

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 660 Department or Agency Human Resources

Rule No. 660-5-26-.03

Rule Title: Facilities

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety: Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? Yes

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rule making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of § 41-22-23, ALA.CODE 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, ALA.CODE 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service:

Signature of certifying officer:

Randy L. Guokner
Date: *October 29, 2012*

DATE FILED
(STAMP)

Alabama Department of Human Resource
Adult Protective Services

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 660-5-26-.03 Facilities

INTENDED ACTION: To amend rule 660-5-26-.03


SUBSTANCE OF PROPOSED ACTION: The purpose of this rule amendment is to update the Alabama Administrative Code section referenced to coincide with Federal Mandatory Crib Standards effective December 28, 2012.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested parties may submit data, views, or arguments respecting the proposed amendment by mail or in person through the close of business on December 5, 2012. Persons wishing to submit data, views, or arguments orally should contact the Department's Administrative Procedure Secretary between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding State holidays, at (334) 242-9330, or set up an appointment for such oral/in person presentations.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: December 5, 2012

CONTACT PERSON AT AGENCY:

Ms. Gail M. Grobe, APA Secretary
State Department of Human Resources
Gordon Persons Building
50 Ripley Street, Room 2122
Montgomery, Alabama 36130-4000



Nancy T. Buckner, Commissioner,
Department of Human Resources

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 660 Department or Agency Human Resources

Rule No: 660-5-26-.03

Rule Title: Facilities

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

On December 28, 2010, the U.S. Consumer Product Safety Commission (CPSC) voted unanimously to approve new mandatory standards for full-size and non-full-size baby cribs as mandated by the Consumer Product Safety Improvement Act of 2008 (CPSIA). Federal crib standards had not been updated in nearly 30 years and these new rules are expected to usher in a safer generation of cribs. Since the regulations mandate changes the crib standards, DHR must amend its Standards to comply with the law. The changes are effective December 28, 2012.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

Federal regulations that govern crib standards are effective December 28, 2012. These new standards will directly affect the childcare community. According to CPSC, these new rules are expected to stop the manufacture and sale of dangerous, traditional drop-size design; create stronger mattress supports and hardware; and establish better safety testing. Overall it is expected that the implementation of these standards will provides safer cribs for children in child care facilities.

A random sample of three major crib manufacturers was selected to get a projected cost of a crib, with a range of \$200-400. A telephone survey was also conducted with the following neighboring states (Georgia, Mississippi, Tennessee, Florida, and Louisiana), to get an average cost of cribs in their states that meets the new federal crib regulations. It was found that an average cost of \$262-\$381 is the cost of a compliance crib.

3. EFFECT OF THIS RULE ON COMPETITION:

Since this rule applies to all child care facilities in Alabama, it should not affect competition among child care facilities.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

None.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

No affect is anticipated. However, the rule will not affect staffing ratios.

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

There is no change in the cost of enforcing this rule.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

The expected cost for providers is short-term in terms of purchasing a crib compliant with the federal standards. See also response to number 2 above. The benefit of safer cribs for children will be immediate.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

Some costs associated with the changes are one time only charges, such as replacing all existing cribs to comply with new safety regulations.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

****Additional pages may be used if needed.**

This rule will have a positive effect on the health and safety of infants and toddlers to further reduce the risk of injury associated with cribs.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

According to information from the Consumer Product Safety Commission's Early Warning System ("EWS"), a pilot project monitored incident reports related to cribs and other infant sleep products reports the number of Fatalities-Between November 1, 2007 and April 11, 2010, a total of 147 fatalities associated with full-size cribs were reported to the commission, A majority of the deaths (107 out of 147, or almost 73 percent) were not related to any structural failure or design flaw of the crib. There were 35 fatalities attributable to structural problems of the crib. Nearly all (34 of the 35) were due to head/neck/body entrapments. More than half of these (18 out of 35) were related to drop-side failures. Almost all of the crib failures-whether they occurred due to detachments, disengagements, or breakages-created openings in which the infant became entrapped.

Nonfatal Injuries- Of the 3,520 incident reports involving full-size(and undetermined size) cribs. 1,675 reported a crib-related injury. The vast majority (97 percent) of these injuries were not serious enough to require hospitalization. Approximately half of those that did require hospitalization involved limb or skull fractures and other head injuries resulting from falls from cribs. Most of the remaining injuries resulted from children getting their limbs caught between crib slats, falling inside the crib and hitting the crib structure, or getting stuck in gaps created by structural failures.

