex.
Dog Training	Sept. 1-Nov. 14.
Bridgestone/Firestone	
Dove (Young Sportsman) adult. Hunting starts at noon.	Sept. 2. Each Young Sportsman must be accompanied by a non-hunting adult. Hunting starts at noon.
Dove	Sept. 3, and the remainder of the statewide season.
Fox, Grouse, Quail, Rabbit, Snipe, Squirrel, Woodcock	Same as statewide seasons.
Opossum, Raccoon	Same as statewide season, except hunting will be limited to Friday and Saturday nights only. All hunting ends Jan. 7.
Deer (Archery)	Three 3-day hunts. Sept. 23-25, 26-28, 29-Oct. 1. No hunter quota. One deer, either sex. Deer counts toward statewide bag.
Deer (Gun-Archery)(Young Sportsman)	One two-day hunt. Nov. 4-5. No hunter quota. One deer, either sex. Deer counts toward statewide bag.
Deer (Gun-Archery)	Two 2-day hunts. Nov. 18-19, Dec. 18-19. No hunter quota. One deer, buck only. Deer counts toward statewide bag.
Dog Training (Daylight hours only)	Sept. 1-Mar. 15

Buffalo Springs

Waterfall parking area closed one hour after sunset until one hour before sunrise.

Dove Sept. 1, 2, 4, and every day thereafter during the statewide dove season except opens at noon during the first segment of the dove season. Hunter quota 55. Staked positions only. A random drawing will be held at 11 a.m. on Sept. 1. Otherwise, first come, first served.

Deer, Grouse, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Turkey, Waterfowl, Woodcock Same as statewide season.

Camden Unit I

Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Waterfowl, Woodcock Same as statewide seasons, except that waterfowl hunting shall end at 3:00 P.M. (CST) each day of the late statewide waterfowl season, and dove hunting shall begin at 12 noon each day of the first segment of the statewide season

On the last day of each segment of the late duck and remaining goose seasons hunting shall end at sunset. Hunting of all species other than waterfowl is prohibited during the late duck season. Dog training permitted Sept. 1 - Mar. 15 except during the late duck season.

All activities are prohibited in the sub-impoundments six days prior to the opening day(s) of the late duck season.

Deer Same as statewide seasons, except closed to statewide archery season during the Young Sportsman deer hunt on Oct. 14-15, and closed during the late duck season.

Deer (Gun-Archery)(Young Sportsman) One 2-day hunt. Oct. 14-15. No hunter quota. One deer, either sex.

Catoosa

Dove, Grouse, Quail, Rabbit, Snipe, Squirrel, Waterfowl, Woodcock Same as statewide seasons, except all hunting ends Jan. 31.

Opossum, Raccoon Sunset Nov. 1 to Sunrise Dec. 31.

Deer/Boar (Archery) Three 3-day hunts. Sept. 30-Oct. 2, Oct 3-5, 6-8. No hunter quota. Area checking stations operated. Entire area open. One deer, either sex. One boar, either sex.

Deer/Boar(Muzzleloader-Archery) One 2-day hunt. Oct. 20-21. No hunter quota. Entire area open. One deer, buck only. One boar, either sex.

Deer/Boar (Gun-Archery)	Two 3-day hunts. Nov. 16-18, Nov. 30-Dec. 2. Station quota: Genesis 1,250; Bicolor 1,250. One deer, buck only. One boar, either sex.
Deer/Boar (Gun-Archery)	One 3-day hunt. Dec. 14-16. No hunter quota. Entire area open. One deer, buck only. One boar, either sex.
Boar (Gun-Archery) (Dogs Permitted) Entire area open. One boar either sex.	One 3-day hunt. Jan. 4-6. Station quota: Genesis 200; Bicolor 200.
Bullfrog	Apr. 1-Sept. 1. No hunting during turkey hunts.
Special Regulations:	Buck deer must have a minimum of 4 points on one antler on all hunts. Points must be at least 1 inch or longer. Catoosa WMA will be closed to all users Feb. 1 - last Friday in March. Guides prohibited on all hunts.
Dog Training (Daylight hours only)	Sept. 1-Jan. 31
Cheatham	
Quail, Rabbit, Snipe, Squirrel, Woodcock	Same as statewide seasons.
Deer	Same as statewide seasons, except all hunting closed after Dec. 15. Deer counts toward statewide bag.
Dove	Same as statewide season except opens at noon each day during the first segment of the dove season.
Opossum, Raccoon	Dec. 15 -Jan. 31.
Firing Range	Open as posted. Automatic weapons prohibited.
Archery range	Open daily. Field points only.
Dog Training (Daylight Hours Only)	Sept. 1-Mar. 15.
Cheatham Lake	
Deer, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Turkey, Waterfowl, Woodcock	Same as statewide seasons on Sycamore Creek upstream from railroad trestle, Harpeth River upstream from Highway 49, and on Johnson Creek upstream from Johnson Creek Bridge. Hunting on remainder of Cheatham Lake WMA same as statewide season except during the late duck season when hunting is open only on Wednesday, Thursday, Saturday, Sunday, and the first and the last day of each segment of the late statewide duck season. Waterfowl hunting is permitted only from registered blind sites and from staked temporary blind sites during the late duck season.

Hunting on Harpeth Island, Marks Creek, and Bluff Creek wade-in areas is not restricted to registered or staked temporary sites. Night hunting, trapping, and fishing prohibited in waterfowl impoundments during the waterfowl season. The sub-impoundment units as posted are closed to all types of activity six days prior to the opening of the first segment of the late duck season.

Waterfowl
(Wheelchair-bound only³ blind site)

Applications must be received by TWRA Region II by noon on the 4th Friday in October. Persons holding a permit for another blind are not eligible to compete in the wheelchair-bound blind drawing. If blind is not occupied by shooting time, another wheelchair-bound hunter and one to three assistants (age 16 or older) may occupy the blind for that day.

Beaver

May be taken during any hunt.

Dove

Same as statewide season except opens at noon each day during the first segment of the dove season. Hunting allowed from designated fields only.

Dog Training.

Sept. 1-Mar. 15, except closed during duck seasons.

Cheatham Lake - Pardue Pond Refuge and Dyson Ditch Refuge

Deer (Archery)

Sept. 23-Oct. 14. Bag limit same as statewide.

Dog Training.

Sept. 1-Mar. 15, except closed Oct. 15-Feb. 14.

Closure

Public use, including all forms of trespass, is prohibited from Oct. 15 through Feb. 14, except as otherwise indicated.

Cherokee⁴

North Cherokee

That portion of the Cherokee WMA lying north of the Great Smoky Mountains National Park.

South Cherokee

That portion of the Cherokee WMA lying south of the Great Smoky Mountains National Park.

³ Wheelchair bound hunters are defined as hunters who are totally and permanently confined to a wheelchair as certified by a physician. Each permittee must be accompanied by at least one, but not more than three assistants (age 16 or older), who may also participate in hunting.

⁴ Bobcat hunting with dogs prohibited. Dog training prohibited, except for Bear Dog Training Season in Cocke and Greene counties. The use of and/or possession of any tracking device from March 1 to August 31 is illegal.

Ocoee Unit	That portion of the South Cherokee lying south of the Hiwassee River.
Tellico Unit	That portion of the South Cherokee lying north of the Hiwassee River, and south of the Little Tennessee River.
North Cherokee	
Dove, Grouse, Quail, Rabbit, Snipe,	Same as statewide seasons ⁵ . Small game hunting (shotguns only) allowed during all big game hunts, but small game hunters (except raccoon and opossum hunters) must wear 500 sq. in. of fluorescent orange during big game hunts. Squirrel, Waterfowl, Woodcock
Deer, Turkey	Same as statewide season.
Opossum, Raccoon	Same as statewide season. Except the season is closed Dec. 2-sunset Dec. 15 in the Bear Reserves.
Bear Dog Training Season (Cocke and Greene Counties only)	Sept. 5-20. No bears may be harvested. No weapons may be possessed. Daylight hours only. No training in bear reserves.
Bear	Same as statewide season. Feral hog hunting closed in bear reserves during bear season.

