

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State

DIVISION: Business Services

SUBJECT: Uniform Commercial Code General Provisions; Filing Procedures for Affidavits and Petitions for Review

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 47-9-513

EFFECTIVE DATES: January 25, 2018 through July 24, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Public Chapter 406 of the 110th General Assembly created a mechanism by which certain public officials who are listed as a debtor in a filed Uniform Commercial Code financing statement may dispute financing statements that were filed without reasonable basis or legal cause with the Secretary of State's office. The public official/debtor files an affidavit with the filing office of the Secretary of State, which is then forwarded to the secured party of record. If the secured party contends that the UCC financing statement was indeed filed with reasonable basis or legal cause, the secured party may file a petition for review and request a contested case hearing in front of an administrative law judge ("ALJ") for determination. If the ALJ determines that the filing did not have a reasonable basis or legal cause, the filing is deemed valid with a filing date that relates back to the date that it was filed with the filing office. There are no changes to previous regulations, except to expand the definitional section to accommodate additional definitions added by Tenn. Code Ann. § 47-9-513(e)(1).

Impact on Local Governments

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

Pursuant to the law that required the enactment of these rules, officials in local governments will have the ability to permanently remove fraudulent financing statements that have been filed against them. This could save valuable time and resources of local governments who may need to assist their local public officials with removing these fraudulent liens.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Public Chapter 406 of the 110th General Assembly created a mechanism by which certain public officials who are listed as a debtor in a filed Uniform Commercial Code financing statement may dispute financing statements that were filed without reasonable basis or legal cause with the Secretary of State's office. The public official/debtor files an affidavit with the filing office of the Secretary of State, which is then forwarded to the secured party of record. If the secured party contends that the UCC financing statement was indeed filed with reasonable basis or legal cause, the secured party may file a petition for review and request a contested case hearing in front of an administrative law judge ("ALJ") for determination. If the ALJ determines that the filing did not have a reasonable basis or legal cause, the filing is voided and removed from the record. If the ALJ determines that the filing had a reasonable basis or legal cause, the filing is deemed valid with a filing date that relates back to the date that it was filed with the filing office. There are no changes to previous regulations, except to expand the definitional section to accommodate additional definitions added by Tenn. Code 47-9-513(e)(1).

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. § 47-9-513 requires promulgation of these rules. This statute creates a mechanism by which certain public officials who are listed as a debtor in a filed Uniform Commercial Code financing statement may dispute financing statements that were filed with the Secretary of States' office without reasonable basis or legal cause. The public official/debtor files an affidavit with the filing office of the Secretary of State, which is then forwarded to the secured party of record. If the secured party contends that the UCC financing statement was indeed filed with reasonable basis or legal cause, the secured party may request a contested case hearing in front of an administrative law judge ("ALJ") for determination. If the ALJ determines that the filing did not have a reasonable basis or legal cause, the filing is voided and removed from the record. If the ALJ determines that the filing had a reasonable basis or legal cause, the filing is deemed valid with a filing date that relates back to the date that it was filed with the filing office.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Public officials are directly affected by these rules and have been supportive of adopting the rules.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

While there will be cost savings to state and local governments who are assisting their officials with combating fraudulent financing statements, the amount of those savings cannot be reasonably estimated.

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

Mary Beth Thomas
General Counsel

Office of Secretary of State
(615) 741-2819
mary.beth.thomas@tn.gov

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

Mary Beth Thomas
General Counsel
Office of Secretary of State
(615) 741-2819
mary.beth.thomas@tn.gov

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

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

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

Department of State
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 Nashville, TN 37243
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 Email: publications.information@tn.gov

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Sequence Number: 01-21-18
 Rule ID(s): 1083-1684
 File Date (effective date): 1/25/18
 End Effective Date: 7/24/18

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Department of State
Division:	Business Services
Contact Person:	Mary Beth Thomas
Address:	600 Charlotte Avenue, State Capitol, 1 st Floor, Nashville, Tennessee
Zip:	37243
Phone:	(615)741-2819
Email:	Mary.beth.thomas@tn.gov

Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

Public Chapter 406 of the 110th General Assembly created a mechanism by which certain public officials who are listed as a debtor in a filed Uniform Commercial Code financing statement may dispute financing statements that were filed without reasonable basis or legal cause with the Secretary of State's office. The public official/debtor files an affidavit with the filing office of the Secretary of State, which is then forwarded to the secured party of record. If the secured party contends that the UCC financing statement was indeed filed with reasonable basis or legal cause, the secured party may file a petition for review and request a contested case hearing in front of an administrative law judge ("ALJ") for determination. If the ALJ determines that the filing did not have a reasonable basis or legal cause, the filing is voided and removed from the record. If the ALJ determines that the filing had a reasonable basis or legal cause, the filing is deemed valid with a filing date that relates back to the date that it was filed with the filing office. These rules are emergency rules because the Act took effect on October 1, 2017, which did not allow for sufficient time to promulgate non-emergency rules.

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

Amended Rules:

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

New Rules:

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

**RULES
OF
THE TENNESSEE DEPARTMENT OF STATE
DIVISION OF BUSINESS SERVICES**

**CHAPTER 1360-08-01
UNIFORM COMMERCIAL CODE
GENERAL PROVISIONS**

TABLE OF CONTENTS

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

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

- (a) "Active record" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the searchable indexes and has not either lapsed or been terminated.
- (b) "Address" means either (i) a street address, route number (may include box), or P.O. Box number, plus the city, state, and zip code, or (ii) an address that purports to be a mailing address outside the United States of America. Submitted addresses will be verified and standardized using the United States Postal Service Address Matching System Application Programming Interface.
- (c) "Affidavit" means a notarized affidavit, signed under penalty of perjury pursuant to T.C.A. § 47-9-513(e)(2)(A), stating that the affiant is a public official and that the UCC financing statement was filed without any reasonable basis or legal cause, and the affiant's factual basis for why the UCC financing statement lacks any reasonable basis or legal cause, executed on the form available from the secretary of state's filing office.
- (d) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations, and terminations.
- (e) "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.
- (f) "Statement of claim" means a UCC record whereby the debtor or secured party indicates that a financing statement is inaccurate or wrongfully filed.
- (g) "Cost Bond" means the bond filed by the secured party of record, unless exempt pursuant to T.C.A. § 47-9-513(e)(5)(B), contemporaneously with the filing of a petition for review, in accordance with these rules.
- (h) "Filing office" and "filing officer" mean the Tennessee Secretary of State, Division of Business Services.
- (i) "Filing officer statement" means a statement entered into the filing office's information system to correct an error.
- (j) "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.

- (k) "Petition for Review" means a petition filed by a secured party of record who believes in good faith that the filed financing statement by the secured party was filed with reasonable basis or legal cause.
- (l) "Public Official" means:
- (A) An individual who is a current or retired elected or appointed government official, including a state, county, metropolitan, or municipal official;
 - (B) An individual who is the head of a division or major unit or department within an agency or office of the executive, judicial, or legislative branch of state, county, metropolitan, or municipal government, regardless of the title of this position, and who, as a substantial part of the individual's duties, provides meaningful input on the development of policy goals or the implementation of policy;
 - (C) A high-ranking employee within the executive, judicial or legislative branch of state, county, metropolitan or municipal government who has primary responsibility for one (1) or more of the following functions:
 - i. Public information and legislative affairs;
 - ii. Fiscal, budget and audit matters;
 - iii. Legal, security, or internal affairs;
 - iv. Information technology systems; and
 - v. Human resources;
 - (D) A first responder, as defined in T.C.A. § 29-34-203; or
 - (E) A law enforcement officer, as defined in T.C.A. § 39-11-106.
- (m) "Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service, but does include a service provider who acts as a filer's representative in the filing process.
- (n) "Searchable indexes" means the searchable index of individual debtor names and the searchable index of organization debtor names maintained in the UCC information management system.
- (o) "Secured party of record" includes a secured party of record as defined in the UCC as well as a person who has been a secured party of record with respect to whom an amendment has been filed purporting to delete such person as a secured party of record.
- (p) "UCC" means the Uniform Commercial Code as adopted in this State.
- (q) "UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements as described in Rule 1360-08-03.
- (r) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, a filing officer statement, or a statement of claim, and includes a record thereof maintained by the filing office. The term "UCC record" shall not be deemed to refer exclusively to paper or paper-based writings.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

Date: 12/29/17

Signature: *Tre Hargett*

Name of Officer: Tre Hargett

Title of Officer: Secretary of State



Subscribed and sworn to before me on: 12/29/17

Notary Public Signature: *Elizabeth Thomas*

My commission expires on: 9/10/18

Agency/Board/Commission: Secretary of State

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

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
1/19/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/25/18

Effective for: 180 *days

Effective through: 7/24/18

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

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: TennCare Standard

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-208, 71-5-105, and 71-5-109

EFFECTIVE DATES: January 16, 2018 through July 15, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These emergency rule amendments are being adopted to address the overuse of prescription opioids in response to what has been called the opioid crisis and the opioid epidemic in Tennessee. These rule amendments impose evidence-based limitations on the use of opioid prescription medications by adult enrollees in the TennCare Program. These emergency rule amendments continue to permit medically necessary use of prescription opioids for persons age 21 and older, but impose dosage amount limits as well as time limits based on evidence-based medical guidelines.

Impact on Local Governments

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

These rules are not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These emergency rule amendments are being adopted to address the over-use of prescription opioids in response to what has been called the opioid crisis and the opioid epidemic in Tennessee. These rule amendments impose evidence based limitations on the use of opioid prescription medications by adult enrollees in the TennCare Program. These emergency rule amendments continue to permit medically necessary use of prescription opioids for persons age 21 and older, but impose dosage amount limits as well as time limits based on evidence based medical guidelines.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These emergency rule amendments are lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these emergency rule amendments are TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these emergency rule amendments is the Division of TennCare, Tennessee Department of Finance and Administration.

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

These emergency rule amendments were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The adoption of these rule amendments is anticipated to produce a minimal decrease in state annual expenditures.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

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

310 Great Circle Road

Nashville, TN 37243
(615) 507-6852
donna.tidwell@tn.gov

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

GW10217297

**Department of State
Division of Publications**

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Nashville, TN 37243
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Sequence Number: 01-16-19
Rule ID(s): 4692
File Date: 07/16/19
Last Effective Day: 07/15/19

Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	TennCare
Contact Person:	George Woods
Address:	Division of TennCare 310 Great Circle Road Nashville, TN
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):

- Amendments
 New
 Repeal

Statement of Necessity:

On October 26, 2017, President Donald Trump issued a memorandum asking the Secretary of Health and Human Services to consider declaring that the opioid crisis constitutes a Public Health Emergency, which Acting Health and Human Services Secretary Eric D. Hargan did by issuing a determination that a Public Health Emergency exists. The U.S. Department of Health and Human Services has declared that opioid abuse is a serious public health issue, with drug overdose deaths being the leading cause of injury death in the United States. The Tennessee Legislature, Attorney General, and members of the Executive Branch have stated that prescription opioid use in Tennessee is a crisis and an epidemic. This emergency rule amendment places limitations on the coverage of opioid medications by the Division of TennCare. These limitations are evidence based and utilize medical necessity criteria.

T.C.A. § 4-5-208 permits an agency to adopt an emergency rule when the agency finds an immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by Title 4, Chapter 5 would not adequately protect the public.

Based upon the above information, I have made the finding that the emergency adoption of this rule is required in order to achieve immediate implementation.

For a copy of this emergency rule contact: George Woods at the Division of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.



Wendy Long, M.D.
Director, Division of TennCare
Tennessee Department of Finance and Administration

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

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.04	Covered Services
1200-13-14-.10	Exclusions

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Rule 1200-13-14-.04 Covered Services, Paragraph (1), Subparagraph (c), is amended by adding a new Part 12, which shall read as follows:

12. Opioid products for persons aged 21 and older are restricted as follows:
 - (i) For non-chronic opioid users (i.e., enrollees who have used prescription opioids fewer than 90 days in the preceding 180-day period):
 - (I) Coverage will be provided for a maximum of 15 days in any 6-month period; and
 - (II) Daily dosage shall not exceed 40 morphine milligram equivalents per day (MME per day).
 - (III) For enrollees with severe cancer pain undergoing active or palliative treatment and enrollees in hospice and palliative care, the restrictions in items (I) and (II) do not apply.
 - (IV) For certain enrollees who experience more frequent or aggressive pain episodes due to certain clinical disease states, the following considerations apply:
 - I. Enrollees with Sickle Cell may receive up to 45 days of 40 MME per day in any 90-day period; and
 - II. Severe burn victims may receive up to 45 days of 40 MME per day in any 90-day period.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Rule 1200-13-14-.10 Exclusions, Paragraph (3), Subparagraph (a), Part 18, is amended by inserting a new Subpart (x), which shall read as follows:

- (x) Opioid products are restricted as follows:
 - (I) For non-chronic opioid users (i.e., enrollees who have used prescription opioids fewer than 90 days in the preceding 180-day period):
 - I. Coverage will be provided for a maximum of 15 days in any 6-month period; and,
 - II. Daily dosage shall not exceed 40 morphine milligram equivalents per day (MME per day).
 - III. For enrollees with severe cancer pain undergoing active or palliative treatment and enrollees in hospice and palliative care, the restrictions in subitems I. and II. do not apply.

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-14
TENNCARE STANDARD

1200-13-14-.04 COVERED SERVICES.

(1) Benefits covered under the managed care program

(c) Pharmacy

TennCare is permitted under the terms and conditions of the demonstration project approved by the federal government to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. TennCare must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by TennCare as described in Section 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

12. Opioid products for persons aged 21 and older are restricted as follows:

(i) For non-chronic opioid users (i.e., enrollees who have used prescription opioids fewer than 90 days in the preceding 180-day period):

(I) Coverage will be provided for a maximum of 15 days in any 6-month period; and

(II) Daily dosage shall not exceed 40 morphine milligram equivalents per day (MME per day).

(III) For enrollees with severe cancer pain undergoing active or palliative treatment and enrollees in hospice and palliative care, the restrictions in items (I) and (II) do not apply.

(IV) For certain enrollees who experience more frequent or aggressive pain episodes due to certain clinical disease states, the following considerations apply:

I. Enrollees with Sickle Cell may receive up to 45 days of 40 MME per day in any 90-day period; and

II. Severe burn victims may receive up to 45 days of 40 MME per day in any 90-day period.

1200-13-14-.10 EXCLUSIONS.

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2)

herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

- (a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21

18. Certain pharmacy items as follows:

(x) Opioid products are restricted as follows:

(I) For non-chronic opioid users (i.e., enrollees who have used prescription opioids fewer than 90 days in the preceding 180-day period):

I. Coverage will be provided for a maximum of 15 days in any 6-month period; and,

II. Daily dosage shall not exceed 40 morphine milligram equivalents per day (MME per day).

III. For enrollees with severe cancer pain undergoing active or palliative treatment and enrollees in hospice and palliative care, the restrictions in subitems I. and II. do not apply.

IV. For certain enrollees who experience more frequent or aggressive pain episodes due to certain clinical disease states, the following considerations apply:

A. Enrollees with Sickle Cell may receive up to 45 days of 40 MME per day in any 90-day period; and

B. Severe burn victims may receive up to 45 days of 40 MME per day in any 90-day period.

GW10317298

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

Date: 11/15/17

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D

Director, Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 11/15/17

Notary Public Signature: Rob A Page

My commission expires on: 11/3/2020

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-14

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

12/15/2017

Date

Department of State Use Only

Filed with the Department of State on: 01/16/19

Effective for: 180 *days

Effective through: 07/15/19

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

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: TennCare Medicaid

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-208, 71-5-105, and 71-5-109

EFFECTIVE DATES: January 16, 2018 through July 15, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These emergency rules are being adopted to address the overuse of prescription opioids in response to what has been called the opioid crisis and the opioid epidemic in Tennessee. These rule amendments impose evidence-based limitations on the use of opioid prescription medications by adult enrollees in the TennCare Program. These emergency rule amendments continue to permit medically necessary use of prescription opioids for persons age 21 and older, but impose dosage amount limits as well as time limits based on evidence-based medical guidelines.

Impact on Local Governments

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

These rules are not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These emergency rule amendments are being adopted to address the over-use of prescription opioids in response to what has been called the opioid crisis and the opioid epidemic in Tennessee. These rule amendments impose evidence based limitations on the use of opioid prescription medications by adult enrollees in the TennCare Program. These emergency rule amendments continue to permit medically necessary use of prescription opioids for persons age 21 and older, but impose dosage amount limits as well as time limits based on evidence based medical guidelines.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These emergency rule amendments are lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these emergency rule amendments are TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these emergency rule amendments is the Division of TennCare, Tennessee Department of Finance and Administration.

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

These emergency rule amendments were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The adoption of these rule amendments is anticipated to produce a minimal decrease in state annual expenditures.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

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

310 Great Circle Road

Nashville, TN 37243
(615) 507-6852
donna.tidwell@tn.gov

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

GW10117298

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Sequence Number: 01-15-18
 Rule ID(s): 6681
 File Date: 01/16/18
 Last Effective Day: 07/15/18

Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	TennCare
Contact Person:	George Woods
Address:	Division of TennCare 310 Great Circle Road Nashville, TN
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):

- Amendments
 New
 Repeal

Statement of Necessity:

On October 26, 2017, President Donald Trump issued a memorandum asking the Secretary of Health and Human Services to consider declaring that the opioid crisis constitutes a Public Health Emergency, which Acting Health and Human Services Secretary Eric D. Hargan did by issuing a determination that a Public Health Emergency exists. The U.S. Department of Health and Human Services has declared that opioid abuse is a serious public health issue, with drug overdose deaths being the leading cause of injury death in the United States. The Tennessee Legislature, Attorney General, and members of the Executive Branch have stated that prescription opioid use in Tennessee is a crisis and an epidemic. This emergency rule amendment places limitations on the coverage of opioid medications by the Division of TennCare. These limitations are evidence based and utilize medical necessity criteria.

T.C.A. § 4-5-208 permits an agency to adopt an emergency rule when the agency finds an immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by Title 4, Chapter 5 would not adequately protect the public.

Based upon the above information, I have made the finding that the emergency adoption of this rule is required in order to achieve immediate implementation.

For a copy of this emergency rule contact: George Woods at the Division of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.


 Wendy Long, M.D.
 Director, Division of TennCare
 Tennessee Department of Finance and Administration

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

Chapter Number	Chapter Title
1200-13-13	TennCare Medicaid
Rule Number	Rule Title
1200-13-13-.04	Covered Services
1200-13-13-.10	Exclusions

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Rule 1200-13-13-.04 Covered Services, Paragraph (1), Subparagraph (c), is amended by adding a new Part 12, which shall read as follows:

12. Opioid products for persons aged 21 and older are restricted as follows:
 - (i) For non-chronic opioid users (i.e., enrollees who have used prescription opioids fewer than 90 days in the preceding 180-day period):
 - (I) Coverage will be provided for a maximum of 15 days in any 6-month period; and
 - (II) Daily dosage shall not exceed 40 morphine milligram equivalents per day (MME per day).
 - (III) For enrollees with severe cancer pain undergoing active or palliative treatment and enrollees in hospice and palliative care, the restrictions in items (I) and (II) do not apply.
 - (IV) For certain enrollees who experience more frequent or aggressive pain episodes due to certain clinical disease states, the following considerations apply:
 - I. Enrollees with Sickle Cell may receive up to 45 days of 40 MME per day in any 90-day period; and
 - II. Severe burn victims may receive up to 45 days of 40 MME per day in any 90-day period.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Rule 1200-13-13-.10 Exclusions, Paragraph (3), Subparagraph (a), Part 18, is amended by inserting a new Subpart (x), which shall read as follows:

- (x) Opioid products are restricted as follows:
 - (I) For non-chronic opioid users (i.e., enrollees who have used prescription opioids fewer than 90 days in the preceding 180-day period):
 - I. Coverage will be provided for a maximum of 15 days in any 6-month period; and,
 - II. Daily dosage shall not exceed 40 morphine milligram equivalents per day (MME per day).
 - III. For enrollees with severe cancer pain undergoing active or palliative treatment and enrollees in hospice and palliative care, the restrictions in subitems I. and II. do not apply.

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-13
TENNCARE MEDICAID

1200-13-13-.04 COVERED SERVICES.

(1) Benefits covered under the managed care program

(c) Pharmacy

TennCare is permitted under the terms and conditions of the demonstration project approved by the federal government to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. TennCare must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by TennCare as described in Section 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

12. Opioid products for persons aged 21 and older are restricted as follows:

(i) For non-chronic opioid users (i.e., enrollees who have used prescription opioids fewer than 90 days in the preceding 180-day period):

(I) Coverage will be provided for a maximum of 15 days in any 6-month period; and

(II) Daily dosage shall not exceed 40 morphine milligram equivalents per day (MME per day).

(III) For enrollees with severe cancer pain undergoing active or palliative treatment and enrollees in hospice and palliative care, the restrictions in items (I) and (II) do not apply.

(IV) For certain enrollees who experience more frequent or aggressive pain episodes due to certain clinical disease states, the following considerations apply:

I. Enrollees with Sickle Cell may receive up to 45 days of 40 MME per day in any 90-day period; and

II. Severe burn victims may receive up to 45 days of 40 MME per day in any 90-day period.

1200-13-13-.10 EXCLUSIONS.