**ALABAMA DEPARTMENT OF HUMAN RESOURCES
SOCIAL SERVICES DIVISION
ADMINISTRATIVE CODE**

**CHAPTER 660-5-26
DAY CARE LICENSURE - MINIMUM STANDARDS FOR
DAY CARE CENTERS AND NIGHTTIME CENTERS**

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660-5-26-.03 Facilities.

(1) Fire Inspection. Prior to being issued an initial license, six-month permit, or approval, the applicant shall submit a written fire department inspection report, with no violations cited, to the Department of Human Resources. Subsequent inspections may be requested by the licensee, center director, or by the Department of Human Resources. Copies of such inspection reports shall be submitted to the Department. Copies shall also be posted in the center.

(2) Health Inspection. Prior to being issued an initial license, six-month permit, or approval, the applicant shall submit a written health department inspection report to the Department of Human Resources. If food is prepared at the center, a copy of a current health department food permit shall also be submitted. If food is not prepared at the center, but is served by the center, the applicant shall obtain written approval of the food service plan from the health department, if available, and submit a copy of this approval to the Department of Human Resources. Subsequent inspections may be requested by the licensee, center director, or by the Department of Human Resources. Copies of such inspection reports shall be submitted to the Department. Copies shall also be posted in the center.

(3) Zoning Approval. Prior to being issued an initial license, six-month permit, or approval, the applicant shall submit a written statement of compliance with applicable zoning requirements to the Department. If no zoning laws or ordinances are applicable, the applicant shall submit a written statement verifying he/she has checked with the local governing authority and there are no applicable zoning laws or ordinances.

(4) Indoor Area.

(a) Exclusive use. Activity areas to which the children in care are assigned shall be used exclusively by the children during operating hours. When lunchroom facilities are shared with other groups, children receiving center care shall be seated together, apart from other groups.

(b) Space per child. There shall be at least 32 square feet of indoor activity space for each child. Bathrooms, kitchens, isolation room, office, halls used as passageways, and storage areas shall not be considered when computing activity space.

(c) Space for groups. Designated areas of indoor activity space shall be provided for each grouping of children. (See Rule 660-5-26-.04, for requirements regarding grouping of children.)

(d) Bathroom facilities.

1. Location. Bathrooms shall be located on the same floor level and under the same roof as activity areas.

2. Number of fixtures:

(i) at least one flush toilet for every 15 children;

(ii) at least one handwashing sink for every 15 children;

(iii) at least one tub (portable plastic type acceptable) per center.

3. Size of fixtures. The toilets and handwashing sinks used by the children shall be child size in height, or shall be adjusted for easy use with sturdy platforms, seat adapters, or both, as needed.

(e) Diapering facilities. One handwashing sink with warm running water, soap, and disposable paper towels, shall be located in each room where children are diapered. (See Rule 660-5-26-.04, regarding staff coverage and supervision of the children.)

(f) Space for ill or injured children. Space shall be provided for a child who becomes ill or is injured at the center. Items used by an ill child shall be disinfected before being used by another child.

(g) Storage space for children and staff.

1. Each child shall have individual, labeled storage space. For children age 2½ years and older, the space shall be at child level.

2. Shelving, accessible to the children, shall be provided for the play equipment and supplies, in areas used by children.

3. Storage space shall be provided for storage of teacher's supplies and reserve equipment.

4. Shelving that can be tipped over by an adult shall be securely anchored, so that it does not pose a risk to children.

(h) Office space shall be provided for storage of records and to afford privacy for conferences.

(i) Ventilation, lighting, and heating in areas used by children.

1. Heating and air conditioning shall be provided as appropriate to the season. Currently licensed centers that do not have air conditioning shall provide air conditioning by August 31, 2003.

2. The temperature shall be maintained between 68 and 82 degrees Fahrenheit, at child level.

3. There shall be a thermometer in each area used by the children to monitor the temperature of the area. Thermometers shall be out of reach of the children.

4. Outside windows that are opened shall be securely screened.

5. Outside doors shall be kept closed.

6. Lighting shall be maintained at a level that will enable the children to participate in center activities.

7. During napping/resting, lighting shall be maintained at a level that will enable children to be visible.

(j) There shall be an operational telephone in the center for center business only. The Department shall be notified if the center's telephone is out of service. The Department shall be notified of any change in the center's telephone number.

(k) Hazard prevention.

1. The center shall be free from apparent hazardous conditions.

2. All flammable, poisonous and other hazardous substances and materials shall be kept under lock and key or combination lock. All containers shall be labeled with the name of the substance or material it contains.