South Cherokee⁶

Special Weapons Regulations:

1. .22 caliber short, long, and long rifle are the only legal weapons on a raccoon hunt.
2. It is illegal to possess firearms with any breed of dog other than pointing breeds during daylight hours, excluding Bear and Boar season, except as provided.

Dove, Grouse, Quail, Rabbit, Snipe, Squirrel, Waterfowl, Woodcock	Same as statewide seasons. Except, no season shall open prior to Oct. 7. Small game hunting closed at sunset the day before and during big game hunts. When specified portions of the Cherokee are hunted, this closure applies only to those specific areas and to the Tellico Bear Reserve during bear hunts. Dogs permitted for squirrel hunting west of Hwy. 68 and north of Ocoee River Jan. 1-Feb. 28.
--	--

⁵ Only pointing breed dogs are allowed in the bear reserve one day before and during bear hunts.

⁶ No feral hog hunting on South Cherokee WMA; boar hunting is allowed as indicated.

Ocoee Unit

Opossum, Raccoon	Same as statewide season, except closed at sunset the day before and during big game hunts.
Deer/Boar (Archery)	One 9-day hunt. Sept. 16-24. No hunter quota. One deer, either sex. One boar, either sex.
Deer/Boar (Gun-Archery)(Young Sportsman)	One 2-day hunt. Oct. 14-15, South of Ocoee River only. No hunter quota. One deer, either sex. One boar, either sex.
Deer/Boar (Gun-Archery)(Young Sportsman)	One 2-day hunt. Oct. 28-29. No hunter quota. One deer, either sex. One boar, either sex.
Deer/Boar (Muzzleloader-Archery)	One 3-day hunt. Nov. 3-5. No hunter quota. One deer, either sex. One boar, either sex.
Deer/Boar (Gun-Archery)	One 3-day hunt. Nov. 10-12. No hunter quota. One deer, buck only. One boar, either sex.
Deer/Boar (Gun-Archery) One boar, either sex.	One 9-day hunt. Nov. 18-26. No hunter quota. Two deer, buck only.
Boar (Gun-Archery)(Dogs Permitted)	Two 5-day hunts. Oct. 9-13, 14-18. No hunter quota. One boar, either sex. Between Ocoee River and Hiwassee River.
Bear/Boar (Gun-Archery)(Dogs Permitted)	One 14-day hunt. Nov. 30-Dec. 13. No hunter quota. One bear per person per year. One boar either sex. Between Ocoee River and Hiwassee River.
Deer/Boar (Gun-Archery)	One 14-day hunt. Nov. 30-Dec. 13. No hunter quota. Two deer, buck only. One boar, either sex. South of Ocoee River only.

Tellico Unit

Opossum, Raccoon (Raccoon hunters must wear fluorescent orange during bear season)	Oct. 30-Nov. 16, Nov. 28-Dec. 13, Dec. 18-Jan. 7. Tellico bear reserve sunset Dec. 13-Jan. 7 only.
Deer/Boar (Archery)	One 9-day hunt. Sept. 16-24 No Hunter quota. Two deer, either sex. One boar either sex.
Deer/Boar (Gun-Archery)	One 9-day hunt. Nov. 18-26. No hunter quota. Two deer, buck only. One boar either sex.
Deer/Boar (Muzzleloader-Archery)	One 3-day hunt. Sept. 29-Oct. 1. No hunter quota. One deer, buck only. One boar either sex.
Deer/Boar (Muzzleloader-Archery)	One 3-day hunt. Dec. 15-17. No hunter quota. One deer, buck only. One boar either sex.

Deer/Boar (Gun-Archery)(Young Sportsman)	One 2-day hunt. Oct. 28-29. No hunter quota. One deer, either sex. One boar, either sex.
Boar (Gun-Archery)(Dogs Permitted)	One 10-day hunt. Oct. 9-18. One boar, either sex. Hunting confined to that area outside the Tellico Bear Reserve and the party dog area.
Bear/Boar (Gun-Archery)(Dogs Permitted)	One 14-day hunt. Nov 30-Dec. 13. No hunter quota. One bear per person per season. One boar, either sex. Hunting confined to that area outside the Tellico Bear Reserve and the party dog area.
Deer/Boar (Gun-Archery) (Party Still Hunts) (No Dogs Allowed)	One 3-day hunt. Oct. 20-22. One party permitted in each of the following areas: Jake Best, Double Camp, North Fork Citico and South Fork Citico. One deer, buck only. One boar, either sex.
Boar (Gun-Archery) (Party Dog Hunts)	One 3-day hunt. Oct. 20-22. One boar either sex. One party permitted in each of the following areas: Upper Tellico, Lower Tellico, Upper Bald River, Lower Bald River.
Bear/Boar (Gun-Archery) (Party Dog Hunts)	Two 2-day hunts. Oct. 5-6, Nov. 28-29. One bear per person per season. One boar either sex. One party permitted in each of the following areas: Upper Tellico, Lower Tellico, Upper Bald River, Lower Bald River.

Chickamauga

(Soddy Creek, Sale Creek, Mud Creek, New Bethal, Moon Island, Cottonport, Washington Ferry, Goodfield Creek, Gillespie Bend, Agency Creek, Sugar Creek, South Mouse Creek Units)

Deer, Dove, Furbearers, Quail, Rabbit, Snipe, Squirrel, Waterfowl, Woodcock	Same as Statewide Hunting and Trapping Seasons. No waterfowl hunters allowed on Units prior to 90 minutes before sunrise.
--	---

(Candies Creek, Rogers Creek, Yellow Creek, Johnson Bottoms Units)

Deer, Dove, Furbearers, Quail, Rabbit, Snipe, Squirrel, Waterfowl, Woodcock	Same as Statewide hunting and trapping seasons, except closed to non-waterfowl species during the late duck season. Waterfowl hunting permitted only on Tuesday, Thursday, Saturday and Sunday and the opening and closing day of the duck season. No trapping during the duck season. No waterfowl hunters allowed on Units prior to 90 minutes before sunrise.
--	--

Dog Training	Sept. 1-Mar. 15, except closed during late duck season.
--------------	---

Chuck Swan

Guides, deer driving, loud noises, and harassment on all deer hunts, and entering the wildlife management area from Norris Lake during the deer and turkey hunts prohibited.

Dove, Grouse, Rabbit, Squirrel, Waterfowl, Woodcock,	Same as statewide season.
Raccoon	Six 1-day hunts. Nov. 1, 7, 10, 13, 15, 18. Fifty-four 3-man parties per night to be drawn and assigned to compartments. Hunter must check out by 2:00 A.M. All raccoons must be checked out.
Deer (Archery)	One 3-day hunt. Oct. 13-15. No hunter quota. One deer, buck only.
Deer (Archery)	Two hunts. Oct. 20-21 and Oct. 22-28. Hunter quota 800. One deer, either sex.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Nov. 4-5. Hunter quota 200. One deer, either sex.
Deer (Gun-Archery)	Two 2-day hunts. Dec. 1-2, 8-9. Hunter quota 750. One deer, buck only.
Deer (Archery)	One 2-day hunt. Dec. 15-16. Hunter quota 1600. One deer, either sex.
Deer (Muzzleloader-Archery)	One 2-day hunt. Nov. 24-25. Hunter quota 750. One deer, buck only.
Deer (Gun-Archery)	One 2-day hunt. Jan. 4-6. Hunter quota 200. One deer, either sex.
Turkey (Shotgun-Archery)	One 2-day hunt. Dec. 29-30. Hunter quota 100. One turkey, either sex.
Dog Training (Daylight hours only)	Sept. 1-Mar. 15
 Cordell Hull (Includes all property posted and painted with Corps of Engineers and/or TWRA WMA signs.)	
Small Game, Waterfowl	Same as statewide seasons.
Deer	Same as statewide seasons except closed after Dec. 15. Wheelchair-bound hunter zone restricted to wheelchair bound hunters only during Sept. 23-24 and Nov. 18-19.
Deer (Archery) (Wheelchair-Bound Only ⁷)	One 2-day hunt. Sept. 23-24. No hunter quota. One deer, either sex. “Wheelchair-Bound Hunter Zone” only.
Deer (Gun-Archery) (Wheelchair-Bound Only ⁷)	One 2-day hunt. Nov. 18-19. No hunter quota. One deer, either sex. “Wheelchair-Bound Hunter Zone” only.