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

(a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21

18. Certain pharmacy items as follows:

(x) Opioid products are restricted as follows:

(l) For non-chronic opioid users (i.e., enrollees who have used prescription opioids fewer than 90 days in the preceding 180-day period):

I. Coverage will be provided for a maximum of 15 days in any 6-month period; and,

II. Daily dosage shall not exceed 40 morphine milligram equivalents per day (MME per day).

III. For enrollees with severe cancer pain undergoing active or palliative treatment and enrollees in hospice and palliative care, the restrictions in subitems I. and II. do not apply.

IV. For certain enrollees who experience more frequent or aggressive pain episodes due to certain clinical disease states, the following considerations apply:

A. Enrollees with Sickle Cell may receive up to 45 days of 40 MME per day in any 90-day period; and

B. Severe burn victims may receive up to 45 days of 40 MME per day in any 90-day period.

GW10217298

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



Date: 11/15/17

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D

Director, Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 11/15/17

Notary Public Signature: Robin A Page

My commission expires on: 11/3/2020

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-13

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

Herbert H. Slattery III
Herbert H. Slattery III
Attorney General and Reporter
12/15/2017
Date

Department of State Use Only

Filed with the Department of State on: 01/16/18

Effective for: 180 *days

Effective through: 07/15/18

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

Tre Hargett
Tre Hargett
Secretary of State

SECRETARY OF STATE
2018 JAN 16 AM 10:02
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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Regents

DIVISION:

SUBJECT: Student Immunization Requirements

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-7-124

EFFECTIVE DATES: January 29, 2018 through July 28, 2018

FISCAL IMPACT: None.

STAFF RULE ABSTRACT: The rule sets out the immunization requirements for students attending Tennessee Board of Regents institutions. It changes, by statute and rules, the requirement that the Tennessee Board of Regents follow Tennessee Department of Health rules.

Impact on Local Governments

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

This rule is anticipated to have no Impact on Local Governments

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule sets out the immunization requirements for students attending Tennessee Board of Regents institutions. It changes, by statute and rules, the requirement that the Tennessee Board of Regents follow Tennessee Department of Health rules.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. 49-7-124 authorizes public higher education governing boards in Tennessee, in consultation with the state department of health, to promulgate rules regarding immunization requirements for students enrolled within each respective institution.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

TBR Board, college administration; students; state health department, who all urge adoption.

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

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None

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

Mary G. Moody
General Counsel
Tennessee Board of Regents

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

Mary G. Moody
General Counsel
Tennessee Board of Regents

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

Mary G. Moody
Tennessee Board of Regents
1 Bridgestone Park, 3rd Floor
Nashville, Tennessee 37214
615-366-4438
Mary.Moody@tbr.edu

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

None

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Sequence Number: 01-25-18
 Rule ID(s): 6686
 File Date (effective date): 1/29/18
 End Effective Date: 7/28/18

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Board of Regents
Division:	System-wide Student Rules
Contact Person:	Mary G. Moody
Address:	Office of General Counsel 1 Bridgestone Park, 3 rd Floor Nashville, Tennessee
Zip:	37214
Phone:	615-366-4438
Email:	Mary.Moody@tbr.edu

Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

In April, 2017, the General Assembly of the State of Tennessee passed Senate Bill No. 393, codified as T.C.A. § 49-7-124, relative to higher education immunization requirements. T.C.A. § 49-7-124 was amended by adding a new subsection requiring each higher education governing board, in consultation with the state department of health, to promulgate rules regarding immunization requirements for students enrolled within each respective institution. These new rules are required for the health and safety of students, faculty, and administrators at all TBR campuses.

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

Chapter Number	Chapter Title
0240-02-09	Student Immunization Requirements
Rule Number	Rule Title
0240-02-09-.01	Immunization Rules
0240-02-09-.02	Information Provided to Students
0240-02-09-.03	Exemptions

REDLINE

Rules of Tennessee Board of Regents
Chapter 0240-02-09
Student Immunization Requirements

Emergency Rule

Table of Contents

0240-02-09-.01 Immunization Rules
0240-02-09-.02 Information Provided to Students
0240-02-09-.03 Exemptions

0240-02-09-.01 Immunization Rules

- (1) Each college shall ask all applicants for admission to provide health information that establishes the applicant's compliance with the recommended immunization schedule for measles, mumps, rubella, and varicella for adults, issued by the Center for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices (ACIP).
 - (a) Proof of prior or current military service shall be considered proof of the recommended immunizations.
 - (b) Students with proof of graduation from a Tennessee high school after 2014 shall not be required to submit evidence of the recommended immunizations, except as specified below.
 - (c) Students enrolling in a course of study that is exclusively online and does not involve any experiential component shall not be asked to provide immunization information.
- (2) Except as otherwise required for specific programs of study, failure to provide documentation of recommended immunization shall not be a bar to admission, however, should the college experience an outbreak of a communicable disease, all students without documented immunization for the disease shall be presumed to be unimmunized and subject to immunization, quarantine or isolation recommendations for the purposes of public health disease control.
- (3) Notwithstanding the forgoing, any applicant to a program that involves interaction with children, such as a teacher education or early childhood education training program, must present proof of compliance with the recommended 2-dose immunization schedule for mumps, rubella, and varicella for adults, issued by the CDC-ACIP.
- (4) Notwithstanding the foregoing, any applicant enrolling in a school of nursing, laboratory technology, or any other allied health profession must present proof of compliance with the immunization schedule for healthcare personnel issued by the CDC-ACIP.

Authority: T.C.A. §§ 49-7-124 and 125.

0240-02-09-.02 Information Provided to Students

- (1) Each college shall provide each new incoming student with detailed information concerning the risk factors for hepatitis B infection and the availability and effectiveness of vaccine for persons who are at risk of the disease.

(2) Each college shall provide each new incoming student with detailed information concerning the recommended immunization schedule for measles, mumps, rubella and varicella for adults issued by the Center for Disease Control Advisory Committee on Immunization Practices, and the availability and effectiveness of the recommended vaccines.

(3) Each new incoming student shall return a completed waiver form indicating that the college has provided the information required in this section.

Authority: T.C.A. §§ 49-7-124 and 125.

0240-02-09-.03 Exemptions

(1) A student who is required to show proof of immunization under these rules may be exempted from the requirements only under the following circumstances:

(a) Where a physician licensed by the board of medical examiners, the board of osteopathic examiners or a health department certifies in writing that a particular vaccine is contraindicated for one (1) of the following reasons:

1. The individual meets the criteria for contraindication set forth in the manufacturer's vaccine package insert;

2. The individual meets the criteria for contraindication published by the CDC-ACIP; or

3. In the best professional judgment of the physician, based upon the individual's medical condition and history, the risk of harm from the vaccine outweighs the potential benefit.

(b) Where a parent or guardian or, in the case of an adult student, the student provides to the institution a written statement, affirmed under penalties of perjury, that vaccination conflicts with the religious tenets and practices of the parent or guardian or, in the case of an adult student, the student.

Authority: T.C.A. § 49-7-124.

The vote by the Tennessee Board of Regents on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bill Haslam				X	
Candice McQueen				X	
MaryLou Apple	X				
Larry Autry	X				
Greg Duckett	X				
Yolanda Greene				X	
Tom Griscom				X	
Joey Hatch	X				
Fran Marcum	X				
Jeremy Mitchell	X				
Barbara Prescott	X				
Emily Reynolds	X				
Leigh Shockey				X	
Jai Templeton	X				
Danni Varlan	X				
Tom White	X				

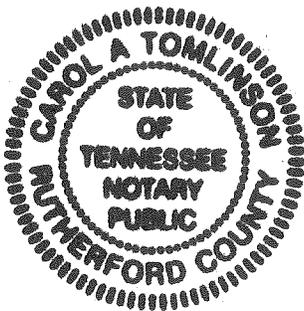
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 12/20/17

Signature: Mary G. Moody

Name of Officer: Mary G. Moody

Title of Officer: General Counsel & Board Secretary



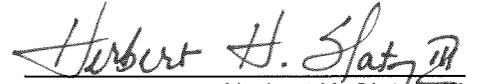
Subscribed and sworn to before me on: 12-20-17

Notary Public Signature: Carol A. Tomlinson

My commission expires on: 2-27-21

Agency/Board/Commission: Tennessee Board of Regents Emergency Rules
Chapter 0240-02-09 Student Immunization Requirements

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


Herbert H. Slatery III
Attorney General and Reporter
1/19/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/29/18

Effective for: 180 *days

Effective through: 7/28/18

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


Tre Hargett
Secretary of State

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2018 JAN 29 AM 9:49
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PARTICIPATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Regents

DIVISION:

SUBJECT: Student Immunization Requirements

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-7-124

EFFECTIVE DATES: April 29, 2018 through June 30, 2018

FISCAL IMPACT: None.

STAFF RULE ABSTRACT: The rule sets out the immunization requirements for students attending Tennessee Board of Regents institutions. It changes, by statute and rules, the requirement that the Tennessee Board of Regents follow Tennessee Department of Health rules.

Regulatory Flexibility Addendum

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

The rule is not anticipated to have an impact on Small Business

Impact on Local Governments

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

The rule is not anticipated to have an impact on Local Governments

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule sets out the immunization requirements for students attending Tennessee Board of Regents institutions. It changes, by statute and rules, the requirement that the Tennessee Board of Regents follow Tennessee Department of Health rules.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. 49-7-124 authorizes public higher education governing boards in Tennessee, in consultation with the state department of health, to promulgate rules regarding immunization requirements for students enrolled within each respective institution.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

TBR Board, college administration; students; state health department, who all urge adoption.

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

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None

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

Mary G. Moody
General Counsel
Tennessee Board of Regents

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

Mary G. Moody
General Counsel
Tennessee Board of Regents

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

Mary G. Moody
Tennessee Board of Regents
1 Bridgestone Park, 3rd Floor
Nashville, Tennessee 37214
615-366-4438
Mary.Moody@tbr.edu

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

None

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For Department of State Use Only

Sequence Number: 01-26-18
Rule ID(s): 6687
File Date: 1/29/18
Effective Date: 4/29/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board of Regents
Division:	System-wide Student Rules
Contact Person:	Mary G. Moody
Address:	Office of General Counsel 1 Bridgestone Park, 3 rd Floor Nashville, Tennessee
Zip:	37214
Phone:	615-366-4438
Email:	Mary.Moody@tbr.edu

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0240-02-09	Student Immunization Requirements
Rule Number	Rule Title
0240-02-09-.01	Immunization Rules
0240-02-09-.02	Information Provided to Students
0240-02-09-.03	Exemptions

REDLINE

Rules of Tennessee Board of Regents
Chapter 0240-02-09
Student Immunization Requirements

New Rule

Table of Contents

0240-02-09-.01 Immunization Rules
0240-02-09-.02 Information Provided to Students
0240-02-09-.03 Exemptions

0240-02-09-.01 Immunization Rules

- (1) Each college shall ask all applicants for admission to provide health information that establishes the applicant's compliance with the recommended immunization schedule for measles, mumps, rubella, and varicella for adults, issued by the Center for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices (ACIP).
 - (a) Proof of prior or current military service shall be considered proof of the recommended immunizations.
 - (b) Students with proof of graduation from a Tennessee high school after 2014 shall not be required to submit evidence of the recommended immunizations, except as specified below.
 - (c) Students enrolling in a course of study that is exclusively online and does not involve any experiential component shall not be asked to provide immunization information.
- (2) Except as otherwise required for specific programs of study, failure to provide documentation of recommended immunization shall not be a bar to admission, however, should the college experience an outbreak of a communicable disease, all students without documented immunization for the disease shall be presumed to be unimmunized and subject to immunization, quarantine or isolation recommendations for the purposes of public health disease control.
- (3) Notwithstanding the forgoing, any applicant to a program that involves interaction with children, such as a teacher education or early childhood education training program, must present proof of compliance with the recommended 2-dose immunization schedule for mumps, rubella, and varicella for adults, issued by the CDC-ACIP.
- (4) Notwithstanding the foregoing, any applicant enrolling in a school of nursing, laboratory technology, or any other allied health profession must present proof of compliance with the immunization schedule for healthcare personnel issued by the CDC-ACIP.

Authority: T.C.A. §§ 49-7-124 and 125.

0240-02-09-.02 Information Provided to Students

- (1) Each college shall provide each new incoming student with detailed information concerning the risk factors for hepatitis B infection and the availability and effectiveness of vaccine for persons who are at risk of the disease.

(2) Each college shall provide each new incoming student with detailed information concerning the recommended immunization schedule for measles, mumps, rubella and varicella for adults issued by the Center for Disease Control Advisory Committee on Immunization Practices, and the availability and effectiveness of the recommended vaccines.

(3) Each new incoming student shall return a completed waiver form indicating that the college has provided the information required in this section.

Authority: T.C.A. §§ 49-7-124 and 125.

0240-02-09-.03 Exemptions

(1) A student who is required to show proof of immunization under these rules may be exempted from the requirements only under the following circumstances:

(a) Where a physician licensed by the board of medical examiners, the board of osteopathic examiners or a health department certifies in writing that a particular vaccine is contraindicated for one (1) of the following reasons:

1. The individual meets the criteria for contraindication set forth in the manufacturer's vaccine package insert;

2. The individual meets the criteria for contraindication published by the CDC-ACIP; or

3. In the best professional judgment of the physician, based upon the individual's medical condition and history, the risk of harm from the vaccine outweighs the potential benefit.

(b) Where a parent or guardian or, in the case of an adult student, the student provides to the institution a written statement, affirmed under penalties of perjury, that vaccination conflicts with the religious tenets and practices of the parent or guardian or, in the case of an adult student, the student.

Authority: T.C.A. § 49-7-124.

The vote by the Tennessee Board of Regents on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bill Haslam				X	
Candice McQueen				X	
MaryLou Apple	X				
Larry Autry	X				
Greg Duckett	X				
Yolanda Greene				X	
Tom Griscom				X	
Joey Hatch	X				
Fran Marcum	X				
Jeremy Mitchell	X				
Barbara Prescott	X				
Emily Reynolds	X				
Leigh Shockey				X	
Jai Templeton	X				
Danni Varlan	X				
Tom White	X				

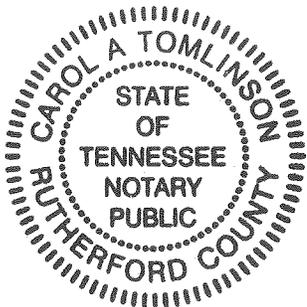
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Board of Regents on 12/14/17, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 12/20/17

Signature: Mary G. Moody

Name of Officer: Mary G. Moody

Title of Officer: General Counsel & Board Secretary



Subscribed and sworn to before me on: 12-20-17

Notary Public Signature: Carol A. Tomlinson

My commission expires on: 2-27-21

Agency/Board/Commission: Tennessee Board of Regents

Rule Chapter Number(s): Chapter 0240-02-09 Student Immunization Requirements

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


Herbert H. Slatery III
Attorney General and Reporter
1/19/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/29/18

Effective on: 4/29/18


Tre Hargett
Secretary of State

RECEIVED
2018 JAN 29 AM 9:50
SECRETARY OF STATE
IMMUNIZATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State

DIVISION: Charitable Solicitations, Fantasy Sports, and Gaming

SUBJECT: Rules Related to the Fantasy Sports Act

STATUTORY AUTHORITY: Tennessee Code Annotated, § 47-18-1612 authorizes the Secretary of State to promulgate rules related to the Fantasy Sports Act, codified in Tenn. Code Ann. 47-18-16101 et seq.

EFFECTIVE DATES: April 30, 2018, through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking hearing rule provides more technologically appropriate language as it relates to the operation of fantasy sports contests and allow alternative types of providers for the production of required audits.

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

Public Comments.

There were no comments received during the open comment period.

Regulatory Flexibility Addendum

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

- (1) The types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

There are no small businesses affected by this proposed rule.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

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

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

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

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no small businesses affected by this proposed rule.

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

There are no small businesses affected by this proposed rule.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

There are no small businesses affected by this proposed rule.

Impact on Local Governments

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

The proposed rules will not impact local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules provide more technologically appropriate language as it relates to the operation of fantasy sports contests and allow alternative types of providers for the production of required audits.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. § 47-18-1612 authorizes the Secretary of State to promulgate rules related to the Fantasy Sports Act, codified in Tenn. Code Ann. § 47-18-16101 *et seq.*

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Fantasy sports operators are most directly affected by this rule and the operators support the adoption of this rule.

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

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

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

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

Mona Hart, Director of Charitable Solicitations, Fantasy Sports, and Gaming; Drew Lewis, Fantasy Sports Compliance Analyst

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

Mona Hart, Director of Charitable Solicitations, Fantasy Sports, and Gaming

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

Mona Hart, Director of Charitable Solicitations, Fantasy Sports, and Gaming, 312 Rosa L. Parks Ave., 8th Floor, Tennessee Tower, Nashville, Tennessee, 37243; 615-741-2555; mona.hart@tn.gov

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

N/A

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-27-18
Rule ID(s): 6688
File Date: 1/30/18
Effective Date: 4/30/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of State
Division:	Charitable Solicitations, Fantasy Sports, and Gaming
Contact Person:	Mona Hart
Address:	312 Rosa L. Parks Ave., 8 th Floor, Nashville, Tennessee
Zip:	37243-1102
Phone:	615-741-2555
Email:	mona.hart@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1360-03-05	Rules Related to the Fantasy Sports Act
Rule Number	Rule Title
1360-03-05-.02	Definitions
1360-03-05-.04	Renewal Application for Licensure
1360-03-05-.05	Approval of Licensure
1360-03-05-.06	Registration of Players/Know Your Customer Requirements
1360-03-05-.07	Player Account Activity
1360-03-05-.08	Player Funds and Required Reserve
1360-03-05-.11	Annual Reporting and Audits

Amendment to Chapter 1360-03-05
Rules Related to the Fantasy Sports Act

Paragraph (5) subparagraph (c) of Rule 1360-03-05-.02 Definitions is amended by deleting the language and punctuation “, visible for a sufficient duration, and does not necessitate scrolling” and by substituting instead the language “and is visible for a sufficient duration” so that, as amended paragraph (5) subparagraph (c) shall read as follows:

- (c) Requires that the disclosure is repeated if necessary, ~~visible for a sufficient duration, and does not necessitate scrolling~~ and is visible for a sufficient duration.

Authority: T.C.A. §§ 47-18-1601, 47-18-1602, and 47-18-1612.

Paragraph (9) Rule 1360-03-05-.02 Definitions is amended by inserting the language “application” following the language “smart phone” so that, as amended paragraph (9) shall read as follows:

- (9) “Fantasy sports contest platform” means any online method by which access to a fantasy sports contest is provided, including, but not limited to a website, smart phone application, or other application providing access to a fantasy sports contest.

Authority: T.C.A. §§ 47-18-1601, 47-18-1602, and 47-18-1612.

Paragraph (1) of Rule 1360-03-05-.04 Renewal Application for Licensure is amended by inserting the language and punctuation “in accordance with T.C.A. § 47-18-1608(d) and Rule 1360-03-05-.05,” before the language “in a form available” so that, as amended paragraph (1) shall read as follows:

- (1) Any person seeking to renew its application to be a licensed fantasy sports operator shall submit a renewal application, in accordance with T.C.A. § 47-18-1608(d) and Rule 1360-03-05-.05, in a form available from the Secretary of State, no later than forty-five (45) days prior to the expiration of the prior year’s license, containing the following information:
 - (a) All information required in an initial application, as set forth in Rule 1360-03-05-.03 except for the following:
 - 1. Identity History Summary from the Federal Bureau of Investigation for individuals who have previously submitted criminal background reports as part of the application process and who have not self-disclosed any new criminal history; and
 - 2. Financial statements required by Rule 1360-03-05-.03(1)(m)(4).

Authority: T.C.A. §§ 47-18-1601, 47-18-1608, and 47-18-1612.

Paragraph (2) of Rule 1360-03-05-.05 Approval of Licensure is amended by deleting the paragraph in its entirety and by substituting instead the following so that, as amended paragraph (2) shall read as follows:

- (2) ~~Each license shall be valid for a period of one (1) year following the date of notification of approval by the Secretary of State.~~ Each license shall expire on the last day of the twelfth month following its issuance and shall become invalid on that date unless renewed.

Authority: T.C.A. §§ 47-18-1601, 47-18-1608, and 47-18-1612.

Paragraph (3) of Rule 1360-03-05-.06 Registration of Players/Know Your Customer Requirements is amended by deleting the paragraph in its entirety and by substituting instead the following so that, as amended paragraph (3) shall read as follows:

~~(3) Single account. A fantasy sports operator shall limit each player to one active and continuously used account. Fantasy sports operators shall implement rules and clearly and conspicuously publish procedures to terminate all accounts of any player that establishes or seeks to establish more than one username or more than one account, whether directly or by use of another person as a proxy. Such procedures may allow a fantasy sports player that establishes or seeks to establish more than one username or more than one account, for one time only, to retain one account provided that the fantasy sports operator investigates and makes a good faith determination that the fantasy sports player's conduct was not intended to obtain a competitive advantage. A player who has established more than one username or account will not be entitled to retain any winnings earned from any account during the time period that more than one username or account is active. A fantasy sports operator must require that any subsequent action by a player of establishing or seeking to establish more than one username or more than one account will result in the fantasy sports operator prohibiting that player from establishing another future account with that fantasy sports operator within a period of two years.~~

(3) Single account.