3. No firearms or ammunition shall be kept or allowed in the center with the exception of law enforcement officers.

4. Stairways used by the children shall have hand railings within child's reach.

5. Clear glass doors shall be plainly marked at child level, to avoid accidental impact.

6. Medicines and drugs for children or staff shall be kept under lock and key or combination lock, in a separate location away from toxic chemicals and other harmful items. (See Rule 660-5-26-.04, for additional requirements regarding medication.)

7. Barriers shall be erected around radiators, heaters, and fans that are accessible to the children.

8. Exposed electrical outlets shall have protective covers. The covers shall be large enough to prevent being swallowed.

9. Consumption or possession of alcohol or use of non-prescription narcotic or illegal substances is prohibited on the center premises.

10. Smoking or tobacco usage is prohibited on the center premises.

(l) The center shall be clean.

1. Cleaning shall be done daily. Floors and bathroom fixtures shall be cleaned and disinfected daily or more often as needed. Carpets shall be vacuumed daily.

2. Cleaning shall not interfere with children's activities.

(5) Outdoor Area.

(a) For centers initially licensed, permitted, or approved after the effective date of these regulations, an off-street area for loading/unloading children shall be provided.

(b) For centers initially licensed, permitted, or approved after the effective date of these regulations, outdoor play area per child shall be:

1. in centers with a licensed, permitted, or approved capacity of less than 60 children, there shall be at least 60 square feet of outdoor play area for each child;

2. in centers with a licensed, permitted or approved capacity of 60 or more children, there shall be at least 60 square feet of outdoor play area for each child for at least one-half of the center's licensed, permitted, or approved capacity.

(c) Separate play areas shall be provided for children younger than age 2½ years. This may be achieved by scheduling alternate play periods.

(d) Outdoor play areas shall adjoin, or be safely accessible to, the indoor area.

(e) Outdoor play areas on the premises shall be enclosed by a fence or wall at least four (4) feet in height. The fence or wall shall be free from sharp protruding edges. Gates shall be secured.

(f) Shade and sun areas shall be provided.

(g) The outdoor play area shall be free of apparent hazardous conditions.

1. Concrete or asphalt shall not be used under outdoor playground equipment, except wheel toys.

2. The outdoor play area shall be well-drained.

3. Playground equipment which is not designed to be portable shall be securely anchored so that it can not be tipped over by an adult.

(h) Stairways or steps used by the children shall have hand railings within child's reach.

(6) Swimming and Wading at the Center.

(a) Parent(s)/guardian(s) permission. Written permission signed by each child's parent(s)/guardian(s) shall be on file in the center for each child participating in swimming or wading activities.

(b) Pools two feet or more in depth.

1. A lifeguard shall be at poolside at all times the pool is in use. Each lifeguard shall have a current American Red Cross Lifeguard Training Certificate, a current First Aid Certificate, and current Infant-Child (Pediatric) Cardiopulmonary Resuscitation Certificate (CPR). A copy of each certificate shall be on file in the center. On-line CPR and First Aid training are not acceptable.

2. The lifeguard shall not be counted in the staff-child ratio for children in the pool.

3. The staff-child ratio for children in the pool shall be:

(i) 1 staff for each child younger than 2 ½ years of age;

(ii) 1 staff for every 4 children ages 2 ½ years up to 4 years;

(iii) 1 staff for every 6 children ages 4 years up to 6 years;

(iv) 1 staff for every 10 children ages 6 years and older.

Ages	Staff to Child Ratio
0 up to 2½ years	1 to 1
2½ years up to 4 years	1 to 4
4 years up to 6 years	1 to 6
6 years and older	1 to 10

4. Ratios shall be determined by the age of the youngest child in the pool.

5. Persons counted in the staff-child ratios for children in the pool shall meet child care worker qualifications, and shall be in the pool at all times.

6. In addition to the lifeguard and persons counted in the staff-child ratios for children in the pool, staff meeting child care worker qualifications shall be provided to supervise any child or children in the enclosed pool area (inside the fence), but not in the water. Required staff-child ratios as stated in Rule 660-5-26-.04, shall be met for children not in the water.

7. If any part of a child's body is in the water, the child shall be considered to be in the pool and shall be counted in the staff-child ratios for children in the pool.

8. Pools (above-ground on in ground) shall be enclosed with a fence or a solid wall with no doors, windows, or other openings. The fence or wall shall be at least four (4) feet in height, and shall be constructed to prevent accessibility by children. The sides of an above-ground pool shall not be considered a fence or wall. Gates and all other access areas shall be locked when the pool is not in use.

(c) Wading structures less than 2 feet in depth.