⁷ Wheelchair-bound hunters are defined as hunters who are totally and permanently confined to a wheelchair as certified by a physician. Each permittee must be accompanied by a non-hunting assistant (age 16 or older).

Wheelchair-Bound Hunter Zone	Wheelchair-bound hunters only in the old “Corps of Engineers Roaring River Campground” area of Cordell Hull WMA (north of Hwy. 135, north of Roaring River, south and east of Hwy. 85, and west of old Roaring River Iron Bridge Road) during the following hunts: Sept. 23-24, Nov. 18-19. Wheelchair-bound hunter zone is available to all hunters during open seasons except for Sept. 23-24, Nov. 18-19.
Cordell Hull Refuge	
Squirrel	Aug. 26-Oct. 14, Feb 2-28.
Dove	Sept. 1-14, noon till sunset.
Canada goose	Sept. 1-10. Bag limit 5 per day.
Quail, Rabbit	Feb. 2-28.
Deer (Archery)	Sept. 23-Oct. 14. Bag limit same as Unit A archery.
Closure	Public use, including all forms of trespass, is prohibited from Oct. 15 through Feb. 1, except as otherwise indicated. Public entry and fishing permitted while on the main river channel passing through the refuge.
Dog Training	Sept. 1-Oct. 14, Feb. 2-Mar. 15, daylight hours only.
Cumberland Springs	
Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Woodcock, Waterfowl	Same as statewide seasons.
Deer (Archery)	One 9-day hunt. Sept. 23-Oct. 1. No hunter quota. Two deer, either sex.
Deer (Gun-Archery)	One 2-day hunt. Oct. 14-15. Hunter quota 500. One deer, buck only.
Deer (Gun-Archery)	One 2-day hunt. Oct. 21-22. No hunter quota. One deer, buck only.
Deer (Gun-Archery)	One 2-day hunt. Oct. 28-29. Hunter quota 250. One deer, either sex.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Nov. 4-5. No hunter quota. One deer, either sex.
Deer (Gun-Archery)	One 2-day hunt. Dec. 2-3. Hunter quota 250. One deer, either sex.

Duck River

Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Turkey, Woodcock, Waterfowl
Same as statewide seasons, except dove hunting opens at noon each day of the first segment.

Deer Same as statewide seasons, except all deer hunting closes after Dec. 15.

Dog training. Sept. 1 - March 15.

Eagle Creek

Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Woodcock Same as statewide seasons.

Deer (Archery) One 18-day hunt. Sept. 23-Oct. 10. No hunter quota. Two deer, either sex. No area checking station operated.

Deer (Gun-Archery)(Young Sportsman) One 2-day hunt. Oct. 14-15. No hunter quota. One deer, either sex.

Deer (Gun-Archery) One 1-day hunt. Oct. 28. No hunter quota. One deer, either sex.
(Wheelchair Bound only⁸) "Wheelchair Bound Hunt Zone" only.

Wheelchair Bound Hunter Zone Wheelchair bound hunters only on roads #2 through #10 on Oct. 28.

Deer (Gun-Archery) Three 4-day hunts. Oct. 19-22, Nov. 2-5, Nov 30-Dec. 3. No hunter
quota. One deer, buck only.

Deer (Gun-Archery) One 2-day hunt. Dec. 9-10. Hunter quota 600. One deer, either sex.

Eagle Lake Refuge

Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Woodcock Open Monday, Wednesday and Saturday within statewide seasons.
Small game hunting allowed during deer seasons.

Closure Eagle Lake Refuge is closed to all hunting November 1-March 1.
Waterfowl hunting prohibited. Non-toxic shot approved by the U.S.
Fish & Wildlife Service required for small game hunting. Access to the
south end of Shelby Forest WMA through Eagle Lake Refuge will be
allowed during hunting seasons.

⁸ Wheelchair bound hunters are defined as hunters who are totally and permanently confined to a wheelchair as certified by a physician. Each permittee must be accompanied by a non-hunting assistant (age 16 or older).

Edgar Evins State Park

Deer, Opossum, Quail, Rabbit, Raccoon,
Squirrel, Waterfowl, Woodcock

Same as statewide seasons.

Deer (Archery)

Safety zone area only. One 2-day hunt Dec. 28-29. Hunter quota 100. Two deer, either sex. Free permit required. Sign-up for hunt will be Aug. 23 at Edgar Evins State Park Office between 8:00 a.m. and noon. A drawing will be held if applications exceed quota. Hunters must be present to sign up.

Ernest Rice, Sr.

Dove, Opossum, Quail, Rabbit, Raccoon,
Snipe, Squirrel, Waterfowl, Woodcock

Same as Statewide season.

Deer (Archery)

Sept. 23-Oct. 31. No hunter quota. One deer either sex.

Deer (Archery)

One 17-day hunt, Dec. 16-Jan. 1. No hunter quota. One deer either sex.

Deer (Gun-Archery)

Two 3-day hunts. Nov. 18-20, Nov. 24-26. No hunter quota. One deer, buck only.

Deer (Gun-Archery)(Young Sportsman)

One 2-day hunt. Nov. 4-5. No hunter quota. One deer either sex.

Fall Creek Falls⁹

Grouse, Squirrel

Dec. 1-Jan. 31. Pointing breed dogs only.

Deer (Archery)

One 3-day hunt. Nov. 4-6. Hunter quota 300. One deer, either sex.
One 6-day hunt. Nov. 7-12. No hunter quota. One deer, either sex. All deer hunters must sign register at horse stables before hunting. Vehicle parking restricted to black-top roads only.

⁹ Dog training prohibited.

Flintville Hatchery

Quail, Rabbit, Snipe, Squirrel, Woodcock	Same as statewide seasons.
Deer	Same as Unit A deer season. Archery equipment only.
Dog Training (Daylight hours only)	Sept. 1-Mar. 15

Foothills WMA ¹⁰

Motorized vehicles prohibited. All small game hunters must wear 500 square inches of blaze orange during big game seasons. Small game hunters must use shotguns only during big game seasons.

Dove, Grouse, Quail, Rabbit, Snipe, Squirrel, Waterfowl, Woodcock	Same as statewide seasons.
Opossum, Raccoon (Raccoon hunters must wear fluorescent orange during bear season)	Oct. 30-Nov. 17, Dec. 1-Jan. 14.
Bear, Deer	Same as statewide season, except closed to statewide archery during Young Sportsman hunt.
Boar (Gun-Archery)(Dogs permitted)	Two hunts. Sept. 23-Oct. 2 and Nov. 30-Dec. 13. No hunter quota. One boar, either sex.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Oct. 28-29. No hunter quota. One deer, buck only.

Forks of the River

Area closed one hour after sunset to one hour before sunrise except for raccoon and opossum hunters and scheduled events. Bicycles are restricted to greenway trail from Sept. 1-Feb. 28. Paintball guns and accessories prohibited.

Dove	Sept. 1, 2, 4, and every day thereafter during the statewide dove season, except opens at noon each day during the first segment of the dove season.
Deer, Quail, Rabbit, Snipe, Squirrel, Waterfowl, Woodcock	Same as statewide seasons.
Opossum, Raccoon	Nov. 3-15.

¹⁰ Dog training prohibited.