- (a) A fantasy sports operator shall limit each player to one active and continuously used account in accordance with T.C.A. § 47-18-1603(b)(7)(C). Fantasy sports operators shall implement rules and clearly and conspicuously publish procedures to terminate all accounts of any player that establishes or seeks to establish more than one username or more than one account, whether directly or by use of another person as a proxy.
- (b) The fantasy sports operator may allow a fantasy sports player that establishes or seeks to establish more than one username or more than one account, for one time only, to retain one account provided that the fantasy sports operator investigates and makes a good faith determination that the fantasy sports player's conduct was not intended to obtain a competitive advantage. A player who has established more than one username or account will not be entitled to retain any winnings earned from any account during the time period that more than one username or account is active.
- (c) If a fantasy sports player is allowed to retain one account in accordance with subdivision (b) above and subsequently establishes or attempts to establish another account, the fantasy sports operator, upon discovery of the duplicative account or attempt, must terminate the player's account and prohibit that player from establishing or seeking to establish a new account for a period of two years.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, and 47-18-1612.

Paragraph (4) of Rule 1360-03-05-.06 Registration of Players/Know Your Customer Requirements is amended by deleting the paragraph in its entirety and by substituting instead the following so that, as amended paragraph (4) shall read as follows:

- ~~(4) Identify verification. A fantasy sports operator shall use commercially and technologically reasonable means to independently verify the identity of the individual making a deposit or a withdrawal. Third party entities may be used to verify the identity of a player.~~
 - ~~(a) If a fantasy sports operator determines that the information provided by a player to make a deposit or process a withdrawal is inaccurate or incapable of verification, or violates its policies and procedures, the fantasy sports operator shall, within ten days, require the submission of additional information that can be used to verify the identity of the player. If such information is not provided or does not result in verification of the player's identity, the fantasy sports operator shall:
 - ~~1. Immediately suspend the player's account and not allow the player to participate in any further fantasy sports contests;~~~~

2. ~~Retain any winnings attributable to the player;~~
 3. ~~Refund the balance of deposits made to the account to the source of such deposit or by issuance of a check; and~~
 4. ~~Deactivate the account.~~
- (b) ~~Prior to verification of the player's identity in accordance with this rule, the player shall not be permitted to make deposits or withdraw funds from his or her account.~~
- (4) Identify verification. A fantasy sports operator shall use commercially and technologically reasonable means to independently verify the identity of the individual making a deposit or a withdrawal. Third party entities may be used to verify the identity of a player.
- (a) If a fantasy sports operator determines that the information provided by a player to make a deposit or process a withdrawal is inaccurate or incapable of verification, or violates its policies and procedures, the fantasy sports operator shall, within ten days, require the submission of additional information that can be used to verify the identity of the player.
- (b) If such information is not provided or does not result in verification of the player's identity, the fantasy sports operator shall:
1. Immediately suspend the player's account and not allow the player to participate in any further fantasy sports contests;
 2. Retain any winnings attributable to the player;
 3. Refund the balance of deposits made to the account to the source of such deposit or by issuance of a check; and
 4. Deactivate the account.
- (c) Prior to verification of the player's identity in accordance with this rule, the player shall not be permitted to make deposits or withdraw funds from his or her account.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, and 47-18-1612.

Paragraph (1) of Rule 1360-03-05-.07 Player Account Activity is amended by inserting the language "new" between the language "No" and the language "player" in the first sentence of paragraph (1) so that, as amended paragraph (1) shall read as follows:

- (1) Amount of Monthly Deposits. No new player shall be permitted to deposit more than two thousand five hundred dollars (\$2,500), of cash or a cash equivalent, per month with a fantasy sports operator unless the player demonstrates that he or she should be entitled to increase its monthly deposit limits in accordance with these rules and the published rules of the fantasy sports operator.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, and 47-18-1612.

Paragraph (1) subparagraph (a) of Rule 1360-03-05-.08 Player Funds and Required Reserve is amended by inserting the language "from one player account" following the language "transfer funds" and is further amended by inserting the language "account through its fantasy sports contest platform" following the language "any other player" so that, as amended paragraph (1) subparagraph (a) shall read as follows:

- (a) A fantasy sports operator shall not allow a player to transfer funds from one player account to any other player account through its fantasy sports contest platform.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, 47-18-1605, and 47-18-1612.

Paragraph (1) subparagraph (b) of Rule 1360-03-05-.08 Player Funds and Required Reserve is amended by deleting the language and punctuation "account, whether such account is opened or closed" and by substituting instead the language "active account" in the first sentence of paragraph (1) and is further amended by inserting the language and punctuation "If an identity-verified player seeks to make a withdrawal from a deactivated or otherwise inactive account, the fantasy sports operator shall follow its policies and procedures for processing such withdrawal requests in a commercially reasonable time." between the language and punctuation "investigation of the account." and the language "For purposes of" so that, as amended paragraph (1) subparagraph (b) shall read as follows:

- b) After a player's identity has been verified, a player must be allowed to withdraw funds maintained in his or her ~~account, whether such account is opened or closed~~ active account. Such requests must be honored within five (5) business days of the request, unless the fantasy sports operator believes in good faith that the player engaged in either fraudulent conduct or other conduct that would put the fantasy sports operator in violation of the law, in which case the fantasy sports operator may decline to honor the request for withdrawal for a reasonable investigatory period until its investigation is resolved, provided that it gives notice to the player of the nature of the investigation of the account. If an identity-verified player seeks to make a withdrawal from a deactivated or otherwise inactive account, the fantasy sports operator shall follow its policies and procedures for processing such withdrawal requests in a commercially reasonable time. For purposes of this provision, a request for withdrawal will be considered honored if it is processed by the fantasy sports operator notwithstanding a delay by a payment processor, credit card issuer, or the custodian of a financial account.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, 47-18-1605, and 47-18-1612.

Paragraph (1) of Rule 1360-03-05-.08 Player Funds and Required Reserve is amended by inserting a space line between subparagraph (b) and subparagraph (c).

- (b) After a player's identity has been verified, a player must be allowed to withdraw funds maintained in his or her active account. Such requests must be honored within five (5) business days of the request, unless the fantasy sports operator believes in good faith that the player engaged in either fraudulent conduct or other conduct that would put the fantasy sports operator in violation of the law, in which case the fantasy sports operator may decline to honor the request for withdrawal for a reasonable investigatory period until its investigation is resolved, provided that it gives notice to the player of the nature of the investigation of the account. If an identity-verified player seeks to make a withdrawal from a deactivated or otherwise inactive account, the fantasy sports operator shall follow its policies and procedures for processing such withdrawal requests in a commercially reasonable time. For purposes of this provision, a request for withdrawal will be considered honored if it is processed by the fantasy sports operator notwithstanding a delay by a payment processor, credit card issuer, or the custodian of a financial account.
-
- (c) A fantasy sports operator shall not allow a player's account to be overdrawn unless caused by payment processing issues outside of the control of the fantasy sports operator.

Authority: T.C.A. §§ 47-18-1601 and 47-18-1612.

Paragraph (2) subparagraph (a) of Rule 1360-03-05-.08 Player Funds and Required Reserve is amended by inserting the language and punctuation "payment processor reserves and receivables," between the language and punctuation "equivalents," and the language "an irrevocable" so that, as amended, paragraph (2) subparagraph (a) shall read as follows:

- (a) Reserve. A fantasy sports operator may maintain a reserve in the form of cash, cash equivalents, payment processor reserves and receivables, an irrevocable letter of credit, a bond, or a combination thereof to protect player funds.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, 47-18-1605, and 47-18-1612.

Paragraph (2) subparagraph (a) part 2 subpart (i) of Rule 1360-03-05-.08 Player Funds and Required Reserve is amended by deleting the language "and held in trust" so that, as amended, paragraph (2) subparagraph (a) part 2 subpart (i) shall read as follows:

- (i) The reserve is established ~~and held in trust~~ for the benefit and protection of authorized players to the extent the fantasy sports operator holds money in player accounts for players.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, 47-18-1605, and 47-18-1612.

Paragraph (2) subparagraph (b) part 2 subpart (i) of Rule 1360-03-05-.08 Player Funds and Required Reserve is amended by deleting the language "and held in trust" so that, as amended, paragraph (2) subparagraph (b) part 2 subpart (i) shall read as follows:

- (i) The segregated account is established ~~and held in trust~~ for the benefit and protection of authorized players.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, 47-18-1605, and 47-18-1612.

Paragraph (2) of Rule 1360-03-05-.11 Annual Reporting and Audits is amended by deleting the word "fourth" and by substituting instead the word "seventh" so that, as amended, paragraph (2) shall read as follows:

- (2) Audit Reports. No later than the first day of the ~~fourth~~ seventh month following the close of the fantasy sports operator's fiscal year in which the fantasy sports operator was licensed, the fantasy sports operator shall submit a full and complete copy of the audit prepared pursuant to T.C.A. § 47-18-1604. This audit shall include two components, a financial audit and a compliance audit as described below.

Authority: T.C.A. §§ 47-18-1601, 47-18-1604, and 47-18-1612.

Paragraph (2) subparagraph (b) of Rule 1360-03-05-.11 Annual Reporting and Audits is amended by inserting the language and punctuation "certified public accountant," between the language "prepared by a" and the language "testing laboratory" and is further amended by inserting the language and punctuation ", or other professional service provider" following the language "testing laboratory" so that, as amended, paragraph (2) subparagraph (b) shall read as follows:

- (b) Compliance audit. The fantasy sports operator shall submit a performance audit, prepared by a certified public accountant, testing laboratory, or other professional service provider recognized by the Secretary of State to verify compliance with the operational aspects of the Fantasy Sports Act, including those set forth in T.C.A. § 47-18-1605, and to verify the integrity of the computer operating systems used to operate the fantasy sports contests.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, 47-18-1604, and 47-18-1612.

Paragraph (2) subparagraph (b) part 2 of Rule 1360-03-05-.11 Annual Reporting and Audits is amended by deleting the language "or testing laboratory" and is further amended by deleting the language "gaming laboratory" wherever it appears and by substituting instead the language "professional service provider"

so that, as amended, paragraph (2) subparagraph (b) part 2 shall read as follows:

2. A fantasy sports operator ~~or testing laboratory~~ can seek recognition of an alternative gaming ~~laboratory~~ professional service provider for use in completing the compliance audit by submitting a written request to the Secretary of State. The Secretary of State will review the qualifications and experience of the gaming ~~laboratory~~ professional service provider and determine whether to recognize that entity as an approved provider.

Authority: T.C.A. §§ 47-18-1601, 47-18-1603, 47-18-1604, and 47-18-1612.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted on 12/28/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/09/17

Rulemaking Hearing(s) Conducted on: (add more dates). 12/28/17

Date: 12/28/17

Signature: [Handwritten Signature]

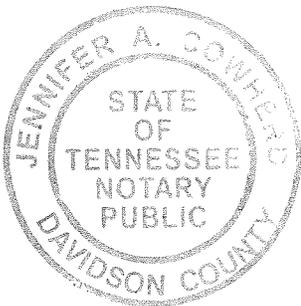
Name of Officer: MONA HART

Title of Officer: DIRECTOR OF CHARITABLE SOLICITATIONS, FANTASY SPORTS, AND GAMING

Subscribed and sworn to before me on: December 28, 2017

Notary Public Signature: [Handwritten Signature]

My commission expires on: 11-5-2019



Agency/Board/Commission: Department of State

Rule Chapter Number(s): 1360-03-05

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

[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter

1/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/30/18

Effective on: 4/30/18

[Handwritten Signature]
Tre Hargett
Secretary of State

RECEIVED
JAN 30 AM 11:19
SECRETARY OF STATE
SOLICITATIONS

Public Hearing Comments

G.O.C. STAFF RULE ABSTRACT

AGENCY: Board of Examiners for Land Surveyors

DIVISION Regulatory Boards

SUBJECT: Global Position Systems Surveys

STATUTORY AUTHORITY: No federal or state law or regulation is known to mandate the promulgation of this rule.

EFFECTIVE DATES: April 11, 2018, through June 30, 2019

FISCAL IMPACT: None known

STAFF RULE ABSTRACT: This rulemaking hearing rule creates standards by which professional licensed land surveyors must document the type of GPS system used in creating a land survey.

Public Hearing Comments

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

Comment 1

There was a comment asking that with Rule 0820-03-.11, it seems impossible for a surveyor to stamp a survey Category 1 with any GPS used on the site unless it is used for control network. Commenter stated he feels he cannot verify "positional accuracy," but rather could verify precision.

Agency Response to Comment 1: An agency member referenced Rule 0820-03-.05(4) Standards of Practice, which refers to Rule 0820-03-.07(5), if GPS is used it provides criteria of exactly what you must do. The agency further clarified those requirements and sets standards within this rule.

Comment 2

There was a comment requesting re-writing of paragraph (2), using a term other than "certificate." Commenter stated that the industry members he represented felt this term to imply licenses needed an additional certificate.

Agency Response to Comment 2: The agency stated this was a great comment and understood how the use of this term could be confusing and that was not the intent of the Board. The Board reworded the rule to remove/change this term.

Comment 3

There was a comment stating opposition to any new rule that would require more certificates on their plats.

Agency Response to Comment 3: The agency stated this was not the Board's intention and they reworded the rule to remove/change the term "certificate."

Comment 4

There was a comment asking if the prepared documents mentioned in paragraph (2) of the rule, that are to contain the certificate, documents that involve any type of GPS surveying that will have the land surveyors stamp.

Agency Response to Comment 4: The agency stated this was an excellent question and a member stated he believes many of these questions will be best answered by placing an example plat on the Board's website.

Comment 5

There was a comment asking how the Board wants positional accuracy to be stated.

Agency Response to Comment 5: The agency stated that this question would be best answered by placing an example plat on the Board's website.

Comment 6

There was a comment in reference to Rule 0820-03-.11(2)(d) and asking if the Board was going to require it to appear as follows: NAD83 (2011) Epoch 2010.00.

Agency Response to Comment 6: The agency stated that this question would be answered by placing an example plat on the Board's website.

Comment 7

There was a comment in reference to Rule 0820-03-.11(2)(g), asking what exact information the Board was looking for. Is this for the fixed control used or GPS coordinates that the surveyor ends up with.

Agency Response to Comment 7: The agency stated that this question would be answered by placing an example plat on the Board's website. The agency chair additionally stated that since these comments were read on behalf of others, he would send a letter to those individuals if necessary.

Comment 8

There was a comment stating concern with Rule 0820-03-.11(5), on the fixed stations that are to appear, could the agency supply some clarification on exactly how that is supposed to be displayed and to what extent if we put our control on the play, that's something new. Commenter additionally stated that putting control points on play is something that he has not done by standard.

Agency Response to Comment 8: The agency stated these were excellent questions and in the opinion of the agency to fulfill 0820-03-.11(5) the surveyor should list the information requested by this rule. At a minimum it should include: station name, horizontal position, latitude, longitude, elevation, datum and epoch.

Comment 9

There was a comment stating that FEMA has very explicit instructions on how you are to document your benchmarks and your GPS data for the elevation certificate. Will this metadata be a requirement for elevation certificates as well?

Agency Response to Comment 9: The agency stated that the agency cannot speak for FEMA, but suggested surveyors follow the guidelines of the FEMA Elevation Certificate.

Comment 10

There was a comment requesting that this rule be postponed until there was continuing education on GPS.

Agency Response to Comment 10: The agency agreed that surveyors should educate themselves regarding GPS and surveyors and stated there are courses available from different vendors, but does not believe there is a need to postpone this rule.

Comment 11

There was a comment requesting clarification on comments about the coordinates and did the commenter understand the agency to state that we are required to show coordinates on plats now?

Agency Response to Comment 11: The agency stated that if you fit within the criteria under T.C.A. § 66-6-105, yes.

Comment 12

There was a comment concerning the use of the term "certificate" in the rule.

Agency Response to Comment 12: The agency thanked the commenter and stated that there was a previous comment regarding the terminology used and the Board is not looking for a separate certificate, but rather looking for data to be listed on the face. The agency believes there is room for change with the terminology used.

Comment 13

There was a comment asking if the Board was going to require this for any place where a surveyor puts any type of GPS coordinates to tie down, as far as like for Metro Nashville stuff the Commenter states he puts that as a separate note. The commenter stated or is this just for plats.

Agency Response to Comment 13: The agency stated that this was a great point.

Comment 14

There was a comment relating to the term "positional accuracy" as used in Rule 0820-03-.11(2)(a) and (3). Is there a way to change it to something that says what the quality of your data? Commenter stated it may be better to stated positional quality vs positional accuracy.

Agency Response to Comment 14: The agency stated that this was a great point.

Comment 15

There was a comment regarding defining GPS survey and stated that as it stands, by defining only GPS, the rule appears to be governing surveys in support of actual navigation systems themselves. Is the intent to cover the use of GPS in all types of surveys?

Agency Response to Comment 15: The agency stated that they believe the commenter's concerns were addressed in previous questions.

Comment 16

There was a comment regarding Rule 0820-03-.11(4), why should this requirement be limited to control network surveys? Should the Positional Accuracy, referred to in Rule 0820-03-.11(2)(b), be stated at the 95-percent confidence interval for all types of surveys? If not, to what confidence interval should the positional accuracy for a non-control network survey be stated to?

Agency Response to Comment 16: The agency stated that they believe the commenter's concerns were addressed in previous questions.

Comment 17

There was a comment asking if the statement/certification of separate of horizontal and vertical accuracy may be desirable (in lieu of just positional accuracy) to be more congruent with existing Rule 0820-03-.05, et al.

Agency Response to Comment 17: The agency stated that they believe the commenter's concerns were addressed in previous questions.

Comment 18

There was a comment read into the records stated that under 0820-03-.11(2), 0820-03-.11(3) and 0802-03-.11(4), that language should be included that could simultaneously have the effect of differentiating accuracies for combined types of surveys, i.e., network survey to establish control, combined with relative positioning technique surveys incorporating less accurate survey feature ties. Example: Network survey to establish control and subsequent RTK positioning techniques based on established project network control, incorporating added and lesser degree accuracy requirements for ties to property locates, plan features, et cetera.

Agency Response to Comment 18: The agency stated that they believe the commenter's concerns were addressed in previous questions. Additionally, the agency chair stated that he may need to look into these

Rules of Tennessee State Board of Examiners for Land Surveyors
Chapter 0820-03 Standards of Practice
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comments further and respond in a letter.

Comment 19

There was a comment submitted that there could be definitions that may need to be added, such as, network accuracy and local accuracy. Additionally the commenter stated that there are additional things that should be incorporated into the certificate in Rule 0820-03-.11(2) and (3).

Agency Response to Comment 19: The agency stated that they believe the commenter's concerns were addressed in previous questions. Additionally, the agency chair stated that he may need to look into these comments further and respond in a letter.

Regulatory Flexibility Addendum

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

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

These rules will affect more than 500 licensed land surveying entities across the state of Tennessee. The vast majority of these entities are considered small businesses.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The projected reporting, recordkeeping and other administrative costs will be expected to be kept at minimum in order to be in compliance with these rules. According to the existing rules, it shall be an acceptable practice to incorporate the use of GPS equipment into any survey, but the use of GPS is not a mandatory practice for land surveyors. Tenn. Comp. R. & Regs. 0820-03-.07(c). Therefore, no new professional skills will be required by any licensee to be in compliance with the new rule.

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

The effect on small businesses will be positive. These rules develop and implement a reporting system designed to establish a standard of practice with an emphasis on increased accuracy for the use of GPS equipment in land surveying. The rule will also have a positive impact on consumers by ensuring that land surveyors who utilize GPS equipment will be able to conduct a more accurate survey for the consumer.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

There are no less burdensome, less intrusive or less costly methods for achieving the purpose of these rules.

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

There are no federal counterparts to these rules. These rules share similarities with the following rules from different states: Ga Comp. R. & Regs. R. 180-7-.09 (Georgia); 201 KAR 18:150 § 8 (Kentucky); 21 NCAC 56.1607 (North Carolina); 36 S.C. Code Ann. Regs. 49-460(D)(4) (South Carolina).

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

There is no possibility for small businesses to be exempt from all or any part of the requirements contained within these rules. These rules are meant to increase the accuracy of land surveys conducted via GPA. Therefore, allowing any small business an exemption from the rule would be counterproductive.

Impact on Local Governments

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

These rules will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules will create standards by which professional licensed land surveyors must document the type of GPS system used in creating a land survey.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None known.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

There are about 1200 licensed land surveyors and land surveyors in training in Tennessee. Those who choose to use GPS devices in preparing their surveys will be affected. The stakeholders and the Board urge adoption of this rule.

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

None known.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None known.

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

Sarah Mathews, Assistant General Counsel

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

Sarah Mathews, Assistant General Counsel
Roxana Gumucio, Executive Director

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

500 James Robertson Parkway
Nashville, Tennessee 37243
(615) 532-6303
Sarah.Mathews@tn.gov

Rules of Tennessee State Board of Examiners for Land Surveyors
Chapter 0820-03 Standards of Practice
Rule 0820-03-.11 Global Position Systems Surveys

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

None known.