1. There shall be at least one staff person with a current Infant-Child (Pediatric) Cardiopulmonary Resuscitation Certificate (CPR) and a current First Aid Certificate, present at each wading structure at all times children are in the wading area. A copy of the CPR and First Aid Certificates shall be on file in the center. On-line CPR and First Aid training are not acceptable. Required staff-child ratios as stated in Rule 660-5-26-.04, shall be met at all times.

2. There shall be at least two (2) staff at each wading structure at all times it is in use.

3. Clean water shall be provided each day.

4. The wading structure shall be emptied when not in use.

(7) Away from center activities.

(a) Note: The Department of Human Resources does not inspect away-from-center activities, including swimming or transportation or any other activities. The licensee shall assume full authority and responsibility for activities away from the center.

(b) If the center provides activities away from the center, a written statement, signed by each child's parent(s)/guardian(s), shall be on file in the center prior to the child's participation in such activities. The statement shall indicate that the parent(s)/guardian(s) has/have been informed that the Department of Human Resources does not inspect activities provided away from the center and that the licensee assumes full responsibility for such activities.

(8) Furnishings and Equipment.

(a) Size. The furniture and equipment shall be appropriate for the age and size of the children.

(b) Condition.

1. Equipment and furniture shall be in operative condition, free of sharp, loose, or rusty parts.
2. Equipment and furniture shall be easily cleaned and kept in a clean and safe condition.
3. Equipment and furniture used by infants and toddlers shall be free of small parts that could be swallowed.
4. Equipment and furniture made of easily breakable materials shall not be used.

(c) Amount and type of furnishings to be provided by the center.

1. There shall be table space for each child who is able to sit at the table.
2. There shall be a straight chair, with a back, without arms, for each child who is able to use a chair. Children's desks are prohibited.
3. A feeding chair shall be provided for children who do not eat at the table.
4. There shall be a crib, manufactured with slats no more than $2\frac{3}{8}$ inches apart, provided for each infant. Each crib shall have a firm, waterproof mattress that fits snugly against all sides of the crib. Mattresses shall be in good condition with no tears or exposed foam rubber or other stuffing material. Stacked cribs or multiple crib units are prohibited.

(d) In accordance with the U.S. Consumer Product Safety Improvement Act of 2008, any crib provided by child care facilities and family child care homes must meet new and improved federal safety standards. To verify compliance with the federal standards for all cribs, there shall be a certificate of compliance on file in the center and the crib must have a label attached showing the date of manufacture. (See Sample Form, Certificate of Compliance, in Appendix P, page 105, for the required form).

5. There shall be a washable cot for each toddler and preschool child and any school-age child who naps. (See Rule 660-5-26-.04, for information on Napping/Resting requirements.)

(e) Arrangement. For each group of children, indoor equipment and furnishings shall be arranged in an orderly manner, in designated activity areas.

(f) Amount and type of equipment to be provided by the center.

1. The amount and type of equipment shall be determined and supplied for each age group according to Rule 660-5-26-.12, the Required Equipment List. (Substitutions of equipment may be considered by the Department upon written request.)

2. With written approval from the Department, stated pieces of equipment may be shared by no more than two groups of children.

3. Equipment shall be available for and used by the children.

4. Equipment shall be kept in clean and safe condition.

Author: Barbara Green

Statutory Authority: Code of Alabama 1975 as amended (hereinafter referred to as Code), §§ 38-7-1 through 38-7-18, §§ 41-22-19, §§ 38-2-6(10), (12), (13), (15), §§ 26-14-3, §§ 26-14-4.

History: Permanent rule effective December 7, 2007. **Succedent Permanent**

Amendment: Filed December 6, 2012, effective January 11, 2013.

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R. Certificate of Compliance

CERTIFICATE OF COMPLIANCE CHECKLIST **For full-size and non-full-size cribs**

The certificate of compliance states all of the following:

- Name and model number of the crib(s) covered by the certificate
- Citation of each Consumer Product Safety Commission (CSPC) product safety regulation covered by the certificate (must include 16 CFR 1219 or 1220)
- Name, full mailing address, and telephone number of the U.S. importer or domestic manufacturer certifying compliance of the product
- Name, full mailing address, e-mail address, and telephone number of the person maintaining the records of the test results
- Date (at least month and year) and place (at least city and country or administrative region) of manufacture. If the same manufacturer operates more than one location in the same city, the certificate should state the street address of the factory
- Date and place where the compliance testing was done
- Name, full mailing address and telephone number of any third-party laboratory that tested the product or conducted a testing program on which the certification is based