Crow	Sept. 8 - Feb. 28 (Fridays, Saturdays and Sundays only)
Arms and Ammunition	Shotguns and Archery equipment only.
Fort Loudoun ¹¹	
Waterfowl	Same as statewide seasons, except open only on Monday, Wednesday, and Friday, one half hour before sunrise until noon. Non-toxic shot, size BBB or smaller required.
Fourth Fractional Township WMA	
(ATVs and motorcycles prohibited)	
Dove, Grouse, Quail, Rabbit, Snipe Squirrel, Woodcock	Same as statewide seasons. Small game hunting with shotguns only with No. 6 shot or smaller. Beagles and pointing breeds only.
Deer	Same as statewide seasons, archery tackle only.
Dog training	Year-round, beagles and pointing breeds only.
Gallatin Steam Plant ¹²	
Deer (Archery-Only)	Four 2-day hunts. Sept. 23-24, Sept. 30-Oct. 1, Oct. 14-15, Dec. 9-10. Hunter quota 50. Two deer, either sex.
C.M. Gooch	
Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Woodcock	Same as statewide seasons except Unit "A" and "E" closed during the waterfowl season. Unit "A" closed to all activities six days prior to the first opening of the late duck season.
Waterfowl	Same as statewide season except Gooch waterfowl hunting closes at 3:00 p.m. on Units "A" and "E". Waterfowl hunting on the last day of each segment of the duck and remaining goose seasons shall close at sunset. Fishing and trapping is prohibited in Units "A" and "E" during the waterfowl season.

¹¹ Dog training prohibited.

¹² Dog training prohibited.

Deer	Same as statewide season, except closed six (6) days prior to and during statewide waterfowl seasons on Gooch Unit A and Gooch Unit E, and closed to statewide archery hunt during the Young Sportsman deer hunt on Oct. 14-15.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Oct. 14-15. No hunter quota. One deer, either sex.
Haley-Jaqueth	
Dog Training (Daylight hours only)	Sept. 1-Mar. 15
Haynes Bottom	
Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Turkey, Waterfowl, Woodcock	Same as the statewide season except during the late duck season when hunting is open only on Wednesday, Thursday, Saturday, Sunday, and the first and last day of each segment of the late statewide duck season. Waterfowl hunting permitted only from registered blind sites beginning with the first day of the late duck season. Night hunting, trapping, dog training, and fishing prohibited in the waterfowl impoundments during waterfowl season. Participating waterfowl hunters only in the bottoms during waterfowl seasons.
Dove	Same as statewide season, except opens at noon during the first segment.
Deer	Same as statewide (unit A) seasons, except all deer hunting is closed after Dec. 15.
Henderson Island Refuge (Horses prohibited)	
Dove, Squirrel	Sept. 1, 2, 4, 13. Hunting from noon to sunset only. Shotguns only.
Quail, Rabbit, Squirrel	Feb. 2-28. Shotguns only.
Deer (Muzzleloader-Shotgun)(Young Sportsman)	Three 1-day hunts. Sept. 9, 16, Nov. 11. Hunter quota 20. One deer, either sex. Sign up for drawing will be held at the Jefferson County courthouse in Dandridge between 9:00 a.m. and 11:00 a.m. on Aug. 12. Youth must be present at sign up and drawing.
Turkey (Young Sportsman)	One 1-day hunt. Oct. 28. Hunter quota - 10. One turkey, either sex. Sign up and drawing same as for deer.
Deer (Archery) statewide bag.	Sept. 23-Oct. 8. Bag limit same as statewide. Deer counts toward

Canada Goose	Sept. 5-8, 10-15. Bag limit 5 geese per day.
Raccoon	Nov. 3-11.
Dog Training	Feb. 2-Mar. 15.
Closure	Public use, including all forms of trespass, is prohibited from Nov. 16 through Feb. 1, except as otherwise indicated. Public entry and fishing permitted while on the main river channel passing through the refuge.
Hermitage	
Dove	Sept. 1-15. Shooting allowed only from staked positions. For the first two days of the season, staked positions will be assigned each day by a drawing held on the site at 11:00 a.m. Shooting hours begin at noon. After the first two days, stakes may be taken on a first-come, first-served basis for the remainder of the season.
Quail, Rabbit (Young Sportsman)	Oct. 1-Feb. 28. Shotguns only. No permit required.
Archery Practice	Open year-round on designated range only. Target arrows only. No permit required.
Dog Training (Daylight hours only)	Sept. 1-Mar. 15
Hiwassee Refuge (Nontoxic shot required for small game hunting)	
Dove	Sept. 1, 4, 9. Noon to sunset only. No access permitted by boat.
Squirrel	To include all of the Hiwassee Refuge except Hiwassee Island. Aug. 19-Sept. 3.
Canada Goose	Sept. 1-8. Bag limit 5 geese per day. No goose hunters allowed on refuge prior to 90 minutes before sunrise.
Deer (Archery)	One 3-day hunt. Sept. 23-25. No hunter quota. Two deer, either sex.
Deer (Muzzleloader)	One 3-day hunt. Sept. 29-Oct. 1. Hunter quota 200. Two deer, either sex.
Deer (Shotgun-Muzzleloader)(Young Sportsman)	One 2-day hunt. Oct. 14-15. Hunter quota 100. Two deer, either sex.
Retriever (Field Trials)	Pre-approved by area manager at least 30 days in advance of trial dates.
Arms and Ammunition	Nontoxic shot approved by the U. S. Fish & Wildlife Service required for small game hunting.

Closure	Refuge is closed to all forms of public use, including all forms of trespass, from Oct. 15 through last day of February. Public entry and fishing is permitted while on the main river channel passing through the refuge.
Dog training (Daylight hours only)	Sept. 1-Oct. 14, Mar. 1-15.
Jackson Swamp	
Deer, Dove, Opossum, Rabbit, Raccoon, Squirrel, Waterfowl, Woodcock	Same as Statewide season.
Kingston Refuge	
Nontoxic shot required for small game hunting. Access by boat only.	
Dove	Sept. 1, 4. Noon to sunset only. No dove hunters allowed on refuge prior to 60 minutes before legal shooting time.
Deer (Archery)	Two 2-day hunts. Sept. 23-24, Sept. 30-Oct. 1. Hunter quota 100. One deer either sex.
Canada Goose	Sept. 1-8. Bag limit 5 geese per day.
Closure	Public use, including all forms of trespass, is prohibited from Oct. 15 through Feb. 1.
Dog training (Daylight hours only)	Sept. 1-Oct. 14, Feb. 2-Mar. 15.
Deer (Shotgun)(Young Sportsman)	One 2-day hunt. Oct. 14-15. Hunter quota 50. One deer, either sex.
Kyker Bottoms Refuge	
Shotguns, Muzzleloaders, and Archery only. Non-toxic shot required for small game hunting.	
Deer, Dove, Grouse, Quail, Rabbit, Snipe, Squirrel, Waterfowl, Woodcock	Same as Statewide season, except closed Nov. 1-Feb. 14.
Dog Training (Daylight hours only)	Sept. 1-Mar. 15, except closed Nov. 1-Feb. 14.