**Department of State
Division of Publications**

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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-12-18
Rule ID(s): 6680
File Date: 01/11/18
Effective Date: 04/11/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board of Examiners for Land Surveyors
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Sarah M. Mathews
Address:	500 James Robertson Parkway, Nashville, TN
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Phone:	(615) 532-6303
Email:	Sarah.Mathews@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0820-03	Standards of Practice
Rule Number	Rule Title
0820-03-.11	Global Position Systems Surveys

Chapter 0820-03
Rules of Tennessee State Board of Examiners for Land Surveyors

New Rule

TABLE OF CONTENTS

Table of contents is amended to add new rule 0820-03-.11 Global Position Systems Surveys, so that it shall read as follows;

0820-03-.01 Applicability	0820-03-.06 Maps and Mapping
0820-03-.02 General	0820-03-.07 Survey Types and Requirements
0820-03-.03 Definitions	0820-03-.08 Making of Property Boundaries
0820-03-.04 Reserved	0820-03-.09 Land Descriptions
0820-03-.05 Accuracy of Surveys	0820-03-.10 Instruments and Apparatus
	0820-03-.11 Global Position Systems Surveys

Rule 0820-03-.11 Global Position Systems Surveys is added to chapter 0820-03 and shall read as follows:

0820-03-.11 Global Position Systems Surveys

- (1) Global Positioning Systems (GPS) are defined as the navigation and positioning systems that comprise the Global Navigation Satellite System (GNSS), which includes NAVSTAR, GLONASS, GALILEO, COMPASS, and any other satellite-based navigation and positioning systems.
- (2) The professional Land Surveyor in responsible charge of the GPS survey shall note on all prepared documents the following information. When a map or document consists of more than one (1) sheet, only one (1) sheet must contain the notes.
 - (a) Type of GPS field procedure, such as Static, Kinematic, Psuedo-Kinematic, Real-time Kinematic, Real-time Kinematic networks, and Online Position User Service;
 - (b) Relative positional accuracy or other mathematical expression as chosen by the Land Surveyor;
 - (c) Dates of survey;
 - (d) What datum and epoch coordinates or geographic positions are based on;
 - (e) Designation of fixed-control stations and their positional data;
 - (f) Geoid model used; and
 - (g) Combined grid factor(s).
- (3) GPS surveys performed to provide control networks shall be performed in such a manner to obtain a ninety-five percent (95%) confidence level of the positional accuracy of each point relative to the published positions of the control points used.
- (4) Fixed station(s) used for the project shall appear on the map, plat, or report. The minimum data shown for each fixed station shall be station name, horizontal position (northing and easting) or latitude, longitude, elevation (ellipsoid or orthometric), and datum and epoch.

Authority: T.C.A. § 62-18-106(c).

Rules of Tennessee State Board of Examiners for Land Surveyors
 Chapter 0820-03 Standards of Practice
 Rule 0820-03-.11 Global Position Systems Surveys

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jay Caughman	X				
Tim Lingerfelt	X				
Jackie Dillehay	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Examiners for Land Surveyors on 10/26/17, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 8/3/17

Rulemaking Hearing(s) Conducted on: (add more dates). 10/26/17

Date: 12/19/17

Signature: SARAH M. MATHEWS

Name of Officer: SARAH M. MATHEWS

Title of Officer: ASST. GENERAL COUNSEL

Subscribed and sworn to before me on: December 19, 2017

Notary Public Signature: Carol L. McGlynn

My commission expires on: Nov. 5, 2019

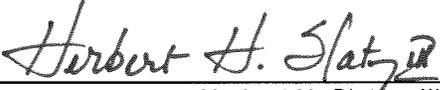


Rules of Tennessee State Board of Examiners for Land Surveyors
Chapter 0820-03 Standards of Practice
Rule 0820-03-.11 Global Position Systems Surveys

Agency/Board/Commission: Tennessee State Board of Examiners for Land Surveyors

Rule Chapter Number(s): 0820-03-.11

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


Herbert H. Slatery III
Attorney General and Reporter
1/5/2018
Date

Department of State Use Only

Filed with the Department of State on: 01/11/18

Effective on: 04/11/18


Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

BOARD: Air Pollution Control

SUBJECT: Construction and Operating Permits

STATUTORY AUTHORITY: There is no federal or state law that mandates the promulgation of this rule. An existing rule (1200-03-09-.07) allows for certain source categories to be eligible for permit-by-rule.

EFFECTIVE DATES: April 8, 2018 through June 30, 2019

FISCAL IMPACT: There will be a minimal reduction in state revenues and expenditures, and a minimal reduction in local expenditures.

STAFF RULE ABSTRACT: This rulemaking hearing rule incorporates four federal rules by reference so that most of the sources subject to these federal rules will qualify for a permit-by-rule.

Specifically, the rule creates two new chapters that incorporate by reference three federal rules (40 CFR 63, subpart ZZZZ; 40 CFR 60, subpart 1111; and 40 CFR 60, subpart JJJJ) related to certain internal combustion engines and one federal rule (40 CFR 63, subpart HHHHHH) related to automobile body shops. One existing chapter is amended to allow permit-by-rule for these engines and automobile body shops. Permit-by-rule streamlines the permitting process so that these sources do not have to obtain the normal construction and operating permits. The permit-by-rule process is less burdensome for owners and operators of affected sources and provides the same degree of environmental protection as the current rules.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: The Tennessee Chamber of Commerce & Industry (the "Chamber") stated that the Chamber is encouraged by the efforts to move to a "permit by rule" structure for applicants of the general air permit (i.e., non-title V permits). The commenter stated that the Chamber is hopeful that these modifications will make the air permit system more efficient and delay any need for fee increases to businesses regulated under the air permit regulations. The Chamber stated that the Chamber believes these ongoing efforts will be beneficial to many of the businesses in Tennessee. Many of these businesses are captured under the general air permit regulation through a small part of their business operations and will surely benefit from these changes. The Chamber stated that the Chamber encourages the department's Division of Air Pollution Control to continue to work with the Chamber, so together they can update businesses on how these changes may impact them.

Response: The Board is not delaying any actions regarding fees as a result of the rule changes, but owners or operators of sources subject to the proposed rule will not have to pay permit application fees. The Board agrees with the Chamber that the rule changes will make the permitting process more efficient and will be beneficial to businesses. The Board agrees with the Chamber that the rule change is a positive change overall. The Chamber did not suggest any modification to the rule so no modifications to the rule were made as a result of the comment.

Regulatory Flexibility Addendum

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

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The small businesses that would be affected by the proposed rule are owners and operators of automobile body shops, emergency reciprocating internal combustion engines (RICE), stationary combustion ignition internal combustion engines, and stationary spark ignition combustion engines. There are over 600 automobile body shops in Tennessee. There are over 1,000 engine sources in Tennessee that will be affected by the proposed rule.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There should be no additional administrative costs required for compliance. The proposed rule will allow affected sources to qualify for a permit-by-rule by submitting a Notice of Intent (NOI). The NOI is a simple form that can be filled out by the owner or operator and does not require any professional skill. In contrast, the current state rules require an owner or operator to submit a construction permit application, which some cannot complete without professional assistance. The proposed rulemaking will also result in reduced costs for owners and operators of affected sources since they will not be paying construction permit application fees for these sources.

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

The proposed rule will make the permitting process easier for small businesses. There is no anticipated impact on consumers.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no known less burdensome, less intrusive, or less costly alternative methods. The proposed rule makes the permitting process less burdensome for small business.

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

The proposed state rule will adopt the federal rules by reference. Thus, the state rule will match the federal rules. The federal rules already apply to the affected sources.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The proposed rule is beneficial to small businesses because it simplifies compliance with existing requirements; exempting them from the rule would actually pose a hardship.

Impact on Local Governments

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

The proposed rule will result in a projected decrease in expenditures for local governments, who own many of the engines that will be eligible for permit-by-rule.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule incorporates four federal rules by reference so that most of the sources subject to these federal rules will qualify for a permit-by-rule. Specifically, the proposed rule creates two new chapters that incorporate by reference three federal rules (40 CFR 63, subpart ZZZZ; 40 CFR 60, subpart IIII; and 40 CFR 60, subpart JJJJ) related to certain internal combustion engines and one federal rule (40 CFR 63, subpart HHHHHH) related to automobile body shops. One existing chapter is amended to allow permit-by-rule for these engines and automobile body shops. Permit-by-rule streamlines the permitting process so that these sources do not have to obtain the normal construction and operating permits. The permit-by-rule process is less burdensome for owners and operators of affected sources and provides the same degree of environmental protection as the current rules.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There is no federal or state law that mandates the promulgation of this rule. An existing rule (1200-03-09-.07) allows for certain source categories to be eligible for permit-by-rule.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule affects owners of automobile body shops and emergency RICEs, stationary compression ignition internal combustion engines, and stationary spark ignition internal combustion engines. The only official comment received during the public hearing was from the Tennessee Chamber of Commerce and Industry, which supports adoption of the rule.

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

The Air Pollution Control Board is not aware of any opinions that directly relate to the rulemaking.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There will be a minimal reduction in state revenues and expenditures, and a minimal reduction in local expenditures.

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

Mark A. Reynolds
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
mark.a.reynolds@tn.gov

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

Emily Urban
Assistant General Counsel

Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-8685
Emily.Urban@tn.gov

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

The Tennessee Air Pollution Control Board is not aware of any requests.

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 Nashville, TN 37243
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Sequence Number: 01-04-19
 Rule ID(s): 6671-6673
 File Date: 01/09/19
 Effective Date: 04/09/19

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Mark A. Reynolds
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN 37243
Zip:	37243
Phone:	(615) 532-0559
Email:	mark.a.reynolds@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
1200-03-09-.07	Permits-by-Rule

Chapter Number	Chapter Title
0400-30-38	Emission Standards for Hazardous Air Pollutants
Rule Number	Rule Title
0400-30-38-.01	Stationary Reciprocating Internal Combustion Engines
0400-30-38-.02	Paint Stripping, Auto Body Refinishing, and Miscellaneous Surface Coating Operations

Chapter Number	Chapter Title
0400-30-39	Standards of Performance for New Stationary Sources
Rule Number	Rule Title
0400-30-39-.01	Stationary Compression Ignition Internal Combustion Engines
0400-30-39-.02	Stationary Spark Ignition Internal Combustion Engines

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1200-03-09
Construction and Operating Permits

Amendments

Paragraph (5) of Rule 1200-03-09-.07 Permits-by-Rule is amended by deleting it in its entirety and substituting instead the following:

1200-03-09-.07 Permits-by-Rule

- (5) Source categories potentially eligible for permit-by-rule:
- (a) Gasoline dispensing facilities (GDFs) subject to the provisions of Rule 1200-03-18-.24.
 - (b) Reserved Emergency stationary reciprocating internal combustion engines subject to the provisions of Rule 0400-30-38-.01.
 - (c) Emergency stationary compression ignition internal combustion engines subject to the provisions of Rule 0400-30-39-.01.
 - (d) Emergency stationary spark ignition internal combustion engines subject to the provisions of Rule 0400-30-39-.02.
 - (e) Auto body refinishing operations, which includes paint stripping and surface coating of motor vehicles and mobile equipment, subject to the provisions of Rule 0400-30-38-.02. However, no emission source subject to a rule in Chapter 1200-03-18 shall qualify for permit-by-rule.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

New Rule

Chapter 0400-30-38
Emission Standards for Hazardous Air Pollutants

Table of Contents

0400-30-38-.01 Stationary Reciprocating Internal Combustion Engines
0400-30-38-.02 Paint Stripping, Auto Body Refinishing, and Miscellaneous Surface Coating Operations

0400-30-38-.01 Stationary Reciprocating Internal Combustion Engines

- (1) Emergency stationary reciprocating internal combustion engines subject to the provisions of this rule may qualify for a permit-by-rule as specified in Rule 1200-03-09-.07.
- (2) The provisions of 40 CFR 63 Subpart ZZZZ (National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines) are hereby adopted by reference as published in the July 1, 2017, edition of the Code of Federal Regulations (CFR), except as provided in subparagraph (a) of this paragraph.
 - (a) Any reference contained in 40 CFR 63 Subpart ZZZZ to the:
 - 1. Administrator shall instead be a reference to the Technical Secretary; and
 - 2. Applicable EPA regional office for the State of Tennessee shall instead be a reference to the EPA Region IV office.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

0400-30-38-.02 Paint Stripping, Auto Body Refinishing, and Miscellaneous Surface Coating Operations

- (1) Auto body refinishing operations, which includes paint stripping and surface coating of motor vehicles and mobile equipment, subject to the provisions of this rule may qualify for a permit-by-rule as specified in Rule 1200-03-09-.07. However, no emission source subject to a rule in Chapter 1200-03-18 Volatile Organic Compounds shall qualify for permit-by-rule.
- (2) The provisions of 40 CFR 63 Subpart HHHHHH (National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources) are hereby adopted by reference as published in the July 1, 2017, edition of the Code of Federal Regulations (CFR), except as provided in subparagraph (a) of this paragraph.
 - (a) Any reference contained in 40 CFR 63 Subpart HHHHHH to the:
 1. Administrator shall instead be a reference to the Technical Secretary; and
 2. Applicable EPA regional office for the State of Tennessee shall instead be a reference to the EPA Region IV office.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

New Rule

Chapter 0400-30-39
Standards of Performance for New Stationary Sources

Table of Contents

0400-30-39-.01 Stationary Compression Ignition Internal Combustion Engines

0400-30-39-.02 Stationary Spark Ignition Internal Combustion Engines

0400-30-39-.01 Stationary Compression Ignition Internal Combustion Engines

- (1) Emergency stationary compression ignition internal combustion engines subject to the provisions of this rule may qualify for a permit-by-rule as specified in Rule 1200-03-09-.07.
- (2) The provisions of 40 CFR 60 Subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines) are hereby adopted by reference as published in the July 1, 2017, edition of the Code of Federal Regulations (CFR), except as provided in subparagraph (a) of this paragraph.
 - (a) Any reference contained in 40 CFR 60 Subpart IIII to the:
 1. Administrator shall instead be a reference to the Technical Secretary; and
 2. Applicable EPA regional office for the State of Tennessee shall instead be a reference to the EPA Region IV office.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

0400-30-39-.02 Stationary Spark Ignition Internal Combustion Engines

- (1) Emergency stationary spark ignition internal combustion engines subject to the provisions of this rule may qualify for a permit-by-rule as specified in Rule 1200-03-09-.07.
- (2) The provisions of 40 CFR 60 Subpart JJJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines) are hereby adopted by reference as published in the July 1, 2017, edition

of the Code of Federal Regulations (CFR), except as provided in subparagraph (a) of this paragraph.

(a) Any reference contained in 40 CFR 60 Subpart JJJJ to the:

1. Administrator shall instead be a reference to the Technical Secretary; and
2. Applicable EPA regional office for the State of Tennessee shall instead be a reference to the EPA Region IV office.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

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

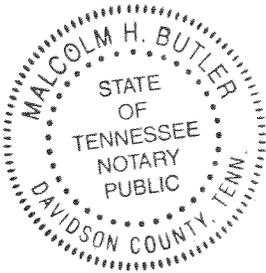
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants	X				
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests	X				
Chris Moore Working in management in Private Manufacturing				X	
Amy Spann, PE Registered Professional Engineer	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 9/13/17, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 6/16/17

Rulemaking Hearing(s) Conducted on: (add more dates). 8/17/17



Date: September 13, 2017

Signature: Michelle W. Owenby

Name of Officer: Michelle Owenby

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: September 13, 2017

Notary Public Signature: Malcolm H. Butler

My commission expires on: September 7, 2020

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-09, 0400-30-38, 0400-30-39

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
12/28/2017
Date

Department of State Use Only

Filed with the Department of State on: 01/09/18

Effective on: 04/09/18

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Air Pollution Control Board

BOARD: Division of Air Pollution Control

SUBJECT: Administrative Fees Schedule - Construction and Annual Emission Fees

STATUTORY AUTHORITY: Section 502(b)(3)(A) of the Federal Clean Air Act is the source of the requirement for Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter.

EFFECTIVE DATES: April 11, 2018 through June 30, 2019

FISCAL IMPACT: It is anticipated that FY2018-2019 state revenues will increase by \$985,021 (above current revenue projections without the rule change) as a result of this rulemaking. This estimate is based on current revenue collections and current knowledge of upcoming changes at affected entities that will impact fee collections. However, this program must be entirely funded by fees per federal law, and the projected revenues are approximately equal to anticipated program expenditures in FY2018-2019.

STAFF RULE ABSTRACT: Section 502(b)(3)(A) of the Federal Clean Air Act requires Tennessee, as an EPA approved program, to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title." Failure to meet this requirement would cause the state to be in violation of federal law and, among other consequences, force EPA to collect the fee from these sources using their presumptive fee rate.

To collect this required annual fee, the Department proposes to amend its rules to:

- 1) Add an annual base fee of \$4,000 which will count as partial payment of the minimum fee;
- 2) Increase the annual fee for allowable emissions from non-EGU sources by \$1 .00/ton and increase the annual fee for actual emissions from non-EGU sources by \$10.50/ton (the choice to pay fees on an actual or allowable emissions basis is made by the owner/operator); and
- 3) Increase the annual fee for allowable emissions from EGU sources by \$8.00/ton and increase the annual fee for actual emissions from EGU sources by \$25.50/ton (the choice to pay fees on an actual or allowable emissions basis is made by the owner/operator). The owner/operator must pay the greater of an unchanged minimum fee of \$7,500 (or \$5,500 for certain small sources) or the amount calculated using the \$/ton fee plus the base fee. An EGU source is a source considered to be an electric utility generating unit.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable

Comment: The Division received updated financial information, so the proposed fee rates (the \$/ton of actual and allowable emissions) have been revised downward. The revised fee rates are included in this written comment.

Proposed rates based on an EGU to non-EGU ratio of 1.4 to 1, an Actual to Allowable ratio of 1.325 to 1, a minimum fee of \$7500, and a base fee of \$4000, which counts toward the minimum fee:

\$36.00/ton for non-EGU allowable emissions (was \$49)
\$50.50/ton for EGU allowable emissions (was \$69)
\$48.00/ton for non-EGU actual emissions (was \$65)
\$67.00/ton for EGU actual emissions (was \$91)

Alternative proposed rates based on EGU to non-EGU ratio of 1.4 to 1, Actual to Allowable ratio of 1.6 to 1, and a base fee of \$4000, which counts toward the minimum fee:

\$33.50/ton for non-EGU allowable emissions (was \$45)
\$47.00/ton for EGU allowable emissions (was \$64)
\$53.50/ton for non-EGU actual emissions (was \$73)
\$75.00/ton for EGU actual emissions (was \$102)

Response: No response necessary.

Comment: Because of the new information received, the Division is extending the public comment period to the close of business November 16, 2017.

Response: No response necessary.

Comment: The Tennessee Chamber of Commerce and Industry (TCCI) supports the suggested change to the rule reinstating the base fee as it appears that removal of the base fee negatively impacted the fund balance and could be a driver for deficits in the future.

Response: The Air Pollution Control Board thanks TCCI for its support.

Comment: TCCI supports an EGU to non-EGU ratio of 1.4:1 and an actual to allowable ratio of 1.6:1 (corrected). The EGU to non-EGU ratio is more equitable for members who pay Title V fees.

Response: The alternative proposed rates (adopted in the rulemaking) reflect these ratios. No additional response necessary.

Comment: TCCI has no comment on the minimum fee other than that it should reflect the cost of servicing a basic Title V permit.

Response: The Division does not maintain records on the cost associated with issuing and enforcing each individual Title V permit. However, during the 2016 stakeholder process, the Division estimated the cost of several sample facilities using available data and a number of assumptions. Estimated costs varied widely based on a number of factors, such as number of sources, number and complexity of applicable MACT standards, frequency of permit amendments, and compliance history. The current minimum fee, which is not being revised, is within the range of the cost estimates for the lower emitting facilities.

Comment: TCCI believes that with proper management the supported ratios and base fee should prevent having to raise fees again in the near future.

Response: The Air Pollution Control Board cannot predict whether fees will need to be adjusted again in the near future.

Regulatory Flexibility Addendum

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

Due to increased program expenses, the rule amendment proposes to increase emission fee rates in order to generate sufficient revenue for the Division to administer the major source "Title V" permitting program, as mandated by federal law. The rule amendment to paragraph (9) of Rule 1200-03-26-.02, Construction and Annual Emission Fees, relative to the amount of emission fees and emission fee rates is therefore federally mandated and exempt from the provisions of the Regulatory Flexibility Act as provided in Tenn. Code Ann. § 4-5-404. Generally businesses that are issued a Title V air pollution permit are large industrial businesses; however, it is believed that Title V permits are issued to some small businesses. The Division does not collect information on the number of employees during the permitting process. Small businesses that are subject to Title V fees will likely experience increased fees, although some of these small businesses may pay the minimum fee and so will not experience a fee increase.

Impact on Local Governments

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

The Air Pollution Control Board anticipates that these amended rules will not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Section 502(b)(3)(A) of the Federal Clean Air Act requires Tennessee, as an EPA approved program, to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title." Failure to meet this requirement would cause the state to be in violation of federal law and, among other consequences, force EPA to collect the fee from these sources using their presumptive fee rate. To collect this required annual fee, the Department proposes to amend its rules to:

- 1) Add an annual base fee of \$4,000 which will count as partial payment of the minimum fee;
- 2) Increase the annual fee for allowable emissions from non-EGU sources by \$1.00/ton and increase the annual fee for actual emissions from non-EGU sources by \$10.50/ton (the choice to pay fees on an actual or allowable emissions basis is made by the owner/operator); and
- 3) Increase the annual fee for allowable emissions from EGU sources by \$8.00/ton and increase the annual fee for actual emissions from EGU sources by \$25.50/ton (the choice to pay fees on an actual or allowable emissions basis is made by the owner/operator).