Land Between the Lakes

Squirrel	The third Saturday in August through the fourth Friday in September, and Dec. 1 through the last day of February.
Dove, Snipe, Woodcock	According to state and federal regulations, open on small game hunt dates that coincide with state seasons.
Fox, Quail, Rabbit,	Dec. 1 through the last day of February.
Coyote	May be taken during daylight hours only by legally licensed hunters during any open season with weapons specified for that season.
Opossum, Raccoon	Dec. 1-Jan. 31. Sunset to sunrise. One raccoon, per person per night. Some hunt areas may be closed to hunting as posted at designated hunter check stations.
Crow	Open during any LBL small game season that coincides with the statewide season.
Fox Chasing	From sunset to sunrise, third Saturday in Aug. through the third Saturday in Sept.
Geese	Same as the statewide goose season, except closed on deer gun hunt dates.
Ducks	Early duck season same as statewide season.
 Waterfowl hunting will be allowed during the statewide season throughout the Tennessee portion of LBL except on designated, signed, refuge areas and public use areas, and on deer gun hunt dates. Permanent blinds will not be permitted.	
Dog Training (Quail, Rabbit and Raccoon chasing only)	Oct. 1-31. Permit required. Training allowed only in designated areas.
Bullfrog	May 15-31. Gigs only. Bag limit 15.
Small Game (Archery Only) season only by legally licensed and equipped deer archery hunters. Statewide limits apply. Arrows must be equipped with broadheads according to deer regulations.	Squirrel, groundhog, and foxes may be taken during deer archery season only by legally licensed and equipped deer archery hunters. Statewide limits apply. Arrows must be equipped with broadheads according to deer regulations.
Deer/Turkey (Archery)	Sept. 23 through Jan. 15, except closed during Quota hunts and one day immediately before each Quota hunt. One turkey, either sex. Two white-tailed deer, no more than one antlered.
Deer (Gun)(Young Sportsman)	One 2-day hunt. Oct. 28-29. Hunter quota 800. One white-tailed deer, either sex. Young sportsman 10-15 years of age. Each youth must be accompanied by an adult.
Deer (Gun/Muzzleloader)	One 2-day hunt. Nov. 10-11. Hunter quota 1000. One white-tailed deer, including 650 buck-only and 350 either-sex permits.

Deer (Gun/Muzzleloader) One 2-day hunt. Nov. 25-26. Hunter quota 1000. One white-tailed deer, including 650 buck-only and 350 either-sex permits.

Areas open to hunting:

All areas lying in Tennessee portion are open to hunting except:

1. Designated, signed, refuge areas and public use areas.
2. The back half of Rushing Bay is closed to all activity Nov. 1 - Mar. 15.

Field Trials:

Raccoon Field Trials, Bird Dogs, Beagles (Quail, Rabbit and Raccoon chasing only) Jul. 1-Mar. 31. Field trial permit required

Laurel Hill

Dove First segment of the statewide dove season, beginning at noon each day. All Fields open. Dove hunting permitted during the second and third segments of the statewide dove season on days open to quail hunting.

Quail Nov. 12 and each Monday, Wednesday, and Saturday through Jan. 14.

Woodcock Oct. 28 - Nov. 13 and each Monday, Wednesday, and Saturday thereafter through the statewide season.

Squirrel Same as statewide season.

Rabbit Nov. 11 and each Tuesday, Thursday, and Sunday through Feb. 28.

Beaver May be taken on any hunt day.

Opossum, Raccoon Friday and Saturday nights, Nov. 11-Feb. 10. One raccoon per party, per night.

No Fox Chasing Allowed

Dog training (Daylight hours only) Sept. 1-Mar. 15.

Deer (Archery) Four 2-day hunts. Sept. 23-24, Sept. 25-26, Sept. 28-29, Sept. 30-Oct. 1. No hunter quota. One deer, either sex.

Deer (Gun-Archery)(Young Sportsman) One 2-day hunt. Oct. 14-15. No hunter quota. One deer, either sex.

Deer (Gun-Archery) Two 3-day hunts. Oct. 20-22, 27-29. Hunter quota 500. One deer, buck only.

Deer (Gun-Archery) One 2-day hunt. Nov. 11-12. Hunter quota 350. One deer, either sex.

Shields Farm Unit

Centerfire rifles and handguns prohibited. Same as Statewide Seasons.

Lick Creek Bottoms

Non-toxic shot is required for small game hunting as posted. No blinds or decoys left overnight. Dove fields open as posted.

Deer, Opossum, Quail, Rabbit, Raccoon, Squirrel, Turkey, Waterfowl, Woodcock Same as statewide season.

Dove Sept. 1, 2, 4, and the remainder of the dove season. Hunting from noon to sunset only on Sept. 1, 2, 4.

Joachim Bible Refuge Unit ¹³ (that portion of Lick Creek Wetlands at Lick Creek Mile 9.0)

Dove Sept. 1, 2, 4-25. Hunting from noon to sunset only on Sept. 1-2.

Squirrel Sept. 15-Oct. 31, Feb. 15-28.

Quail, Rabbit Feb. 15-28.

Maness Swamp Refuge

Coyote, Opossum, Quail, Rabbit, Raccoon, Squirrel, Woodcock Same as statewide seasons, except all seasons closed Nov. 1- Feb. 14.

Closure Public use, including all forms of trespass, is prohibited from Nov. 1 through Feb. 14, except as otherwise indicated.

Dog training Sept. 1-Oct. 31; Feb. 15-28.

Deer Same as statewide seasons, except closed to statewide archery during Young Sportsman deer hunt on Oct. 14-15, and Nov. 1-Feb. 14.

Deer (Gun-Archery)(Young Sportsman) One 2-day hunt. Oct. 14-15. No hunter quota. One deer, either sex.

Moss Island

Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Waterfowl, Woodcock Same as Statewide season.

¹³ Dog training prohibited.

Deer (Archery)	Sept. 23-Oct. 31. No hunter quota. One deer either sex.
Deer (Archery)	One 17-day hunt, Dec. 16-Jan. 1. No hunter quota. One deer either sex.
Deer (Gun-Archery)	Two 3-day hunts. Nov. 18-20, Nov. 24-26. No hunter quota. One deer, buck only.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Nov. 4-5. No hunter quota. One deer either sex.
Natchez Trace	
Bobcat, Crow, Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Waterfowl, Woodcock	Same as statewide seasons, except dove hunting begins at 12 noon each day of the first segment of the dove season. Small game hunting and dog training closes as sunset the day before and during scheduled deer gun hunts unless otherwise specified.
North of I-40	
Closed to county special season antlerless hunts and the Dec. 18-Jan. 7 nonquota antlerless deer hunts.	
Deer (Archery)	Sept. 23-Oct. 12, Oct. 16-Nov. 3, Nov. 13-17, Dec. 11-15. No hunter quota. Same bag limit as statewide.
Deer (Muzzleloader-Archery)	Nov. 6-9, Dec. 4-10. No hunter quota. Same bag limit as statewide.
Deer (Gun-Archery)(Young Sportsman)	Two 2-day hunts. Oct. 14-15, Nov. 4-5. No hunter quota. Same bag limit as statewide.
Deer (Gun-Archery)	Nov. 20-26, Dec. 25-31, Jan. 1-7. No hunter quota. Same bag limit as statewide.
South of I-40	
Closed to county special season antlerless hunts and the Dec. 18-Jan. 7 nonquota antlerless deer hunts.	
Deer (Archery)	Sept. 23-Oct. 12, Oct. 16-Nov. 3, Nov. 13-17, Dec. 11-15. No hunter quota. Same bag limit as statewide.
Deer (Muzzleloader-Archery)	Nov. 10-12. No hunter quota. Same bag limit as statewide.
Deer (Gun-Archery)(Young Sportsman)	Two 2-day hunts. Oct. 14-15, Nov. 4-5. No hunter quota. Same bag limit as statewide.
Deer (Gun-Archery)	Nov. 27-Dec. 3, Dec. 18-24, Jan. 1-7. No hunter quota. Same bag limit as statewide.

Nathan Bedford Forrest State Park¹⁴

Deer (Muzzleloader) One 3-day hunt. Oct. 20-22. Hunter quota 100. One deer, either sex.

Nolichucky

Area closed to all hunting and access from Byrds Bridge to the Nolichucky Dam one week before and during the late statewide duck season.

Dove Sept. 1, 2, and 4. Hunting from noon to sunset only.

Deer, Grouse, Quail, Rabbit, Snipe, Squirrel, Turkey, Woodcock, Same as statewide season, except closed one week before and during the late duck season.

Waterfowl Same as statewide season except closed one week before and during late duck season.

Dog Training (Daylight hours only) Sept. 1-Mar. 15

North Chickamauga Creek

No motorized vehicles outside parking areas. Area closed after sunset except opossum and raccoon hunters and scheduled events. Shotguns loaded with #4 or smaller only (except waterfowl). All areas walk-in only.

Rabbit, Snipe, Squirrel, Woodcock Same as statewide seasons with hunting allowed only on Tuesdays, Thursdays and Saturdays.

Dove Sept. 1-4, shooting allowed from staked positions only, noon till sunset only. Thereafter, hunting allowed on each Tuesday, Thursday, and Saturday during the statewide season.

Opossum, Raccoon Same as statewide season, except hunting allowed on Tuesday, Thursday, and Saturday night only. Bag limit - 1 raccoon per party per night.

Waterfowl Open each Tuesday, Thursday, and Saturday during the statewide season. Hunting ends at noon each day. Hunting from temporary blinds only. Decoys to be removed each day.

¹⁴ Dog training prohibited.

Oak Ridge ¹⁵

- Deer (Shotgun-Muzzleloader)(Gun zones only, excluding Tower Shielding-Park City Road Unit.) One 2-day hunt. Oct. 14-15. Hunter quota 750. One deer, either sex.
- Deer (Archery)(Archery zones only, excluding Tower Shielding-Park City Road Unit.) One 2-day hunt. Oct. 14-15. Hunter quota 250. One deer, either sex.
- Deer (Archery) (Tower Shielding-Park City Road Unit) One 2-day hunt. Nov. 11-12. Hunter quota 350. One deer, either sex.
- Deer (Shotgun-Muzzleloader)(Gun zones only, excluding Tower Shielding-Park City Road Unit.) One 2-day hunt. Nov. 11-12. Hunter quota 750. One deer, either sex.
- Deer (Archery) (Archery zones only, excluding Tower Shielding-Park City Road Unit) One 2-day hunt. Nov. 11-12. Hunter quota 250. One deer, either sex.
- Deer (Shotgun-Muzzleloader-Archery) (Gun zones only, excluding Tower Shielding-Park City Road Unit.) One 2-day hunt. Dec. 9-10. Hunter quota 750. One deer, either sex.
- Deer (Archery) (Archery zones only, excluding Tower Shielding-Park City Road Unit.) One 2-day hunt. Dec. 9-10. Hunter quota 250. One deer, either sex.

Special Regulations: Scouting dates--6:00A.M. to 4:00 P.M. Oct. 7: Oct. 14-15 permit holders only. Nov. 4: Nov. 11-12 permit holders only. Dec. 2: Dec. 9- 10 permit holders only. No access by boat, except for the Haw Ridge Park Unit. Dog training prohibited.

Old Hickory

Beaver may be taken on any hunt.

Unit I (Hwy 109 upstream to River Mile 267)
Dove, Opossum, Quail, Rabbit, Raccoon,

Same as statewide seasons except closed after 3:00 P.M..(CST) during the late duck season. Dove hunting begins at noon each day of the first dove season segment and is allowed from designated fields only. Non-toxic shot required for dove hunting.

Dog training

Sept. 1-Mar. 15, except closed during duck seasons.

Waterfowl

Hunting is permitted only from registered blind sites and staked temporary blind sites during the late duck season Same as statewide season except waterfowl hunting shall cease at 3:00 P.M.(CST) during the late duck season except hours same as statewide on the last day of

¹⁵ Dog training prohibited.

each segment of the late duck season. Raccoon and opossum hunting, trapping, and fishing are prohibited in sub-impoundments during the waterfowl season. From Hwy. 231 bridge downstream to river mile 258.5 (Headquarters Slough), the area south of the river channel is closed to waterfowl hunting during the first segment of the dove season.

The sub-impoundment units as posted are closed to all types of activity six days prior to the opening of the first segment of the late duck season.

Waterfowl
(Wheelchair-bound only ¹⁶ blind site)

Applications must be received by TWRA Region II by noon on the 4th Friday in October. Persons holding a permit for another blind are not eligible.

Deer

Same as statewide seasons.

Unit II - (Hwy. 109 downstream to Old Hickory Dam)

Dove, Deer, Opossum, Quail, Rabbit, Raccoon,
Snipe, Squirrel, Turkey, Woodcock

Same as statewide seasons.

Waterfowl

Same as statewide seasons. Hunting from registered blind sites only except during the early duck season. All goose hunting is from registered blinds only.

Unit III - (River Mile 267 upstream to River Mile 281)

Deer, Dove, Opossum, Quail, Rabbit, Raccoon,
Snipe, Squirrel, Turkey, Woodcock,

Same as statewide seasons.

Waterfowl

Same as statewide seasons. Hunting from temporary blinds only. Decoys must be picked up each day.

Old Hickory Lock 5 Refuge

Deer (Archery)

Sept. 23-Oct. 31. Bag limit same as statewide.

Closure

Public use, including all forms of trespass, is prohibited from Nov. 1 through Jan. 31, except as otherwise indicated. Public entry and fishing permitted while on the main river channel passing through the refuge.

¹⁶ Wheelchair bound hunters are defined as hunters who are totally and permanently confined to a wheelchair as certified by a physician. Each permittee must be accompanied by at least one, but not more than three assistants (age 16 or older), who may also participate in hunting.

Dog training

Sept. 1-Oct. 14, Feb. 1-28.

Pea Ridge

Opossum, Quail, Rabbit, Raccoon, Squirrel,
Waterfowl, Woodcock

Same as statewide season.

Deer

Same as statewide season, except buck only during the muzzleloader seasons.

Dove

Sept. 1, 2, 4. hunting begins at noon each day; thereafter, same as statewide season.

Percy Priest

Beaver

May be taken only during small game hunts.

Unit I

All activities except scheduled field trials prohibited on Fridays, Saturdays, and Sundays from Sept. 22-Apr. 29.

Dove

Sept. 1, 2, and each Saturday and Sunday thereafter during the state wide season beginning at noon each day of the first segment of dove season. Shooting from staked and designated positions on a first come, first served basis.

Squirrel

Same as statewide season.

Quail, Rabbit (Young Sportsman)

Oct. 7-Jan. 1. Shotguns only. Each adult must possess a valid hunting license and an area permit.

Dog Training (except Retrievers)

Sept. 1-April 15. Small game permit required. Training from horse back prohibited prior to Oct. 1. Participants of sanctioned field trials may train 72 hours prior to and after scheduled dates without a small game permit. Blank ammunition only.

Retriever Dog Training and Trials. Year-round in designated areas only. Trials must be scheduled with Area Manager and special field trial permits must be obtained from the Region II Office at least 30 days in advance of trial dates. Participants of sanctioned field trials may train 72 hours prior to and after scheduled dates without a small game hunt permit.

Bird and Rabbit Dog Trials

Oct. 1-April 15. Trials must be scheduled with Area Manager and special field trial permits must be obtained from the Region II Office at least 30 days in advance of trial dates. Field trial gallery must be kept out of standing or planted crops by marshals provided by sponsoring club.