The owner/operator must pay the greater of an unchanged minimum fee of \$7,500 (or \$5,500 for certain small sources) or the amount calculated using the \$/ton fee plus the base fee. An EGU source is a source considered to be an electric utility generating unit.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Section 502(b)(3)(A) of the Federal Clean Air Act is the source of the requirement for Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter."

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Owners and operators of sources subject to Title V fees in the state. These persons recognize the necessity of the rule.

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

The Air Pollution Control Board is not aware of any opinions that directly relate to the rulemaking.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

It is anticipated that FY2018-2019 state revenues will increase by \$985,021 (above current revenue projections without the rule change) as a result of this rulemaking. This estimate is based on current revenue collections and current knowledge of upcoming changes at affected entities that will impact fee collections. However, this program must be entirely funded by fees per federal law, and the projected revenues are approximately equal to anticipated program expenditures in FY2018-2019.

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

James Johnston and Lacey Hardin
Division of Air Pollution Control

William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
Lacey.Hardin@tn.gov

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

Emily Urban
Assistant General Counsel
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

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

The Tennessee Air Pollution Control Board is not aware of any additional relevant information.

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For Department of State Use Only

Sequence Number: 01-10-18
 Rule ID(s): 6078
 File Date: 1-11-18
 Effective Date: 4-11-18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Air Pollution Control Board
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN
Zip:	37243
Phone:	(615) 532-0545
Email:	Lacey.Hardin@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-03-26	Administrative Fees Schedule
Rule Number	Rule Title
1200-03-26-.02	Construction and Annual Emission Fees

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1200-03-26
Administrative Fees Schedule

Amendments

Subparagraph (c) of paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (c) ~~Annual emission fees collected from sources named by the Board in the Division's Workload Analysis as being major sources pursuant to the provisions of Title V of the federal Clean Air Act and the federal regulations at 40 CFR Part 70 [FR Vol 57, No. 140, Tuesday, July 21, 1992 p32295-32312] and the definition of a major source in subparagraph 1200-03-26-.02(2)(g) major sources and all sources subject to paragraph (11) of Rule 1200-03-09-.02 shall be used to pay for the direct and indirect costs of:~~
1. Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
 2. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
 3. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification and related data entry;
 4. Implementing and enforcing the terms of any part 40 C.F.R. Part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
 5. Emissions and ambient monitoring;
 6. Modeling, analyses, or demonstrations;
 7. Preparing inventories and tracking emissions; and
 8. Providing direct and indirect support to sources under the Small Business Environmental Assistance Program.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Subparagraph (f) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (f) "Legally enforceable" means all limitations and conditions which are enforceable by the Technical Secretary, including those under this Division 1200-03, Division 0400-30, the State Implementation Plan, and any permit requirements established pursuant to Chapter 1200-03-09. ~~For Major major sources and sources subject to paragraph (11) of Rule 1200-03-09-.02, legally enforceable also includes a limitation or condition that is enforceable by the United States Environmental Protection Agency or its administrator.~~

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(9) ANNUAL EMISSION FEES FOR MAJOR SOURCES AND SOURCES SUBJECT TO PARAGRAPH 11 OF RULE 1200-03-09-.02.

- (a) 1. A responsible official of a major source or a source subject to paragraph (11) of Rule 1200-03-09-.02 (hereinafter, "Paragraph 11 source") must pay an annual emission fee to the Division. A major source or Paragraph 11 source is not subject to the minor and conditional major source annual emission fees of paragraph (6) of this rule on or after July 1, 1994. Once a major stationary source or Paragraph 11 source begins to pay major source annual emission fees pursuant to this paragraph (9), it will not be subject to the construction permit fees of paragraph (5) of this rule for any additional construction occurring at the source.
2. Effective January 1, 2018, the following shall apply:
- (i) Sources choosing to pay annual emission fees on an allowable emissions basis pursuant to subparagraph (b) of this paragraph shall pay one hundred percent (100%) of the fee due pursuant to subparagraph (d) of this paragraph:
 - (I) No later than April 1 of the year immediately following the annual accounting period for which the fee is due for sources paying on a calendar year basis pursuant to subparagraph (b) of this paragraph; or
 - (II) No later than April 1 of the current fiscal year for sources paying on a fiscal year basis pursuant to subparagraph (b) of this paragraph.
 - (ii) Sources choosing to pay annual emission fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a calendar year basis pursuant to subparagraph (b) of this paragraph shall pay one hundred percent (100%) of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the year immediately following the annual accounting period for which the fee is due, except as allowed by part (g)3 of this paragraph.
 - (iii) Sources choosing to pay annual emission fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a fiscal year basis pursuant to subparagraph (b) of this paragraph shall pay an estimated sixty-five percent (65%) of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the current fiscal year. The remainder of the annual emission fee is due July 1 of each year, except as allowed by part (g)3 of this paragraph.
- (b) 1. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual emission fee based on:
- (i) Either a calendar year or state fiscal year; and
 - (ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.
2. If the responsible official does not declare a fee payment choice as provided in subparts 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the same as the responsible official's most recent choice of fee payment, or, if no such previous choice was made, the basis of the annual fee payment shall be that specified in the source's current major source operating permit.
3. If the responsible official wishes to restructure a major source's allowable emissions for a major source or Paragraph 11 source for the purpose of lowering the major source's annual emission fee, then an application must be filed at least ninety (90) days prior to December 31 of the annual accounting period as provided in subparagraph (g) of this paragraph.

4. The responsible official of a newly constructed major source, Paragraph 11 source, or a minor source modifying its operation such that the source becomes a major source or Paragraph 11 source shall pay an initial annual emission fee based on a calendar year and allowable emissions for the fractional remainder of the calendar year commencing upon the source's start-up.
5. For purposes of the payment of annual emission fees due July 1, 2016, parts 1 and 2 of this subparagraph shall not apply. Annual emission fees due July 1, 2016, shall be based on the state fiscal year and the annual fee basis (actual emissions, allowable emissions, or a mixture) specified in a source's current major source operating permit. If a source does not have an effective major source operating permit on July 1, 2016, then the source's responsible official shall pay the annual emission fee based on the state fiscal year and allowable emissions.

(c) Reserved.

(d) 1. ~~Notwithstanding the emission fee rates established by part 2 of this subparagraph, the annual emission fee required to be paid by a responsible official relative to a major source pursuant to subparagraph (a) of this paragraph shall be no less than \$7,500 of any source subject to this paragraph (9) shall pay an annual base emission fee of \$4,000. This base emission fee shall be paid in addition to the annual emission fee established by part 2 of this subparagraph, but shall be counted toward the applicable minimum fee set forth in subpart 2(ii) of this subparagraph.~~

2. (i) For purposes of this part, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.

~~(ii) Notwithstanding the annual emission fee rates established by subpart (iii) of this part, the annual emission fee required to be paid by a responsible official of any source subject to this paragraph (9) shall be no less than:~~

~~(I) \$5,500 for sources (once in always in or OIAI sources) subject to this paragraph (9) solely due to the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors, provided that the source has permitted allowable emissions below the major source thresholds found in part 14 of subparagraph (b) of paragraph (11) of Rule 1200-03-09-.02. If the source's permitted allowable emissions are not below those major source thresholds as of October 31 of the annual accounting period for which fees are due under this part, then item (II) of this subpart applies; and~~

~~(II) \$7,500 for all other sources subject to this paragraph (9).~~

~~(iii)(iii) The emission fee rates applied to calculate the annual emission fee assessed pursuant to paragraph subparagraph (a) of this paragraph shall be as follows:~~

~~(I) Fee based on actual emissions: \$43.00 53.50 per ton for non-EGU sources and \$49.50 75.00 per ton for EGU sources; and~~

~~(II) Fee based on allowable emissions: \$32.50 33.50 per ton for non-EGU sources and \$39.00 47.00 per ton for EGU sources.~~

~~(iii)~~(iv) The emission fee rates enumerated in subpart (iii) of this part must be supported by the Division's annual workload analysis that is approved by the Board.

3. The emission fee rates shall remain in effect until the effective date of an amendment to part 2 of this subparagraph. Any revision to the emission fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c) of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.
- (e)
 1. An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.
 2. No ~~major source~~ annual emission fee under this paragraph (9) will be charged for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
 - (f) In the case where a source is shut down such that it has operated only during a portion of the annual accounting period and the source's permits are forfeited to the Technical Secretary, the appropriate fee shall be calculated on a prorated basis over the period of time that the source was operated in the annual accounting period. The responsible official of a major source or Paragraph 11 source that is shutdown, but wishes to retain its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had the responsible official determined to base the annual emission fee on allowable emissions. If the responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. The responsible official shall notify the Division no later than December 31 of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.
 - (g) Responsible officials required to pay the major source or Paragraph 11 source annual emission fee pursuant to subparagraph (a) of this paragraph must conform to the following requirements with respect to fee payments:
 1.
 - (i) If a responsible official paying the annual emission fee based on allowable emissions wishes to restructure the allowable emissions of a source subject to paragraph (11) of Rule 1200-03-09-.02 for the purpose of lowering the ~~major source's~~ annual emission fee, then upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive regulatory requirement, the method used to determine compliance with the limitation, and the documentation procedure to be followed by the major source or Paragraph 11 source to ensure that the limit is not exceeded must be included in the application and specified in a permit through either the permit modification processes of paragraph (11) of Rule 1200-03-09-.02, or the construction permit processes of Rule 1200-03-09-.01, or both. The more restrictive requirement shall be effective for purposes of lowering the annual emission fee upon agreement by both the responsible official and the Technical Secretary and for all other purposes shall be effective upon issuance of the permit, modification, or both.
 - (ii) To reduce the amount of the fee as provided in subpart (i) of this part, the responsible official must file a complete permit modification or construction permit application with the Division at least ninety (90) days prior to December 31 of the annual accounting period.
 2. The responsible official shall file an analysis of actual emissions, allowable emissions, or both actual and allowable emissions, whichever is appropriate due to the basis of the annual emission fee payment, with the Technical Secretary on or before the date the fee

is due pursuant to subparagraph (a) of this paragraph. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major source or Paragraph 11 source facility and shall be used to calculate the amount of the annual emission fee owed pursuant to subparagraph (a) of this paragraph.

- (i) An annual emission fee based on both actual emissions and allowable emissions shall be calculated utilizing the 4,000 ton per year cap specified in subparagraph (2)(i) of this rule. In determining the tonnages to be applied toward the regulated pollutant 4,000 ton cap in a mixed base fee, the responsible official shall first calculate the actual emission-based fees for a regulated pollutant and apply that tonnage toward the regulated pollutant's cap. The remaining tonnage available in the 4,000 ton category of a regulated pollutant shall be subject to allowable emission based fee calculations. Once the 4,000 ton per year cap has been reached for a regulated pollutant, no additional fee for that pollutant shall be required.
 - (ii) If the responsible official chooses to base the annual emission fee on actual emissions, then the responsible official must prove the magnitude of the ~~major source's~~ emissions to the satisfaction of the Technical Secretary. ~~The procedure for quantifying actual emission rates shall be specified in the major source operating permit.~~
3. (i) Responsible officials choosing to pay the ~~major source~~ annual emission fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary for up to ninety (90) days after the fee is due pursuant to subparagraph (a) of this paragraph. The request for extension must be received by the Division no later than 4:30 p.m. on April 1, or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual emission fee payment of no less than sixty-five percent (65%) of the annual emission fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. The remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual emission fee.
- (ii) A responsible official choosing to pay the annual emission fee based on allowable emissions is not eligible for the extension of time authorized by subpart (i) of this part.
- (h) Reserved.
 - (i) Reserved.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

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

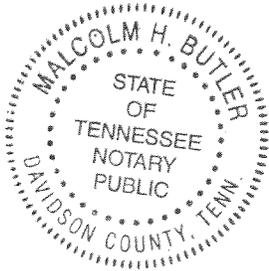
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Karen Cisler Environmental Interests				X	
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests				X	
Ken Moore Working in Municipal Government				X	
Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Vacant Working in management in Private Manufacturing					
Amy Spann, PE Registered Professional Engineer	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 12/13/2017, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/13/17

Rulemaking Hearing(s) Conducted on: (add more dates). 11/09/17



Date: December 15, 2017

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: December 15, 2017

Notary Public Signature: Malcolm H. Butler

My commission expires on: September 7, 2020

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-26

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
1/10/2018
Date

Department of State Use Only

Filed with the Department of State on: 1-11-18

Effective on: 4-11-18

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Alcoholic Beverage Commission

DIVISION:

SUBJECT: Sale of Liquor by the Drink

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 57-4-203

EFFECTIVE DATES: April 11, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The proposed rule was brought by representatives of certain airports and retail businesses within such airports in order to expand the hours of sale of alcoholic beverages and beer at such airports and to provide additional flexibility and potentially cheaper fees with regard to obtaining licenses to sell alcoholic beverages by retail businesses at such airports.

Public Hearing Comments

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

A copy of a document summarizing Commission responses to public hearing comments is attached.



MEMO

From: Clayton Byrd, Executive Director

Re: Responses to comments made at public rulemaking hearing

Date: November 20, 2017

On or about February 15, 2017, a petition to promulgate certain rules regarding terminal buildings of commercial air carriers including rules to expand the hours of sale of alcoholic beverages and beer in such airport terminals were filed pursuant to T.C.A. § 57-4-203 and other relevant law. On November 13, a rulemaking hearing was held in accordance with the law. At the hearing, various comments were made in support of the proposed rule. Only one comment was made that prompts comment by the Tennessee Alcoholic Beverage Commission (TABC). Below is a summary of the comment and the Tennessee Alcoholic Beverage Commission's (TABC's) response to such comment:

- (1) AIRPORT PACKAGE STORES AND FINANCIAL DISCLOSURES - Rule 0100-01-.08(5) - A comment was made requesting that the TABC add an additional provision as a part of these rules regarding airport terminal buildings to specify that certain package stores located in such airports are not required to maintain a minimum of 65% of sales from alcoholic beverages. It was persuasively argued that this requirement could not be possibly met by such licensee and could not have been met at the time that this license type was authorized by law and thus any interpretation that the requirement applied to such licensee would be contrary to the statutory intent that authorized the provision of a retail package store license to such licensee. The TABC agrees with this argument. Chapter 301 of the Public Acts of 2016 was passed with the specific intent to allow a retail package store license to be obtained in certain airports. This law was passed after the 65% minimum sales provision was added to the law in 2014. It is the opinion of the TABC that since the retail package store at the airport, by the very nature of it being at the airport, could not have met the 65% minimum sales provision, at the time of the passage of Chapter 301 of the Public Acts of 2016, then it was the statutory intent that the 65% minimum sales provision not apply to package stores licensed pursuant to Chapter 301 of the Public Acts of 2016. However, since the statutory intent is clear, and because this request is outside of the scope of the filed rule petition, the TABC does not feel it is appropriate or necessary to include a rule provision specifying this at this time.

Sincerely,

Clayton Byrd
Executive Director
Tennessee Alcoholic Beverage Commission

Regulatory Flexibility Addendum

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

The proposed rule was brought by representatives of certain airports and retail businesses within such airports in order to expand the hours of sale of alcoholic beverages and beer at such airports and to provide additional flexibility and potentially cheaper fees with regards to obtaining licenses to sell alcoholic beverages by retail businesses at such airports. Since this rule only affects certain airports and certain retail businesses in such airports, it is expected to have very limited impact on small businesses, but to the extent small business would be affected by this rule, that effect would be positive and to the benefit of the small business. Roughly 20 businesses may be impacted by this rule, but such businesses are not necessarily small businesses and very few small businesses are expected to be impacted by this rule. This rule was brought by certain airports and businesses and there are no less burdensome, intrusive, or costly method for effectuating the purposes of the rule and this rule would generally decrease the fees charged and remove certain administrative requirements. There are no state or federal counterparts for which this rule can be effectively compared to, except that with regard to hours of sale, that authority for the Commission to expand the hours of sale is given by T.C.A. § 57-4-203 and has been used previously pursuant to Rule 0100-01-.03(2). To the extent small businesses would be affected by this rule, the exemption of small businesses from this rule would be detrimental to such small businesses.

Impact on Local Governments

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

The proposed rule would extend the hours of sale of both alcoholic beverages and beer in certain airports, provided that pursuant to T.C.A. § 57-4-203, the local jurisdictions in which the airports effected by this rule are located do have the right to pass an ordinance to opt out of this extension of the hours of sales of alcoholic beverages and beer at such airports.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rule was brought by representatives of certain airports and retail businesses within such airports in order to expand the hours of sale of alcoholic beverages and beer at such airport and, to provide additional flexibility and potentially cheaper fees with regards to obtaining licenses to sell alcoholic beverages by retail businesses at such airports.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There is no state or federal law that mandates the promulgation of this rule, however, T.C.A. § 57-4-203 allows the Commission, upon petition for rulemaking by a licensee and the holding of a rulemaking hearing, to promulgate a rule expanding the hours of sale of alcoholic beverages and beer.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The Nashville Airport and representatives of certain retail establishments within the airport petitioned for this rule and urge adoption for this rule. The Commission has heard from no one opposing the rule.

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

There are no such attorney general opinions or judicial rulings.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The fiscal impact is minimal due to the very limited scope and effect of this rule to only certain airports.

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

Clay Byrd, Director; Zack Blair, Assistant Director

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

Clay Byrd, Director

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

500 James Robertson Pkwy, 3rd Floor, Nashville, TN 37243; 615-741-7620; Clay.Byrd@tn.gov

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

No additional information regarding this proposed rule has been requested.

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-11-18
Rule ID(s): 6679
File Date: 1-11-18
Effective Date: 4-11-18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Alcoholic Beverage Commission
Division:	
Contact Person:	Clayton Byrd, Executive Director
Address:	500 James Robertson Parkway, 3rd Floor, Nashville, TN
Zip:	37243
Phone:	615-741-7620
Email:	Clay.Byrd@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0100-01	Rules for the Sale of Liquor by the Drink
Rule Number	Rule Title
0100-01-.03	Conduct of Business
0100-01-.08	Terminal Building of a Commercial Air Carrier

Chapter Number	Chapter Title
Rule Number	Rule Title



Rule 0100-01-.03 Conduct of Business, paragraph (2) is amended by deleting the present language in its entirety and replacing it with the following:

- (2) Consumption on Licensed Premises. Except as provided for in 0100-01-.08 below, No licensee shall permit alcoholic or malt beverages to be consumed and/or sold on the licensed premises between the hours of 3 a.m. and 8 a.m. on Monday through Saturday or between the hours of 3 a.m. and 10 a.m. on Sunday unless the local jurisdiction has opted out of the expanded hours. If such is the case, then the consumption and/or sale of alcoholic beverages may begin at 12 noon on Sunday.

Authority: T.C.A. §§ 4-58-103, 57-1-207, 57-3-104, 57-3-406, 57-3-704, 57-3-710, 57-4-101, 57-4-102, 57-4-201 and 57-4-203.

Rule 0100-01 Rules for the Sale of Liquor by the Drink is amended by adding the following as a new separate section:

Chapter 0100-01-.08 Terminal Building of a Commercial Air Carrier

- (1) Hours of Sale. Notwithstanding subsection 0100-01-.03(2), any establishment that holds a license as a terminal building of a commercial air carrier airport under Tenn. Code Ann. §57-4-102(36), any establishment that holds a license as a commercial airline travel club under Tenn. Code Ann. § 57-4-102(10), or a concessionaire that holds a liquor-by-the-drink license and is located in a terminal building of a commercial air carrier airport, shall be permitted to allow alcoholic or malt beverages to be consumed and/or sold on the licensed premises during the hours that the terminal building of the commercial carrier airport is open to the public, unless the local jurisdiction has opted out of these expanded hours.
- (2) Privilege Tax. Establishment, as the term is used in Tenn. Code Ann. § 57-4-301(b)(1)(L), shall mean the license holder. Only one license fee or privilege tax shall be due from each holder of a license for a terminal building of a commercial air carrier airport, regardless of the number of points of sale the entity may operate under the license.
- (3) Establishment.
- (a) A terminal building of a commercial air carrier airport license may be issued either to the entity having contractual, jurisdictional or other such authority to operate the airport, or, in the entity's discretion, to another entity or entities as are contractually authorized to operate within the airport. All such entities shall be considered an establishment for purposes of Tenn. Code Ann. § 57-4-301(b)(1)(L) and shall file an addendum with each renewal application identifying each point of sale within the airport.
- (b) The holder of a license for a terminal building of a commercial air carrier airport may contractually authorize a separate entity to operate under the terminal building of a commercial air carrier airport license, and such contractually authorized entity shall not be required to obtain its own license; provided that prior notice and disclosures shall be given to the commission, on such forms or in such manner as may be prescribed by the commission. The license holder shall ultimately be responsible for any violation or sanction issued by the commission.
- (4) Enforcement. The commission may, in its discretion, treat each point of sale at the terminal building of a commercial air carrier separately for enforcement purposes.