Horseback Riding	Horses permitted on all areas except freshly planted and standing crops, and special areas as posted.
Unit II	
No Permit Required. Centerfire rifles, centerfire handguns, and shotgun slugs prohibited.	
Deer, Dove, Fox, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Turkey, Woodcock	Same as statewide seasons, except dove hunting begins at noon each day of the first segment of dove season.
Waterfowl	Same as statewide seasons. Temporary blinds only. Blinds and decoys must be removed each day. No waterfowl hunting in the Poole Knobs Rest Area.
Dog Training	Sept. 1-Mar. 15. No hunting or training from horseback.
Archery Practice	Open year-round designated range site (Poole Knobs) only. Target arrows only.
Prentice Cooper	
Dove, Fox, Grouse, Quail, Rabbit, Snipe, Squirrel, Woodcock	Same as statewide seasons.
Opossum, Raccoon	First Friday in Nov.-Jan. 30, except hunting will be limited to Friday and Saturday nights only. All hunting ends Jan. 30. Bag limit is 1 per person per night.
Deer (Archery)	One 3-day hunt. Sept. 16-18. Hunter quota 500. One deer, either sex.
Deer (Archery)	Two 3-day hunts. Sept. 19-21, 22-24. No hunter quota. One deer, either sex. No area checking station operated.
Deer (Muzzleloader)	One 3-day hunt. Oct. 19-21. No hunter quota. One deer, buck only.
Deer (Gun-Archery)	One 2-day hunt. Nov. 10-11. No hunter quota. One deer, Buck only
Deer (Gun-Archery)	One 6-day hunt. Dec. 2-7. No hunter quota. Two deer, Buck Only.
Deer (Gun-Archery)	One 2-day hunt. Dec. 15-16. Hunter quota 500. One deer, either sex.
Rankin	
No blinds or decoys left overnight. Shotguns only for small game hunting.	

Deer, Dove, Grouse, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Turkey, Waterfowl, Woodcock	Same as statewide seasons. Waterfowl hunting allowed during deer season.
 Reelfoot	
Dove, Quail, Rabbit, Snipe, Squirrel, Woodcock	Same as statewide seasons.
Opossum, Raccoon	Sept. 15 - Dec. 31.
Deer (Archery)	Three hunts. Sept. 23-Nov. 3, Nov. 6-14. Nov. 22-Jan. 1. No hunter quota. Three deer, either sex. Small game hunting open during archery hunts.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Nov. 4-5. One deer, either sex.
Deer (Gun-Archery)	One 4-day hunt. Nov. 18-21. No hunter quota. One deer, buck only.
Waterfowl	Same as waterfowl zone seasons. Waterfowl hunting closed at 3:00 PM (CST) except for last day of each segment of the late duck and the remaining Reelfoot goose seasons when hunting shall cease at sunset.
Waterfowl (Wheelchair-bound only ¹⁷ blind sites)	Applications must be received by TWRA Region I by noon on the 4th Friday in October. Persons holding a permit for another blind are not eligible to compete in the wheelchair-bound blind drawing. If blind is not occupied by shooting time, another wheelchair-bound hunter and 1-3 assistants (age 16 or older) may occupy the blind for that day. Hunting restricted to wheelchair hunters and assistants only within the marked wheelchair hunting zone.

Royal Blue

All users should be aware that hazards associated with mining (deep and strip) exist on this area. Public use is allowed during all hunts. During daylight hours, all users outside of an enclosed vehicle or out of camp must wear on the upper portion of their body and head a minimum of 500 square inches of daylight fluorescent orange, visible front and back, during the deer gun and muzzleloader seasons.

No person shall remove minerals, including coal, trees, plants (including vines), or building stone from the area without specific authorization.

Camping is allowed on the entire area.

ORV, horseback riding, bicycles, and all other vehicles are restricted to roads marked "open to vehicular traffic".

¹⁷ Wheelchair bound hunters are defined as hunters who are totally and permanently confined to a wheelchair as certified by a physician. Each permittee must be accompanied by at least one, but not more than three assistants (age 16 or older) who may also participate in hunting.

Ginseng season - Same as statewide.

Night time use by the general public and raccoon hunters is permitted area wide.

Organized competition events for motorized/non-motorized vehicles prohibited

Maximum noise limit of 93 dBa for all motorized vehicles, as measured 50 feet from the exhaust.

Reckless operation of motorized and non-motorized vehicles prohibited- reckless operation is defined as operating a vehicle in a reckless or negligent manner as to endanger the life, limb, or property of any person or damage TWRA property or developments. Speed limit is 25 mph.

Hunting Seasons:

Grouse, Opossum, Rabbit, Raccoon, Snipe, Squirrel, Waterfowl, Woodcock,	Same as statewide except hunting season closed March 1 to Aug. 25, except for turkey hunts and spring squirrel season.
Deer	Same as statewide seasons, except closed Oct. 28-29.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Oct. 28-29. No hunter quota. One deer, buck only.
Dog Training	Sept. 1-Mar. 1.
Shelby Forest	
Special Squirrel Hunt (Young Sportsman)	Aug. 19.
Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Woodcock	Open Monday, Wednesday and Saturday within statewide seasons. Small game hunting allowed during seasons. Small game hunters must wear legal hunter orange during deer gun hunts. Raccoon and opossum open Monday, Wednesday and Saturday sunset to sunrise.
Dog training	Open Monday, Wednesday and Saturday, Sept. 1- Mar. 15.
Field Trials	Sept. 1-Apr. 30.
Deer	Open Monday, Wednesday and Saturday during statewide seasons. Successful hunters must check out at nearest county Checking Station. Statewide bag limits apply. Counts towards Unit A bag limit.
Waterfowl	Open Monday, Wednesday, and Saturday within the statewide duck season and the last week of the statewide duck season, except Sunday. Waterfowl hunting allowed during all deer hunts. No permanent blinds. No decoys left overnight.
Beaver	Open during any hunt date.
Arms and Ammunition	Shotgun, muzzleloader, and archery equipment only.

South Fork Waterfowl Refuge ¹⁸

Waterfowl

Waterfowl hunting only allowed on Monday, Wednesday and Saturday during the season. No other type of hunting will be allowed. Temporary blinds only.

Tellico Lake (Field Trial Permit Required)

Deer, Dove, Grouse, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Waterfowl, Woodcock

All areas except Chota and Wears Bend Units are the same as statewide seasons. No blinds or decoys left overnight.

McGhee-Carson Unit ¹⁹ - (that peninsula of Ft. Loudoun Historic Park at LTRM 21.0)

Rabbit, Squirrel (Young Sportsman/Adult) (Shotguns and Archery only)

Each Saturday and Sunday during the statewide season, except closed during scheduled field trials, and big game hunts. Adults who accompany a young sportsman may hunt.

Field Trials-- Quail, Rabbit

Sept. 1-April 15. Trials must be scheduled with Area Manager and special field trial permit obtained from Region IV office thirty days prior to trial dates. Field trial gallery must be kept out of standing or planted crops by marshals provided by sponsoring club.

Field Trials - Retriever

Year-round in designated areas only. Trials must be scheduled with Area Manager and special field trial permit must be obtained from the Region IV Office at least 30 days prior to trial dates.

Horses special areas as posted.

Horses permitted, except in freshly planted and standing crops and

Deer (Shotgun only) (Young Sportsman)

One 1-day hunt. Oct. 28. Hunter quota 35. One deer, either sex.

Deer (Shotgun-Archery) (Wheelchair Bound Only ²⁰)

One 2-day hunt. Nov. 18-19. One deer either sex.

¹⁸ Dog training prohibited.

¹⁹ Dog training prohibited.

²⁰ Wheelchair bound hunters are defined as hunters who are totally and permanently confined to a wheelchair as certified by a physician. Each permittee must be accompanied by a non-hunting assistant (age 16 or older).

Chota Refuge Unit - (that portion from LTRM 26.0 upstream to the Hiwassee - Alcoa Powerline at LTRM 29.7)

Deer, Dove, Grouse, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Waterfowl, Woodcock	Same as statewide except all seasons closed Nov. 1-Feb. 14. Dove hunting allowed in fields as posted; non-toxic shot required.
Dog Training	Sept. 1-Mar. 15, except closed Nov. 1-Feb. 14.
Field Trials	Feb. 15-Oct. 31. Trials must be scheduled with Area Manager and special field trail permit must be obtained from the Region IV Office at least 30 days prior to trial dates.

Niles Ferry Unit²¹ - (that portion of the Niles Ferry Industrial Park at LTRM 18.0 as posted)

Dove	In fields as posted.
Deer (Shotgun-muzzleloader) (Young Sportsman)	Four 1-day hunts. Nov. 4, 5, 11, 12. Hunter Quota 35. One deer-either sex. Access by Industrial Rd. only. Sign up for drawing will be held at the Tellico Lake WMA Office between 9:00a.m. and 11:00a.m. on Oct. 7. Youth must be present at sign up and drawing.
Small game (Falconry Only)	Jan. 1-Feb. 28

Wears Bend Unit - (That portion of Tellico Reservoir Development Agency Industrial Park at LTRM 18.)