Authority: T.C.A. §§ 57-3-204(i), 57-4-101, 57-4-102, 57-4-201, 57-4-203, and 57-4-301.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bryan Kaegi	X				<i>Bryan Kaegi</i>
Richard Skiles	X				<i>Richard Skiles</i>
John A. Jones	X				<i>John A. Jones</i>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the TABC (board/commission/ other authority) on 11/28/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/15/2017

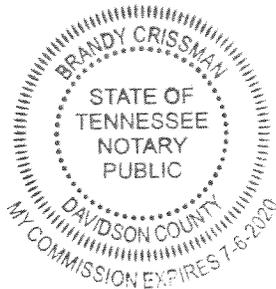
Rulemaking Hearing(s) Conducted on: (add more dates). 11/13/2017

Date: 11-28-17

Signature: *Clay Byrd*

Name of Officer: Clay Byrd

Title of Officer: Director



Subscribed and sworn to before me on: November 28, 2017

Notary Public Signature: *Brandy Crissman*

My commission expires on: 7-6-2020

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

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

1/5/2018
Date

Department of State Use Only

Filed with the Department of State on: 1-11-18

Effective on: 4-11-18



Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: General Environmental Health

SUBJECT: Food Service Establishment

STATUTORY AUTHORITY: Public Acts 2013, Chapter 182

EFFECTIVE DATES: April 4, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The rule amendment to Rule 1200-23-01-.03(4)(b)1(i) corrects temperatures for parasite destruction. The amendment to Rule 1200-23-01-.03(4)(c)6 adds additional options for compliance. The amendment to Rule 1200-23-01-.03(5)(a)6(i) replaces language to include an additional temperature requirement.

Regulatory Flexibility Addendum

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

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

These rule do not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

These rules exhibit clarity, conciseness, and lack of ambiguity.

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

These rules do not provide for additional compliance or reporting requirements for small businesses.

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

These rules do not establish schedules or deadlines for compliance or reporting requirements for small businesses.

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

These rules do not contain compliance or reporting requirements for small businesses.

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

These rules do not establish performance standards, design for small businesses. They ease the burden of operational standards.

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

The rules do not stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Department of Health, Division of General Environmental Health

Rulemaking hearing date: N/A

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

These rules will affect those businesses and governmental programs offering food services. These business and governmental entities will bear the cost of, and/or benefit from the proposed rule amendments.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

These rules amendments do not contain any new reporting, recordkeeping, or other administrative costs required for compliance with the proposed rule amendments.

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

Small business and consumers will benefit from the proposed rule amendments. Businesses will benefit from these rules as these amendments will make the rules clearer and give more guidance and options for compliance. Consumers should not be affected by these rule amendments.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule amendments.

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

Federal: The FDA has adopted this language.

State: Mississippi and South Carolina have adopted these rules.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

These rule amendments do not contain any exemptions for small businesses.

Impact on Local Governments

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

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule amendment to Rule 1200-23-01-.03(4)(b)1(i) corrects temperatures for parasite destruction. The amendment to Rule 1200-23-01-.03(4)(c)6 adds additional options for compliance. The amendment to Rule 1200-23-01-.03(5)(a)6(i) replaces language to include an additional temperature requirement.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

2013 Public Chapter 182.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will affect those businesses and governmental programs offering food services.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rule amendments should not result in any increase or decrease in state or local government revenues or expenditures.

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

Mary Kennedy, Deputy General Counsel, Department of Health.

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

Mary Kennedy, Deputy General Counsel, Department of Health.

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

710 James Robertson Parkway, 5th Floor – Andrew Johnson Building, Nashville, Tennessee 37243, (615) 532-7161, Mary.Kennedy@tn.gov.

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

None.

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 Nashville, TN 37243
 Phone: 615-741-2650
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For Department of State Use Only

Sequence Number: 01-03-18
 Rule ID(s): 6670
 File Date: 01/04/18
 Effective Date: 04/04/19

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Health
Division:	General Environmental Health
Contact Person:	Mary Kennedy
Address:	710 James Robertson Parkway, 5th Floor, Nashville, TN
Zip:	37243
Phone:	(615) 253-4878
Email:	Mary.Kennedy@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-23-01	Food Service Establishment
Rule Number	Rule Title
1200-23-01-.03	Food

(Rule 1200-23-01-.02, continued)

1. Except as specified in part 2 of this subparagraph, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result.
 2. A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:
 - (i) The employee's hands;
 - (ii) The container; and
 - (iii) Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- (b) Discharges from the Eyes, Nose, and Mouth. Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.
- (c) Effectiveness.
1. Except as provided in part 2. of this subparagraph, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
 2. This subparagraph does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- (d) Handling Prohibition.
1. Except as specified in part 2. of this subparagraph, food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in subparts 1200-23-01-.06 (5) (o) 2(i) – (v). (Pf)
 2. Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacean in display tanks if they wash their hands as specified under 1200-23-01-.02(3)(b) and 1200-23-01-.02(3)(c)3.

Authority: T.C.A. §§ 68-14-701 through 68-14-726. **Administrative History:** Original rule filed March 26, 1987; effective May 9, 1987. Repeal and new rule filed August 24, 2000; effective November 7, 2000. Amendment filed October 22, 2004; effective January 5, 2005. Repeal and new rule filed April 17, 2015; effective July 16, 2015.

1200-23-01-.03 FOOD.

- (1) Condition - Safe, Unadulterated, and Honestly Presented. Food shall be safe, unadulterated, and, as specified under 1200-23-01-.03(6)(a)2, honestly presented. (P)
- (2) Sources, Specifications and Original Containers and Records

(Rule 1200-23-01-.03, continued)

(a) Sources

1. Compliance with Food Law

- (i) Food shall be obtained from sources that comply with law. (P)
- (ii) Food from an Unlicensed Home Facility. Food from an unlicensed home facility shall not be served in a food establishment.
- (iii) Packaged food shall be labeled as specified in law, including 21 CFR Part 101 Food Labeling, 9 CFR Part 317 Labeling, Marking Devices, and Containers, and 9 CFR Part 381 subpart N Labeling and Containers, and as specified under 1200-23-01-.03(2)(b)7 and 8. (Pf)
- (iv) Fish, other than those specified in subpart 1200-23-01-.03(4)(a)1(iv), that are intended for consumption in raw or undercooked form and allowed as specified in 1200-23-01-.03(4)(a)1(ii)-(iv), may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under 1200-23-01-.03(4)(b); or if they are frozen on the premises as specified under 1200-23-01-.03(4)(b) and records are retained as specified under 1200-23-01-.03(4)(b)2.
- (v) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in 1200-23-01-.03(4)(a)1(iii) shall be:
 - (I) Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef; (Pf) or
 - (II) Deemed acceptable by the department based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; (Pf) and
 - (III) If individually cut in a food establishment:
 - I. Cut from whole-muscle, intact beef that is labeled by a food processing plant as specified in item (v)(I) or identified as specified in item (v)(II). (Pf)
 - II. Prepared so they remain intact; (Pf) and
 - III. If packaged for undercooking in a food establishment, labeled as specified in item (v)(I) or identified as specified in item (v)(II) of this part. (Pf).
- (vi) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in law, including 9 CFR § 317.2(l) and 9 CFR § 381.125(b).
- (vii) Eggs that have not been specifically treated to destroy all viable salmonellae shall be labeled to include safe handling instructions as specified in law, including 21 CFR § 101.17(h).

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2. Food in a Hermetically Sealed Container. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant. (P)
3. Fluid Milk and Milk Products. Fluid milk and milk products shall be obtained from sources that comply with Grade A standards as specified in law. (P)
4. Fish
 - (i) Fish that are received for sale or service shall be: (P)
 - (I) Commercially and legally caught or harvested; (P) or
 - (II) Approved for sale or service. (P)
 - (ii) Molluscan shellfish that are recreationally caught may not be received for sale or service. (P)
5. Molluscan Shellfish.
 - (i) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. (P)
 - (ii) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List. (P)
6. Wild Mushrooms.
 - (i) Except as specified in subpart (ii) of this part, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert. (P)
 - (ii) This section does not apply to:
 - (I) Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or
 - (II) Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.
7. Game Animals.
 - (i) If game animals are received for sale or service they shall be:
 - (I) Commercially raised for food (P) and:
 - I. Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction, (P) or

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- II. Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction, (P) and
 - III. Raised, slaughtered, and processed according to:
 - A. Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, (P) and
 - B. Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; (P)
- (II) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR Part 352 Exotic animals; voluntary inspection of rabbits that are "inspected and certified" in accordance with 9 CFR Part 354 Voluntary inspection of rabbits and edible products thereof; (P)
- (III) As allowed by law, for wild game animals that are live-caught:
- I. Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction, (P) and
 - II. Slaughtered and processed according to:
 - A. Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, (P) and
 - B. Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; (P) or
- (IV) As allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:
- I. Receive a postmortem examination by an approved veterinarian or veterinarian's designee, (P) or
 - II. Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program, (P) and
 - III. Are processed according to laws governing meat and poultry as determined by the agency that has animal health

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jurisdiction and the agency that conducts the inspection program. (P)

- (ii) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR Part 17 Endangered and threatened wildlife and plants.
- (b) Specifications for Receiving
1. Temperature.
 - (i) Except as specified in subpart 1.(ii) of this subparagraph, refrigerated, time/temperature control for safety food shall be at a temperature of 5°C (41°F) or below when received. (P)
 - (ii) If a temperature other than 5°C (41°F) for a time/temperature control for safety food is specified in law governing its distribution, such as laws governing milk and molluscan shellfish, the food may be received at the specified temperature.
 - (iii) Raw eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 5°C (41°F) or less. (P)
 - (iv) Time/temperature control for safety food that is cooked to a temperature and for a time specified under 1200-23-01-.03(6)(a)1.- 3. and received hot shall be at a temperature of 57°C (135°F) or above. (P)
 - (v) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen. (Pf)
 - (vi) Upon receipt, time/temperature control for safety food shall be free of evidence of previous temperature abuse.(Pf)
 2. Additives. Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR Parts 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR Parts 181-186, substances that exceed amounts specified in 9 CFR Subpart C § 424.21(b) Food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR Part 180 Tolerances and exemptions for pesticide chemical residues in food. (P)
 3. Eggs. Eggs shall be received clean and sound and may not exceed the restricted Egg tolerances for U.S. Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA. (P)
 4. Eggs and Milk Products, Pasteurized.
 - (i) Egg Products shall be obtained pasteurized. (P)
 - (ii) Fluid and dry milk and milk products shall:
 - (I) Be obtained pasteurized;(P) and
 - (II) Comply with Grade A standards as specified in law. (P)

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- (iii) Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR Part 135 - Frozen desserts. (P)
 - (iv) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR Part 133 - Cheeses and related cheese products, for curing certain cheese varieties. (P)
5. Package Integrity. Food packages shall be in good condition and protect the integrity of the contents so that the Food is not exposed to adulteration or potential contaminants. (Pf)
6. Ice. Ice for use as a food or a cooling medium shall be made from drinking water. (P)
7. Shucked Shellfish, Packaging and Identification.
- (i) Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the: (Pf)
 - (I) Name, address, and certification number of the shucker, packer or re-packer of the molluscan shellfish; (Pf) and
 - (II) The "sell by" or "best if used by" date for packages with a capacity of less than 1.89 L (one-half gallon) or the date shucked for packages with a capacity of 1.89 L (one-half gallon) or more. (Pf)
 - (ii) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under subpart 7(i) of this subparagraph shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D § 1240.60(d) - Specific Administrative Decisions Regarding Interstate Shipments, Molluscan shellfish.
8. Shellstock Identification.
- (i) Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that list: (Pf)
 - (I) Except as specified under subitem III of this item, on the harvester's tag or label, the following information in the following order: (Pf)
 - I. The harvester's identification number that is assigned by the shellfish control authority, (Pf)
 - II. The date of harvesting, (Pf)
 - III. The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested, (Pf)

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- IV. The type and quantity of shellfish, (Pf) and
 - V. The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days"; (Pf) and
- (II) Except as specified in subpart (iv) of this part, on each dealer's tag or label, the following information in the following order: (Pf)
- I. The dealer's name and address, and the certification numbers assigned by the shellfish control authority, (Pf)
 - II. The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested, (Pf)
 - III. The same information as specified for a harvester's tag under subitems (i)(I)II.-IV of this subpart, (Pf) and
 - IV. The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days." (Pf)
- (ii) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under subpart (i) . of this part shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D § 1240.60(d) Specific Administrative Decisions Regarding Interstate Shipments.
- (iii) If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.
- (iv) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under items (i)(I) and (II) of this part, individual dealer tags or labels need not be provided.
9. Shellstock, Condition: When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.
10. Juice - Commercially Processed: Pre-packaged juice shall:
- (i). Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120 Hazard Analysis and Critical Control (HACCP) Systems; (Pf) and
 - (ii). Be obtained pasteurized or otherwise treated to attain a 5 log reduction of the most resistant microorganism of public health significance as specified in 21 CFR § 120.24 Process Controls. (P)
- (c) Original Containers and Records
- 1. Molluscan Shellfish, Original Container.

(Rule 1200-23-01-.03, continued)

- (i) Except as specified in (ii) - (iv) of this part, molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.
- (ii) For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:
 - (I) The source of the shellstock on display is identified as specified under 1200-23-01-.03(2)(b)8. and recorded as specified under 1200-23-01-.03(2)(c)1(v)(II) ; and
 - (II) The shellstock are protected from contamination.
- (iii) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:
 - (I) The labeling information for the shellfish on display as specified under 1200-23-01-.03(2)(b)8. is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and
 - (II) The shellfish are protected from contamination.
- (iv) Shucked shellfish may be removed from the container in which they were received and repacked in consumer self-service containers where allowed by law if:
 - (I) The labeling information for the shellfish is on each consumer self-service container as specified under 1200-23-01-.03(2)(b)7. and 1200-23-01-.03(6)(b)1 and 2(i) - (v) ;
 - I. The labeling information as specified under 1200-23-01-.03(2)(b)7 is retained and correlated with the date when, or dates during which, the shellfish are sold or served;
 - II. The labeling information and dates specified under (v)(II) of this part are maintained for 90 days; and
 - III. The shellfish are protected from contamination.
- (v) Shellstock, Maintaining Identification.
 - (I) Except as specified under subitem (III) II of this subpart, shellstock tags or labels shall remain attached to the container in which the shellstock are received until the container is empty. (Pf)
 - (II) The date when the last shellstock from the container is sold or served shall be recorded on the tag or label. (Pf)
 - (III) The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date that is recorded on the tag or label, as specified under (I) of this subpart, by: (Pf)

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- I. Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under item (II) of this subpart; (Pf) and
 - II. If shellstock are removed from its tagged or labeled container:
 - A. Preserving source identification by using a record keeping system as specified under subpart 1.(ii) of this part, (Pf) and
 - B. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer. (Pf)
- (3) Protection from Contamination after Receiving.
- (a) Preventing Contamination by Employees
 1. Preventing Contamination from Hands.
 - (i) Food employees shall wash their hands as specified under 1200-23-01-.02(3)(b).
 - (ii) Except when washing fruits and vegetables as specified under 1200-23-01-.03(3)(b)5 or as specified in (v) of this part, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment. (P)
 - (iii) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form. (Pf)
 - (iv) Subpart (ii) of this subparagraph does not apply to a food employee who contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 74°C (165°F).
 - (v) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:
 - (I) The permit holder obtains prior approval from the department;
 - (II) Written procedures are maintained in the food establishment and made available to the department upon request that include:
 - I. For each bare hand contact procedure, a listing of the specific ready-to-eat foods that are touched by bare hands,
 - II. Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under 1200-23-01-.05(2)(c)1, 1200-23-01-.05(2)(d)1,

(Rule 1200-23-01-.03, continued)

1200-23-01-.05(2)(e)1, 1200-23-01-.06(3)(a)1, 1200-23-01-.06(3)(a)3, and 1200-23-01-.06(3)(a)5, are in an easily accessible location and in close proximity to the work station where the bare hand contact procedure is conducted;

- (III) A written employee health policy that details how the food establishment complies with 1200-23-01-.02(2)(a), (b), and (c) including:
 - I. Documentation that food employees and conditional employees acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified under 1200-23-01-.02(2)(a)1.
 - II. Documentation that food employees and conditional employees acknowledge their responsibilities as specified under 1200-23-01-.02(2)(a)4 and 5; and
 - III. Documentation that the person in charge acknowledges the responsibilities as specified under 1200-23-01-.02(2)(a)2, 3, and 4, and 1200-23-01-.02(2)(b) and 1200-23-01-.02(2)(c);
- (IV) Documentation that food employees acknowledge that they have received training in:
 - I. The risks of contacting the specific ready-to-eat foods with bare hands,
 - II. Proper handwashing as specified under 1200-23-01-.02(3)(b),
 - III. When to wash their hands as specified under 1200-23-01-.02(3)(c),
 - IV. Where to wash their hands as specified under 1200-23-01-.02(3)(d),
 - V. Proper fingernail maintenance as specified under 1200-23-01-.02(3)(f),
 - VI. Prohibition of jewelry as specified under 1200-23-01-.02(3)(g), and
 - VII. Good hygienic practices as specified under 1200-23-01-.02(4)(a) and 1200-23-01-.02(4)(b);
- (V) Documentation that hands are washed before food preparation and as necessary to prevent cross contamination by food employees as specified under 1200-23-01-.02(3)(a), 1200-23-01-.02(3)(b), 1200-23-01-.02(3)(c), and 1200-23-01-.02(3)(d) during all hours of operation when the specific ready-to-eat foods are prepared;
- (VI) Documentation that food employees contacting ready-to-eat food with bare hands use two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

(Rule 1200-23-01-.03, continued)

- I. Double handwashing,
 - II. Nail brushes,
 - III. A hand antiseptic after handwashing as specified under 1200-23-01-.02(3)(e),
 - IV. Incentive programs such as paid sick leave that assist or encourage food employees not to work when they are ill, or
 - V. Other control measures approved by the department; and
 - VI. Documentation that corrective action is taken when items (I) – (VI) of this subpart are not followed.
2. Preventing Contamination When Tasting. A food employee may not use a utensil more than once to taste food that is to be sold or served. (P)
- (b) Preventing Food and Ingredient Contamination.
1. Packaged and Unpackaged Food – Separation, Packaging and Segregation
 - (i) Food shall be protected from cross contamination by:
 - (I) Except as specified in subitem III below, separating raw animal foods during storage, preparation, holding, and display from:
 - I. Raw ready-to-eat including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as fruits and vegetables, (P) and
 - II. Cooked ready-to-eat food; (P)
 - III. Frozen, commercially processed and packaged raw animal food may be stored or displayed with or above frozen, commercially processed and packaged, ready-to-eat food.
 - (II) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:
 - I. Using separate equipment for each type, (P) or
 - II. Arranging each type of food in equipment so that cross contamination of one type with another is prevented, (P) and
 - III. Preparing each type of food at different times or in separate areas;
 - (III) Cleaning equipment and utensils as specified under 1200-23-01-.04(6)(b)1(i) and sanitizing as specified under 1200-23-01-.04(7)(c);

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- (IV) Except as specified under 1200-23-01-.03(5)(a)5(ii)(II) and in part 2. of this subparagraph, storing the food in packages, covered containers, or wrappings;
 - (V) Cleaning hermetically sealed containers of food of visible soil before opening;
 - (VI) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
 - (VII) Storing damaged, spoiled, or recalled food being held in the food establishment as specified under 1200-23-01-.06(4)(d); and
 - (VIII) Separating fruits and vegetables, before they are washed, as specified under 1200-23-01-.03(5) from ready-to-eat foods.
- (ii) Item (i)(IV) does not apply to:
- (I) Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;
 - (II) Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;
 - (III) Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;
 - (IV) Food being cooled as specified under 1200-23-01-.03(5)(a)5(ii)(II); or
 - (V) Shellstock.
2. Food Storage Containers, Identified with Common Name of Food. Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.
3. Pasteurized Eggs, Substitute for Raw Eggs for Certain Recipes: Pasteurized eggs or egg product shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not:
- (i) Cooked as specified under 1200-23-01-.03(4)(a)1(i)(I) or (II); (P) or
 - (ii) Included in 1200-23-01-.03(4)(a)1(iv). (P)
4. Protection from Unapproved Additives.
- (i) Food shall be protected from contamination that may result from the addition of, as specified in 1200-23-01-.03(2)(b)2:
 - (I) Unsafe or unapproved food or color additives; (P) and
 - (II) Unsafe or unapproved levels of approved and color additives. (P)

(Rule 1200-23-01-.03, continued)

- (ii) A food employee may not:
 - (I) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; (P) or
 - (II) Except for grapes, serve or sell food specified under (i) of this part that is treated with sulfiting agents before receipt by the food establishment. (P)
- 5. Washing Fruits and Vegetables.
 - (i) Except as specified in subpart (ii) of this part and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.
 - (ii) Fruits and vegetables may be washed by using chemicals as specified under 1200-23-01-.07(2)(d)2.
- (c) Preventing Contamination from Ice Used as Coolant
 - 1. Ice Used as Exterior Coolant, Prohibited as Ingredient. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food. (P)
 - 2. Storage or Display of Food in Contact with Water or Ice.
 - (i) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.
 - (ii) Except as specified in subparts (iii) and (iv) of this part, unpackaged food may not be stored in direct contact with undrained ice.
 - (iii) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.
 - (iv) Raw poultry and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.
- (d) Preventing Contamination from Equipment, Utensils and Linens
 - 1. Food Contact with Equipment and Utensils – Food shall only contact:
 - (i) Equipment and utensils that are cleaned as specified under 1200-23-01-.04(6) of this Chapter and sanitized as specified under 1200-23-01-.04(7) of this Chapter; (P) or
 - (ii) Single-service and single-use articles. (P)

(Rule 1200-23-01-.03, continued)

- (iii) Linens, such as cloth napkins, as specified under 1200-23-01-.03(3)(d)3. that are laundered as specified under 1200-23-01-.04(8)(b) of this Chapter.
2. In-Use Utensils, Between-Use Storage. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:
- (i) Except as specified under subpart (ii) of this part, in the food with their handles above the top of the food and the container;
 - (ii) In food that is not time/temperature control for safety food with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;
 - (iii) On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under 1200-23-01-.04(6)(b) and 1200-23-01-.04(7)(b);
 - (iv) In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;
 - (v) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not time/temperature control for safety food; or
 - (vi) In a container of water if the water is maintained at a temperature of at least 57°C (135°F) and the container is cleaned at a frequency specified under 1200-23-01-.04(6)(b)1(iv)(VII).
3. Linens and Cloth Napkins, Use Limitation. Linens and cloth napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.
4. Wiping Cloths, Use Limitation.
- (i) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:
 - (I) Maintained dry; and
 - (II) Used for no other purpose.
 - (ii) Cloths in-use for wiping counters and other equipment surfaces shall be:
 - (I) Held between uses in a chemical sanitizer solution at a concentration specified under 1200-23-01-.04(5)(a)14; and
 - (II) Laundered daily as specified under 1200-23-01-.04(8)(b)4.
 - (iii) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.
 - (iv) Dry wiping cloths and the chemical sanitizing solutions specified in item (ii)(I) of this part in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

(Rule 1200-23-01-.03, continued)

- (v) Containers of chemical sanitizing solutions specified in item (ii)(l) of this part in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.
 - (vi) Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.
5. Gloves - Use Limitation.
- (i) If used, single-use gloves shall be used for only one task such as working with ready-to-eat or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation. (P)
 - (ii) Except as specified in subpart (iii) of this part, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under 1200-23-01-.03(4)(a)-(b) such as frozen food or a primal cut of meat.
 - (iii) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.
 - (iv) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under 1200-23-01-.03(4)(a)-(b) such as frozen food or a primal cut of meat.
6. Using Clean Tableware for Second Portions and Refills.
- (i) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.
 - (ii) Except as specified in (iii) of this part, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.
 - (iii) Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under 1200-23-01-.04(2)(d)3(i),(ii) and (iv).
7. Refilling Returnables.
- (i) A take-home food container returned to a food establishment may not be refilled at a food establishment with a time/temperature control for safety food.
 - (ii) Except as specified in subpart (iii) of this subpart, a take-home food container refilled with food that is not time/temperature control for safety food shall be cleaned as specified under 1200-23-01-.04(6)(c)7(ii).