Deer, Dove, Grouse, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Waterfowl, Woodcock	Same as statewide season.
Dog Training	Sept. 1-Mar. 15.
Horses	Horses permitted, except in freshly planted and standing crops and special areas as posted.

Williamsport WMA

Open 1 hour before sunrise until 1 hour after sunset on hunt days.

²¹ Dog training prohibited.

Free Survey Card (one per party) is required in addition to other licenses and permits prior to hunting rabbits and quail on the area. Cards available only at the WMA entrance and must be returned before leaving the WMA.

Dove, Quail, Rabbit, Squirrel, Woodcock	Same as statewide seasons.
Deer (Archery)	Two 3-day hunts. Sept. 29-Oct. 1, Oct. 6-8. No hunter quota. One deer, either sex. Deer counts toward statewide bag.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Oct. 14-15. No hunter quota. One deer, either sex.
Deer (Muzzleloader-archery)	One 3-day hunt. Nov. 10-12. Hunter quota 50. One deer, either sex.
Deer (Gun-Archery)	One 3-day hunt. Dec. 1-3. Hunter quota 50. One deer, buck only.
Dog Training (Daylight hours only)	Sept. 1-Mar. 15

Wolf River WMA

Free Survey Card (one per party) is required in addition to other licenses and permits prior to hunting rabbits and quail on the area. Permits available only at checking station. Must be signed before the hunt and returned to checking station at conclusion of hunt.

Dove	Open with statewide seasons except that during the first segment shooting hours begin at noon. Hunting permitted only from staked positions for the first day of the first segment. Positions will be assigned the first day by a drawing held on the site at 11 a.m. CST.
Duck, Raccoon, Squirrel	Same as statewide seasons, except waterfowl hunting will close at 3:00 pm. each day of the waterfowl season.
Quail	Opens Nov. 11, and each Monday, Wednesday, Friday, and Saturday through the last day of December.
Woodcock	Oct. 28 - Nov. 11, and each Monday, Wednesday, Friday, and Saturday thereafter during the statewide season, except closed during deer gun hunts.
Rabbit	Opens Nov. 12, and each Tuesday, Thursday, and Sunday through the last day of December, then every day until the end of the statewide season.
Deer (Archery)(Muzzleloader-Archery)	Open with statewide seasons for archery and muzzleloader-archery seasons through Friday of the first segment of the archery/muzzleloader season. Deer must be checked out at the nearest county checking station.
Deer (Gun-Archery)(Young Sportsman)	One 2-day hunt. Nov. 4-5. No hunter quota. One deer, either sex.
Coyote	Jun. 1-Aug. 31

Dog Training	Sept. 1 - Mar. 15, except closed during deer gun hunts.
Field Trials	Bird and Rabbit Dog field trials: on Monday, Wednesday, Friday and Saturday, Jan. 1-Apr. 30; Retriever Field Trials: Sept. 1- Apr. 30.

The following wildlife management areas are open to trapping as set out in the statewide season, unless otherwise indicated: (Small Game WMA permit required to trap on all areas that require a small game hunt permit)

Note: Red Fox may be taken during Statewide Trapping Season

Alpine Mountain	Cove Creek	Pickett
Anderson Tully	Doe Mountain	Prentice Cooper (7)
Bark Camp Barrens	Duck River	Rankin
Barkley Reservoir	Ernest Rice, Sr.	Reelfoot (16)
Barkley Unit II	Foothills (15)	Royal Blue (11)
Big Sandy	Harmon Creek	Shelby Forest (10)
Bridgestone/Firestone (7)	Haynes Bottom (1)	Standing Stone (4)
Buffalo Springs	Laurel Hill (5)	Tigrett
Camden Unit I (1)	LBL	Watts Bar (9)
Camden Unit II	Lick Creek	West Sandy
Catoosa (6)	Lick Creek Bottoms	White Oak
Cedar Hill Swamp	Moss Island	Wolf River
Ceatham (5)	Mt. Roosevelt	
Ceatham Lake	MTSU	
Cherokee - North Unit	Natchez Trace (2)	
Cherokee - South Unit (12)	New Hope	
Chickamauga (8)	Normandy	
Chickasaw	Obion River	
Chilhowee Mountain	Old Hickory	
Chuck Swan (13)	Pea Ridge	
C. M. Gooch (3)	Percy Priest (Unit II)	
Cordell Hull	Perryville	

AEDC

1. No trapping during duck season.
2. Dec. 9 - Feb. 8--All areas open except Pin Oak Lake.
3. No trapping during the duck season in Units "A" and "E".
4. No Fox Trapping.
5. Jan. 9-Feb. 9.
6. Dec. 12-Dec. 27.
7. Dec. 22-Jan 2.
8. No Trapping during the duck season on Candies Creek, Johnson Bottoms, Rogers Creek, and Yellow Creek Units.
9. No trapping during the duck season on the Long Island Unit.
10. Beaver trapping by special permit only. Trapping of all other species prohibited.
11. Beaver trapping prohibited.
12. Jan. 1-Feb. 15.
13. No raccoons. Jan. 13-Feb. 5. Quota 1 party per compartment. Trappers must apply at WMA office. No snares or conibear traps. Trappers must report catch annually.
14. Trapping Season is fourteen consecutive days beginning the second Monday in January. LBL Hunt Areas 12 and 14 and designated problem areas as assigned. All species to conform with statewide regulations. Trappers must report their harvest in accordance to LBL instructions. Beaver trapping is Feb. 1-28. All areas open except areas shaded in gray on LBL legal Road Map or posted as no hunting. Legal Traps: According to statewide regulation.
15. Raccoon trapping Jan. 1-15 only.
16. A Reelfoot Preservation Permit is required instead of a Small Game WMA permit.

SECTION III. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals Proclamation No. 99-14, dated May 27, 1999.

Proclamation No. 00-12 received and recorded this 20th day of June, 2000. (06-50)



CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning June 1, 2000 and ending June 30, 2000.


RILEY C. DARNELL
Secretary of State

BLANK

pg. 254

CHANGE OF ADDRESS

If your address has changed, please supply the following information immediately:

- official compilation - Rules and Regulations of the State of Tennessee*
- Tennessee Administrative Register*

Former Address

name of firm or organization

street or box number and street or rural route

city

state

zip code

New Address

name of firm or organization

()

name of person to receive publication

telephone number

street or box number and street or rural route

city

state

zip code

Mail This Form To:

Tennessee Secretary of State
Division of Publications
James K. Polk Building, Suite 1700
Nashville TN 37243 - 0310



BLANK

pg. 256

ORDER FORM

Please send the subscription(s) indicated below. A check in the amount of \$_____ is enclosed.

New Subscription: *official compilation – Rules and Regulations of the State of Tennessee.* The multi-volume compilation is \$ 950.00, which includes monthly replacement pages and the *Tennessee Administrative Register* for the first year.

Renewal: *official compilation – Rules and Regulations of the State of Tennessee.* After one year the compilation subscription is renewable for \$ 150.00 per year. The renewal includes monthly replacement pages for the compilation and the *Tennessee Administrative Register*.

New Subscription: *Tennessee Administrative Register (T.A.R.).* The T.A.R., a monthly publication containing notices of rulemaking hearings as well as emergency, proposed and public necessity rules, is available for \$ 50.00 per year. This does not include replacement pages for the compilation.

name of firm or organization

()

name of person to receive publication

telephone number

street address

city

state

zip code

Mail This Form To:

Tennessee Secretary of State
Division of Publications
James K. Polk Building, Suite 1700
Nashville, TN 37243-0310