(Rule 1200-23-01-.03, continued)

- (iii) Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under 1200-23-01-.04(2)(d)3(i), (ii) and (iv).

(e) Preventing Contamination from the Premises

1. Food Storage.

- (i) Except as specified in subparts (ii) and (iii) of this part, food shall be protected from contamination by storing the food:
 - (I) In a clean, dry location;
 - (II) Where it is not exposed to splash, dust, or other contamination; and
 - (III) At least 15 cm (6 inches) above the floor.
- (ii) Food in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling equipment as specified under 1200-23-01-.04(9)(c)1(iv).
- (iii) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

2. Food Storage, Prohibited Areas. Food may not be stored:

- (i) In locker rooms;
- (ii) In toilet rooms;
- (iii) In dressing rooms;
- (iv) In garbage rooms;
- (v) In mechanical rooms;
- (vi) Under sewer lines that are not shielded to intercept potential drips;
- (vii) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
- (viii) Under open stairwells; or
- (ix) Under other sources of contamination.

3. Food Preparation. During preparation, unpackaged food shall be protected from environmental sources of contamination.

(f) Preventing Contamination by Consumers

- 1. Food Display. Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of

(Rule 1200-23-01-.03, continued)

- packaging; counter, service line, or salad bar food guards; display cases; or other effective means. (P)
2. Condiments, Protection. Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.
 3. Consumer Self-Service Operations.
 - (i) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This paragraph does not apply to:
 - (I) Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;
 - (II) Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or
 - (III) Raw, frozen, shell-on shrimp, or lobster.
 - (ii) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination. (Pf)
 - (iii) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures. (Pf)
 4. Returned Food and Re-Service of Food.
 - (i) Except as specified in subpart (ii) of this part, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption. (P)
 - (ii) Except as specified under 1200-23-01-.03(8)(g), a container of food that is not time/temperature control for safety food may be re-served from one consumer to another if:
 - (I) The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or
 - (II) The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.
 5. Preventing Contamination from Other Sources - Miscellaneous Sources of Contamination: Food shall be protected from contamination that may result from a factor or source not specified under 1200-23-01-.03(3)(a)-(f).
- (4) Destruction of Organisms of Public Health Concern
- (a) Cooking
 1. Raw Animal Foods.

(Rule 1200-23-01-.03, continued)

- (i) Except as specified under subparts (ii),(iii) and (iv) of this part, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:
 - (I) 63°C (145°F) or above for 15 seconds for: (P)
 - I. Raw eggs that are broken and prepared in response to a consumer’s order and for immediate service, (P) and
 - II. Except as specified under items (i)(II) and (i)(III) and subparts (ii), and (iii) of this part, fish and meat including game animals commercially raised for food as specified under 1200-23-01-.03(2)(a)7(i) and game animals under a voluntary inspection program as specified under 1200-23-01-.03(2)(a)7(ii); (P)
 - (II) 68°C (155°F) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites, mechanically tenderized, and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under 1200-23-01-.03(2)(a)7(i), and game animals under a voluntary inspection program as specified under 1200-23-01-.03(2)(a)7(i)(II) and raw eggs that are not prepared as specified under 1(i)(I) of this subparagraph: (P) or

Minimum	
Temperature °C (°F)	Time
63 (145)	3 minutes
66 (150)	1 minute
70 (158)	< 1 second (instantaneous)

(Rule 1200-23-01-.03, continued)

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10lbs)	4.5 kg (10 lbs) or More
Still Dry	177°C (350°F) or more	121°C (250°F) or more
Convection	163°C (325°F) or more	121°C (250°F) or more
High Humidity ¹	121°C (250°F) or less	121°C (250°F) or less

¹Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

- (III) 74°C (165°F) or above for 15 seconds for poultry, baluts, wild game animals as specified under 1200-23-01-.03(2) (a) 7 (iii) and (iv), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites. (P)
- (ii) Whole meat roasts including beef, corned beef, lamb, pork, and cured pork roasts such as ham shall be cooked:
 - (I) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature: (P); and
 - (II) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature: (P)

(Rule 1200-23-01-.03, continued)

Temperature °C (°F)	Time ¹ in Minutes	Temperature °C (°F)	Time ¹ in Seconds
54.4 (130)	112	63.9 (147)	134
55.0 (131)	89	65.0 (149)	85
56.1 (133)	56	66.1 (151)	54
57.2 (135)	36	67.2 (153)	34
57.8 (136)	28	68.3 (155)	22
58.9 (138)	18	69.4 (157)	14
60.0 (140)	12	70.0 (158)	0
61.1 (142)	8		
62.2 (144)	5		
62.8 (145)	4		

¹Holding time may include postoven heat rise.

- (iii) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:
 - (I) The food establishment serves a population that is not a highly susceptible population,
 - (II) The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified under 1200-23-01-.03(2)(a)1(v), and
 - (III) The steak is cooked on both the top and bottom to a surface temperature of 63°C (145°F) or above and a cooked color change is achieved on all external surfaces.
- (iv) A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in (iii) of this part, may be served or offered for sale upon consumer request or selection in a ready-to-eat form if:
 - (I) As specified under 1200-23-01-.03(8)(c)1 and 2, the food establishment serves a population that is not a highly susceptible population;
 - (II) The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted; (Pf) and
 - (III) The consumer is informed as specified under 1200-23-01-.03(6)(c) that to ensure its safety, the food should be cooked as specified under subparts (i) or (ii) of this part; or
 - (IV) The department grants a variance from (i) or (ii) of this part as specified in 1200-23-01-.08(1)(d)1 based on a HACCP plan that:
 - I. Is submitted by the permit holder and approved as specified under 1200-23-01-.08(1)(d)2,

(Rule 1200-23-01-.03, continued)

- II. Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food, and
 - III. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.
2. Microwave Cooking. Raw animal foods cooked in a microwave oven shall be:
 - (i) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
 - (ii) Covered to retain surface moisture;
 - (iii) Heated to a temperature of at least 74°C (165°F) in all parts of the food; and
 - (iv) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.
3. Plant Food Cooking for Hot Holding. Fruits and vegetables cooked for hot holding shall be cooked to a temperature of 57°C (135°F). (Pf)
4. Non-Continuous Cooking of Raw Animal Foods. Raw animal foods cooked using a non-continuous cooking process shall be:
 - (i) Subject to an initial heating process that is no longer than sixty minutes in duration; (P)
 - (ii) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked time /temperature control for safety food under 1200-23-01-.03(5)(a)4; (P)
 - (iii) After cooling, held frozen or cold, as specified for time/temperature control for safety food under 1200-23-01-.03(5)(a)6(i); (P)
 - (iv) Prior to sale or service, cooked using a process that heats all parts of the food to a temperature of at least 74°C (165°F) for 15 seconds; (P)
 - (v) Cooled according to the time and temperature parameters specified for cooked time /temperature control for safety food under 1200-23-01-.03(5)(a)4 if not either hot held as specified under 1200-23-01-.03(5)(a)6, served immediately, or held using time as a public health control as specified under 1200-23-01-.03(5)(a)9 after complete cooking; (P) and
 - (vi) Prepared and stored according to written procedures that:
 - (I) Have obtained prior approval from the department; (Pf)
 - (II) Are maintained in the food establishment and are available to the department upon request; (Pf)

(Rule 1200-23-01-.03, continued)

- (III) Describe how the requirements specified under (i)-(v) of this part are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met; (Pf)
- (IV) Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under subpart (iv) of this part prior to being offered for sale or service; (Pf) and
- (V) Describe how the foods, after initial heating but prior to cooking as specified under subpart (iv) of this part, are to be separated from ready-to-eat foods as specified under 1200-23-01-.03(5)(c). (Pf)

(b) Freezing

1. Parasite Destruction.

~~(i) Except as specified in (ii) of this part, before service or sale in ready-to-eat form, raw, raw-marinated, partially-cooked, or marinated-partially-cooked fish shall be:~~

- ~~(I) Frozen and stored at a temperature of 20°C (4°F) or below for a minimum of 168 hours (7 days) in a freezer; (P)~~
- ~~(II) Frozen at 35°C (31°F) or below until solid and stored at 35°C (-31°F) or below for a minimum of 15 hours; (P) or~~
- ~~(III) Frozen at 35°C (-31°F) or below until solid and stored at 20°C (4°F) or below for a minimum of 24 hours. (P)~~

~~(i) Except as specified in (ii) of this part, before service or sale in ready-to-eat form, raw, raw-marinated, partially-cooked, or marinated-partially-cooked fish shall be:~~

- ~~(I) Frozen and stored at a temperature of -20°C (-4°F) or below for a minimum of 168 hours (7 days) in a freezer; (P)~~
- ~~(II) Frozen at -35°C (-31°F) or below until solid and stored at -35°C (-31°F) or below for a minimum of 15 hours; (P) or~~
- ~~(III) Frozen at -35°C (-31°F) or below until solid and stored at -20°C (-4°F) or below for a minimum of 24 hours. (P)~~

(ii) Subpart (i) of this part does not apply to:

- (I) Molluscan shellfish;
- (II) Tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), Scallops consisting only of the shucked abductor muscle, or *Thunnus thynnus* (Bluefin tuna, Northern); or
- (III) Aquacultured fish, such as salmon, that:
 - I. If raised in open water, are raised in net-pens, or

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(Rule 1200-23-01-.03, continued)

- II. Are raised in land-based operations such as ponds or tanks, and
 - III. Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish.
- (IV) Fish eggs that have been removed from the skein and rinsed.
2. Records, Creation and Retention.
- (i) Except as specified in 1200-23-01-.03(4)(b)1(ii) and (ii) of this part, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person-in-charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish. (Pf)
 - (ii) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under 1200-23-01-.03(4)(b)1 may substitute for the records specified under subpart (i) of this part.
 - (iii) If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in 1200-23-01-.03(4)(b)1(ii)(III), a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in 1200-23-01-.03(4)(b)1(ii)(III) shall be obtained by the person in charge and retained in the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish. (Pf)
3. Preparation for Immediate Service. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.
- (c) Reheating for Hot Holding.
- 1. Except as specified under parts 2, 3 and 5 of this subparagraph, time/temperature control for safety food) that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74°C (165°F) for 15 seconds. (P)
 - 2. Except as specified under part 3 of this subparagraph, time/temperature control for safety food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74°C (165°F) and the food is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating. (P)
 - 3. Ready-to-eat taken from a commercially processed, hermetically-sealed container, or from an intact package from a food processing plant that is inspected by the food department that has jurisdiction over the plant, shall be heated to a temperature of at least 57°C (135°F) for hot holding. (P)
 - 4. Reheating for hot holding as specified under parts 1. through 3. of this subparagraph shall be completed within 2 hours and the time the food is

(Rule 1200-23-01-.03, continued)

between 5°C (41°F) or 7°C (45°F) and the temperatures specified under 1 through 3 of this subparagraph may not exceed 2 hours. (P)

- 5. Remaining unsliced portions of meat roasts that are cooked as specified under 1200-23-01-.03(4)(a)1(ii) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 1200-23-01-.03(4)(a)1(ii).

- 6. A HACCP plan is not required when a food establishment uses a reduced oxygen packaging method to package time/temperature control for safety food that is always:

- (i) Labeled with the production time and date.
- (ii) Held at 5°C (41°F) or less during refrigerated storage, and
- (iii) Removed from its package in the food establishment within 48 hours after packaging.

(d) Treating Juice. Juice packaged in a food establishment shall be:

- 1. Treated under a HACCP PLAN as specified in 1200-23-01-.08(2)(d) to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance; (P) or
- 2. Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance: (Pf)
 - (i) As specified under 1200-23-01-.03(6)(b), (Pf) and
 - (ii) As specified in 21 CFR § 101.17(g) Food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems." (Pf)

(5) Limitation of Growth of Organisms of Public Health Concern.

(a) Temperature and Time Control.

- 1. Frozen Food. Stored frozen foods shall be maintained frozen.
- 2. Time/Temperature Control for Safety Food, Slacking. Frozen time/temperature control for safety food that is slacked to moderate the temperature shall be held:
 - (i) Under refrigeration that maintains the food temperature at 5°C (41°F) or less.
 - (ii) At any temperature if the food remains frozen.
- 3. Thawing. Except as specified in subpart (iv) of this part, time/temperature control for safety food shall be thawed:
 - (i) Under refrigeration that maintains the food temperature at 5°C (41°F) or less°.

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(Rule 1200-23-01-.03, continued)

- (ii) Completely submerged under running water:
 - (I) At a water temperature of 21°C (70°F) or below,
 - (II) With sufficient water velocity to agitate and float off loose particles in an overflow,
 - (III) Such that for ready-to-eat food, the temperature of thawed portions do not rise above 5°C (41°F), and
 - (IV) Such that for raw animal food requiring cooking as specified under 1200-23-01-.03(4)(a)1(i) or (ii), thawed portions are not above 5°C (41°F), for more than 4 hours including:
 - I. The time the food is exposed to the running water and the time needed for preparation for cooking, or
 - II. The time it takes under refrigeration to lower the food temperature to 5°C (41°F);
 - (iii) As part of a cooking process if the food that is frozen is:
 - (I) Cooked as specified under 1200-23-01-.03(4)(a)1(i) or (ii) or under 1200-23-01-.03(4)(a)2(i), or
 - (II) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or
 - (iv) Using any procedure if a portion of frozen ready-to-eat-food is thawed and prepared for immediate service in response to an individual consumer's order.
4. Cooling.
- (i) Cooked time/temperature control for safety food shall be cooled:
 - 1. Within 2 hours from 57°C (135°F) to 21°C (70°F); (P) and
 - 2. Within a total of 6 hours from 57°C (135°F) to 5°C (41°F) or less. (P)
 - (ii) Time/temperature control for safety food shall be cooled within 4 hours to 5°C (41°F) or less, if prepared from ingredients at ambient temperature such as reconstituted foods and canned tuna. (P)
 - (iii) Except as specified under subpart (iv) of this part, a time/temperature control for safety food received in compliance with laws allowing a temperature above 5°C (41°F) during shipment from the supplier as specified under 1200-23-01-.03(2)(b)1(ii), shall be cooled within 4 hours to 5°C (41°F) or less. (P)
 - (iv) Raw eggs shall be received as specified under under 1200-23-01-.03(2)(b)3 and immediately placed in refrigerated equipment that maintains an ambient air temperature of 5°C (41°F) or less. (P)

(Rule 1200-23-01-.03, continued)

5. Cooling Methods.

- (i) Cooling shall be accomplished in accordance with the time and temperature criteria specified under 1200-23-01-.03(5)(a)4 by using one or more of the following methods based on the type of food being cooled:
 - (I) Placing the food in shallow pans; (Pf)
 - (II) Separating the food into smaller or thinner portions; (Pf)
 - (III) Using rapid cooling equipment; (Pf)
 - (IV) Stirring the food in a container placed in an ice water bath; (Pf)
 - (V) Using containers that facilitate heat transfer; (Pf)
 - (VI) Adding ice as an ingredient; (Pf) or
 - (VII) Other effective methods. (Pf)
- (ii) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:
 - (I) Arranged in the equipment to provide maximum heat transfer through the container walls; and
 - (II) Loosely covered, or uncovered if protected from overhead contamination as specified under 1200-23-01.03(3)(e)1(i)(I), during the cooling period to facilitate heat transfer from the surface of the food.

6. Time/Temperature Control for Safety Food, Hot and Cold Holding.

~~(i) Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 1200-23-01-.03(5)(a)9, and except as specified under (ii) and in (iii) of this part, time/temperature control for safety food shall be maintained at 57°C (135°F) or above, except that roasts cooked to a temperature and for a time specified under 1200-23-01-.03(4)(a)1(ii) or reheated as specified in 1200-23-01-.03(4)(c)5 may be held at a temperature of 54°C (130°F) or above. (P)~~

(i) Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 1200-23-01-.03(5)(a)9, and except as specified under (ii) and in (iii) of this part, time/temperature control for safety food shall be maintained:

(I) at 57°C (135°F) or above, except that roasts cooked to a temperature and for a time specified under 1200-23-01-.03(4)(a)1(ii) or reheated as specified in 1200-23-01-.03(4)(c)5 may be held at a temperature of 54°C (130°F) or above; (P) or

(II) at 5°C (41°F) or less. (P).

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(Rule 1200-23-01-.03, continued)

- (ii) Eggs that have not been treated to destroy all viable *Salmonellae* shall be stored in refrigerated equipment that maintains an ambient air temperature of 5°C (41°F) or less. (P)
- (iii) Time/temperature control for safety food in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under (i) of this part, while contained within specially designed equipment that complies with the design and construction requirements as specified under 1200-23-01-.04(2)(d)3(v).

7. Ready-to-Eat, Time/Temperature Control for Safety Food Date Marking

- (i) Except when packaging food using a reduced oxygen packing method as specified under 1200-23-01-.03(5)(c), and except as specified in subpart (v) of this part, refrigerated, ready-to-eat, time/temperature control for safety food prepared and held in a food establishment for more than 24 hours shall be marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combination of 5°C (41°F) or less for a maximum of 7 days. The day of preparation shall be counted as day 1. (Pf)
- (ii) Except as specified in (v) - (vi) of this part, refrigerated, ready-to-eat, time/temperature control for safety food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in (i) of this part and: (Pf)
 - (I) The day the original container is opened in the food establishment shall be counted as day 1; (Pf) and
 - (II) The day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety. (Pf)
- (iii) A refrigerated, ready-to-eat, time/temperature control for safety food ingredient or a portion of a refrigerated, ready-to-eat, time/temperature control for safety food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient. (Pf)
- (iv) A date marking system that meets the criteria stated in subparts (i) and (ii) of this part may include:
 - (I) Using a method approved by the department for refrigerated, ready-to-eat time/temperature control for safety food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;
 - (II) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subpart (i) of this part;

(Rule 1200-23-01-.03, continued)

- (III) Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subpart (ii) of this part; or
 - (IV) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the department upon request.
 - (v) Subparts (i) and (ii) of this part do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.
 - (vi) Subpart (ii) of this part does not apply to the following foods prepared and packaged by a food processing plant inspected by a department:
 - (I) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR Part 110 Current good manufacturing practice in manufacturing, packing, or holding human food;
 - (II) Hard cheeses containing not more than 39% moisture as defined in 21 CFR Part 133 Cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;
 - (III) Semi-soft cheeses containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR Part 133 Cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and monterey jack;
 - (IV) Cultured dairy products as defined in 21 CFR Part 131 Milk and cream, such as yogurt, sour cream, and buttermilk;
 - (V) Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products as defined in 21 CFR Part 114 Acidified foods;
 - (VI) Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 CFR Part 317 Labeling, marking devices, and containers, and which retain the original casing on the product; and
 - (VII) Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 CFR Part 317 Labeling, marking devices, and containers.
8. Ready-to-Eat, time/temperature control for safety food, Disposition.
- (I) A food specified in 1200-23-01-.03(5)(a)7(i) or (ii) shall be discarded if it:
 - (I) Exceeds the temperature and time combination specified in 1200-23-01-.03(5)(a)7(i), except time that the product is frozen; (P)
 - (II) Is in a container or package that does not bear a date or day; (P) or

(Rule 1200-23-01-.03, continued)

- (iii) Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in 1200-23-01-.03(5)(a)7(i). (P)
 - (ii) Refrigerated, ready-to-eat, potentially hazardous foods time/temperature control for safety food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in 1200-23-01-.03(5)(a)7(i).
9. Time as a Public Health Control.
- (i) Except as specified under subpart (iv) of this part, if time without temperature control is used as the public health control for a working supply of time/temperature control for safety food before cooking, or for ready-to-eat time/temperature control for safety food that is displayed or held for sale or service:
 - (I) Written procedures shall be prepared in advance, maintained in the food establishment and made available to the department upon request that specify: (Pf)
 - I. Methods of compliance with items (ii)(I)-(IV) or (iii)(I)-(V) of this part; (Pf) and
 - II. Methods of compliance with 1200-23-01-.03(5)(a)4 for food that is prepared, cooked, and refrigerated before time is used as a public health control. (Pf)
 - (ii) If time without temperature control is used as the public health control up to a maximum of 4 hours:
 - (I) The food shall have an initial temperature of 5°C (41°F) or less when removed from cold holding temperature control, or 57°C (135°F) or greater when removed from hot holding temperature control; (P)
 - (II) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control; (Pf)
 - (III) The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control; (P) and
 - (IV) The food in unmarked containers or packages, or marked to exceed a 4-hour limit shall be discarded. (P)
 - (iii) If time without temperature control is used as the public health control up to a maximum of 6 hours:
 - (I) The food shall have an initial temperature of 5°C (41°F) or less when removed from temperature control and the food temperature may not exceed 21°C (70°F) within a maximum time period of 6 hours; (P)
 - (II) The food shall be monitored to ensure the warmest portion of the food does not exceed 21°C (70°F) during the 6 hour period, unless

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- an ambient air temperature is maintained that ensures the food does not exceed 21°C (70°F) during the 6-hour holding period; (Pf)
- (III) The food shall be marked or otherwise identified to indicate: (Pf)
- I. The time when the food is removed from 5°C (41°F) or less cold holding temperature control, (Pf) and
 - II. The time that is 6 hours past the point in time when the food is removed from cold holding temperature control; (Pf)
- (IV) The food shall be:
- I. Discarded if the temperature of the food exceeds 21°C (70°F), (P) or
 - II. Cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of 6 hours from the point in time when the food is removed from 5°C (41°F) or less cold holding temperature control; (P) and
- (V) The food in unmarked containers or packages, or marked with a time that exceeds the 6-hour limit shall be discarded. (P)
- (iv) A food establishment that serves a highly susceptible population may not use time as specified under subparts (i), (ii) or (iii) of this part as the public health control for raw eggs.
- (b) Specialized Processing Methods: Variance Requirement. A food establishment shall obtain a variance from the department as specified in 1200-23-01-.08(1)(d)1 and under 1200-23-01-.08(1)(d)2 before: (Pf)
1. Smoking food as a method of food preservation rather than as a method of flavor enhancement; (Pf)
 2. Curing food; (Pf)
 3. Using food additives or adding components such as vinegar: (Pf)
 - (i) As a method of food preservation rather than as a method of flavor enhancement, (Pf) or
 - (ii) To render a food so that it is not time/temperature control of safety food; (Pf)
 4. Packaging food using a reduced oxygen packing method except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled as specified under 1200-23-01-.03(5)(c); (Pf)
 5. Operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption; (Pf)
 6. Custom processing animals that are for personal use as food and not for sale or service in a food establishment; (Pf)

(Rule 1200-23-01-.03, continued)

7. Preparing food by another method that is determined by the department to require a variance; (Pf)or
 8. Sprouting seeds or beans. (Pf)
- (c) Clostridium botulinum and Listeria monocytogenes Controls. - Reduced Oxygen Packaging Without a Variance, Criteria.
1. Except for a food establishment that obtains a variance as specified under 1200-23-01-.03(5)(b)4, a food establishment that packages time/temperature control for safety food using a reduced oxygen packaging method shall control the growth and toxin formation of Clostridium botulinum and the growth of Listeria monocytogenes. (P)
 2. A food establishment that packages time/temperature control for safety food using a reduced oxygen method shall have a HACCP plan that contains the information specified under 1200-23-01-.08(2)(d)4 and that: (Pf)
 - (i) Identifies the food to be packaged; (Pf)
 - (ii) Except as specified under parts 3. – 5. of this subparagraph, requires that the packaged food shall be maintained at 5°C (41°F) or less and meet at least one of the following criteria: (Pf)
 - (I) Has an A_w of 0.91 or less, (Pf)
 - (II) Has a Ph of 4.6 or less, (Pf)
 - (III) Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR § 424.21, Use of food ingredients and sources of radiation, and is received in an intact package, (Pf)or
 - (IV) Is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables; (Pf)
 - (iii) Describes how the package shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to: (Pf)
 - (I) Maintain the food at 5°C (41°F) or below, (Pf) and
 - (II) Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption; (Pf)
 - (iv) Limits the refrigerated shelf life to no more than 14 calendar days from packing to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first; (P)
 - (v) Includes operational procedures that:
 - (i) Prohibit contacting ready-to-eat food with bare hands as specified under 1200-23-01-.03(3)(a)1(ii), (Pf)

(Rule 1200-23-01-.03, continued)

- (II) Identify a designated work area and the method by which: (Pf)
 - I. Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, (Pf) and
 - II. Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation, (Pf) and
 - III. Delineate cleaning and sanitation procedures for food-contact surfaces; (Pf) and
- (vi) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the: (Pf)
 - (I) Concepts required for a safe operation, (Pf)
 - (II) Equipment and facilities, (Pf) and
 - (III) Procedures specified under subpart 2(v) of this part and 1200-23-01-.08(2)(d)4. (Pf)
- 3. Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method. (P)
- 4. Except as specified under part 3 of this subparagraph, a food establishment that packages food using a cook-chill or sous vide process shall:
 - (i) Implement a HACCP plan that contains the information as specified under 1200-23-01-.08(2)(d)4; (Pf)
 - (ii) Ensure the food is:
 - (I) Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity or the consumer, (Pf)
 - (II) Cooked to heat all parts of the food to a temperature and for a time as specified under 1200-23-01-.03(4)(a)1, (Pf)
 - (III) Protected from contamination before and after cooking as specified under 1200-23-01-.03(3)-(5), (P)
 - (IV) Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking and before reaching a temperature below 57°C (135°F), (P)
 - (V) Cooled to 5°C (41°F) in the sealed package or bag as specified under 1200-23-01-.03(5)(a)4 and subsequently; (P)
 - (VI) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of packaging; (P)

(Rule 1200-23-01-.03, continued)

- (VII) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F), removed from refrigeration equipment that maintains a 1°C (34°F) food temperature and then held at 5°C (41°F) or less for no more than 72 hours, at which time the food must be consumed or discarded; (P)
 - (VIII) Cooled to 3°C (38°F) or less within 24 hours of reaching 5°C (41°F) and held there for no more than 72 hours from packaging, at which time the food must be consumed or discarded; (P) or
 - (IX) Held frozen with no shelf life restriction while frozen until consumed or used. (P)
 - (X) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily, (Pf)
 - (XI) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, (Pf) and
- (iii) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:
 - (I) Make such records available to the department upon request (Pf); and
 - (II) Hold such records for at least 6 months; (Pf) and
 - (iv) Implement written operational procedures as specified under subpart 2(v) of this subparagraph and a training program as specified under subpart 2(vi) of this subparagraph.
5. A food establishment that packages cheese using a reduced oxygen packaging method shall:
- (i) Limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 CFR § 133.150 Hard cheeses, 21 CFR § 133.169 Pasteurized process cheese or 21 CFR § 133.187 Semisoft cheeses; (P)
 - (ii) Have a HACCP plan that contains the information specified under 1200-23-01-.08(2)(d)4 and as specified under subparts 2(i), 2(v) and 2(vi) and item 2)(iii)(I) of this subparagraph; (Pf)
 - (iii) Labels the package on the principal display panel with a "use by" date that does not exceed 30 days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever occurs first; (Pf) and
 - (iv) Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging. (Pf)

(Rule 1200-23-01-.03, continued)

(6) Food Identity, Presentation, and On-Premises Labeling

(a) Accurate Representation.

1. Standards of Identity. Packaged food shall comply with standard of identity requirements in 21 CFR Parts 131-169 and 9 CFR Part 319 Definitions and standards of identity or composition, and the general requirements in 21 CFR Part 130 – Food Standards: General and 9 CFR Part 319 Subpart A – General Provisions.
2. Honestly Presented.
 - (i) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
 - (ii) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

(b) Labeling.

1. Food packaged in a food establishment, shall be labeled as specified in law, including 21 CFR Part 101 - Food labeling, and 9 CFR Part 317 Labeling, marking devices, and containers.
2. Label information shall include:
 - (i) The common name of the food, or absent a common name, an adequately descriptive identity statement;
 - (ii) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;
 - (iii) An accurate declaration of the quantity of contents;
 - (iv) The name and place of business of the manufacturer, packer, or distributor; and
 - (v) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient (Effective January 1, 2006). (Pf)
 - (vi) Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) - (5), nutrition labeling as specified in 21 CFR Part 101 - Food Labeling and 9 CFR Part 317 Subpart B Nutrition Labeling.
 - (vii) For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.
3. Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:
 - (i) The manufacturer's or processor's label that was provided with the food; or

(Rule 1200-23-01-.03, continued)

- (ii) A card, sign, or other method of notification that includes the information specified under subparts 2(i), (ii), and (v) of this part.
4. Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:
- (i) A health, nutrient content, or other claim is not made;
 - (ii) There are no state or local laws requiring labeling; and
 - (iii) The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.
5. Other Forms of Information.
- (i) If required by law, consumer warnings shall be provided.
 - (ii) Food establishment or manufacturers' dating information on foods may not be concealed or altered.
- (c) Consumer Advisory - Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.
1. Except as specified in 1200-23-01-.03(4)(a)1(iii) and 1200-23-01-.03(4)(a)1(iv)(IV) and under 1200-23-01-.03(8)(c), if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in parts 2 and 3 of this subparagraph using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means. (Pf)
2. Disclosure shall include:
- (i) A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)," "raw-egg Caesar salad," and "hamburgers (can be cooked to order)"; (Pf) or
 - (ii) Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients. (Pf)
3. Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:
- (i) Regarding the safety of these items, written information is available upon request; (Pf)
 - (ii) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; (Pf) or

(Rule 1200-23-01-.03, continued)

- (iii) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions. (Pf)
- (7) Contaminated Food - Disposition. Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food.
 - (a) A food that is unsafe, adulterated, or not honestly presented as specified under 1200-23-01-.03(1) shall be discarded or reconditioned according to an approved procedure. (P)
 - (b) Food that is not from an approved source as specified under 1200-23-01-.03(2)(a) – (c) shall be discarded. (P)
 - (c) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 1200-23-01-.02(2)(b) shall be discarded. (P)
 - (d) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded. (P)
- (8) Special Requirements for Highly Susceptible Populations - Pasteurized Foods, Prohibited Re-Service, and Prohibited Food. In a food establishment that serves a highly susceptible population:
 - (a) The following criteria apply to juice:
 - 1. For the purposes of this paragraph only, children who are age 9 or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
 - 2. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR § 101.17(g) Food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label as specified under 1200-23-01-.03(4)(d)2 may not be served or offered for sale; (P) and
 - 3. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified under 1200-23-01-.08(2)(d) and as specified in 21 CFR Part 120 – Hazard Analysis and Critical Control Point (HACCP) Systems, Subpart B Pathogen Reduction, § 120.24 Process controls. (P)
 - (b) Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of: (P)
 - 1. Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages, (P) and
 - 2. Except as specified in (f) of this paragraph, recipes in which more than one egg is broken and the eggs are combined; (P)
 - (c) The following foods may not be served or offered for sale in a ready-to-eat form: (P)

(Rule 1200-23-01-.03, continued)

1. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare, (P)
 2. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; (P) and
 3. Raw seed sprouts. (P)
- (d) Food employees may not contact ready-to-eat food as specified under 1200-23-01-.03(3)(a)1.(ii) and (iv). (P)
- (e) Time only, as the public health control as specified under 1200-23-01-.03(5)(a)9(iv), may not be used for raw eggs.
- (f) Subparagraph (b)2 of this paragraph does not apply if:
1. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 1200-23-01-.03(4)(a)1(i)(I), and served immediately, such as an omelet, soufflé, or scrambled eggs; (P)
 2. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or
 3. The preparation of the food is conducted under a HACCP plan that:
 - (i) Identifies the food to be prepared,
 - (ii) Prohibits contacting ready-to-eat food with bare hands,
 - (iii) Includes specifications and practices that ensure:
 - (I) Salmonella Enteritidis growth is controlled before and after cooking, and
 - (II) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 1200-23-01-.03(4)(a)1(i)(II),
 - (iv) Contains the information specified under 1200-23-01-.08(2)(d)4 including procedures that:
 - (I) Control cross contamination of ready-to-eat food with raw eggs, and
 - (II) Delineate cleaning and sanitization procedures for food-contact surfaces, and
 - (v) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.
- (g) Except as specified in subparagraph (h) of this paragraph, food may be re-served as specified under 1200-23-01-.03(3)(f)4(ii)(I) and (II).
- (h) Food may not be re-served under the following conditions:

(Rule 1200-23-01-.03, continued)

1. Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside.
2. Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation.

Authority: T.C.A. §§ 68-14-701 through 68-14-726. **Administrative History:** Original rule filed March 26, 1987; effective May 9, 1987. Amendment filed January 4, 1995; effective March 20, 1995. Withdrawal of 1200-23-.03(3)(d) filed November 3, 2000. Repeal and new rule filed August 24, 2000; effective November 7, 2000. Amendment filed October 22, 2004; effective January 5, 2005. Repeal and new rule filed April 17, 2015; effective July 16, 2015.

1200-23-01-.04 EQUIPMENT, UTENSILS, AND LINENS.

(1) Materials for Construction and Repair

(a) Multiuse

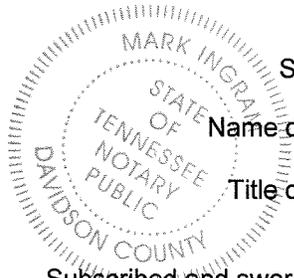
1. Characteristics

- (i) Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be: (P)
 - (I) Safe; (P)
 - (II) Durable, corrosion-resistant, and nonabsorbent;
 - (III) Sufficient in weight and thickness to withstand repeated warewashing;
 - (IV) Finished to have a smooth, easily cleanable surface; and
 - (V) Resistant to pitting, chipping, crazing, scratching, scoring, distortion and decomposition.
- (ii) Cast Iron, Use Limitation.
 - (I) Except as specified in items (II) and (III) of this subpart, cast iron may not be used for utensils or food-contact surfaces of equipment.
 - (II) Cast iron may be used as a surface for cooking.
 - (III) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.
- (iii) Lead, Use Limitation.
 - (I) Ceramic, china, and crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories (P)

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

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Health, Division of General Health (board/commission/other authority) on 09/05/2017 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: Mary Kennedy
Signature: 12.09.17

Name of Officer: Mary Kennedy
Deputy General Counsel
Title of Officer: Department of Health

Subscribed and sworn to before me on: 12/7/17
Notary Public Signature: Mark Ingram
My commission expires on: 5/16/19

Agency/Board/Commission: Department of Health, Division of General Health

Rule Chapter Number(s): 1200-23-01

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
12/28/2017
Date

Department of State Use Only

RECEIVED
2018 JAN -4 PM 3:29
SECRETARY OF STATE
QUALIFICATIONS

Filed with the Department of State on: 01/04/18

Effective on: 04/04/18

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	State Board of Education
<u>DIVISION:</u>	
<u>SUBJECT:</u>	Education of Incarcerated Students
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-6-3023
<u>EFFECTIVE DATES:</u>	April 10, 2018 through June 30, 2019
<u>FISCAL IMPACT:</u>	This item will have a financial impact on a Local Education Agency (LEA) to the extent it transfers Basic Education Program (BEP) funds associated with a student from the LEA where the student was enrolled prior to incarceration to the LEA serving the student while incarcerated in the detention center.
<u>STAFF RULE ABSTRACT:</u>	<p>On April 17th, 2017, Governor Haslam signed Public Chapter 152 that requires the Department of Education and the State Board of Education to develop rules to ensure students incarcerated in detention centers are provided educational services. In many cases, students are incarcerated in centers located in an LEA jurisdiction different than their home LEA. Therefore, procedures are needed to ensure the swift transfer of educational records and funding.</p> <p>The proposed rule sets out the requirements for the following:</p> <ul style="list-style-type: none">• Responsibility for the education of students incarcerated in juvenile detention centers.• Notification and transfer of records timeline for students held in a center outside of their home LEA.• Educational requirements and responsibilities for the students incarcerated in juvenile detention centers.• Calculation of the BEP funding amount to be received by the LEA in which the juvenile detention

center is located from the LEA in which the students was enrolled at the time of incarceration for the length of the student's incarceration.

- Monitoring of the detention centers to ensure compliance with these rules.

NOTE: This rule contains all new language; therefore, the new language is not underlined in the redline copy.

Regulatory Flexibility Addendum

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

This rule does not affect small businesses

Impact on Local Governments

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

This item will have a financial impact on a Local Education Agency (LEA) to the extent it transfers Basic Education Program (BEP) funds associated with a student from the LEA where the student was enrolled prior to incarceration to the LEA serving the student while incarcerated in the detention center.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

On April 17th, 2017, Governor Haslam signed Public Chapter 152 that requires the Department of Education and the State Board of Education to develop rules to ensure students incarcerated in detention centers are provided educational services. In many cases, students are incarcerated in centers located in an LEA jurisdiction different than their home LEA. Therefore, procedures are needed to ensure the swift transfer of educational records and funding.

The proposed rule sets out the requirements for the following:

- Responsibility for the education of students incarcerated in juvenile detention centers.
- Notification and transfer of records timeline for students held in a center outside of their home LEA.
- Educational requirements and responsibilities for the students incarcerated in juvenile detention centers.
- Calculation of the BEP funding amount to be received by the LEA in which the juvenile detention center is located from the LEA in which the student was enrolled at the time of incarceration for the length of the student's incarceration.
- Monitoring of the detention centers to ensure compliance with these rules.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 49-6-3023 directs the Department of Education to develop rules to be adopted by the State Board of Education to ensure students incarcerated in detention centers licensed by the Department of Children's Services under § T.C.A. 37-5-502 are provided educational services by an LEA serving the county in which the detention center is located.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Local Education Agencies and detention centers licensed by the Department of Children's Services are most directly affected by this rule and have urged adoption of this rule. The State Board of Education and the Department of Education urge adoption of this rule.

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

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This item will have a financial impact on a Local Education Agency (LEA) to the extent it transfers Basic Education Program (BEP) funds associated with a student from the LEA where the student was enrolled prior to incarceration to the LEA serving the student while incarcerated in the detention center.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707

Nathan James
Nathan.James@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
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(615)-532-3528

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

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

N/A

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-07-19
Rule ID(s): 4475
File Date: 01/10/19
Effective Date: 04/10/19

Proposed Rule(s) Filing Form

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

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

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

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-12	Education of Incarcerated Students
Rule Number	Rule Title
0520-01-12-.01	Scope of Rules
0520-01-12-.02	Definitions
0520-01-12-.03	Notifications and Transfer of Records
0520-01-12-.04	Basic Educational Services, Testing Requirements
0520-01-12-.05	Calculation of Funds
0520-01-12-.06	Points of Contact
0520-01-12-.07	Security
0520-01-12-.08	Monitoring and Mediation

New Rule

Chapter 0520-01 State Board of Education Rules, Regulations and Minimum Standards for the Operation of the Public School System is amended by adding Chapter 0520-01-12, a table of contents, and rules .01 through .08, so that as amended it shall read:

RULES OF THE STATE BOARD OF EDUCATION
CHAPTER 0520-01-12
EDUCATION OF INCARCERATED STUDENTS

TABLE OF CONTENTS

0520-01-12-.01	Scope of Rules	0520-01-12-.05	Calculation of Funds
0520-01-12-.02	Definitions	0520-01-12-.06	Points of Contact
0520-01-12-.03	Notifications and Transfer of Records	0520-01-12-.07	Security
0520-01-12-.04	Basic Educational Services, Testing Requirements	0520-01-12-.08	Monitoring and Mediation

0520-01-12-.01 SCOPE OF RULES

- (1) Each Local Education Agency (LEA) shall be responsible for providing educational services to general education students detained in Juvenile Detention Centers located in the LEA's jurisdiction.
- (2) A Juvenile Detention Center shall be considered within an LEA's jurisdiction when the Juvenile Detention Center is within the geographic boundaries of the LEA, and the LEA can appropriately serve the age or grade level of the student located at the Juvenile Detention Center. In the event the Juvenile Detention Center is located within the geographic boundaries of an LEA that cannot appropriately serve the age or grade level of the students incarcerated, the Center shall be within the jurisdiction of the LEA serving the county in which the Center is located. In the event of any dispute between LEAs, the Department of Education shall determine which LEA is responsible for providing educational services.
- (3) These rules shall apply to general education students only. Students eligible for services under the Individuals with Disabilities Education Act (IDEA) will continue to be served through the IDEA Amended and Restated Interagency Agreement.
- (4) Educational services may be provided directly by the LEA, through contract, or through other methods deemed appropriate by the LEA.

Authority: T.C.A. § 49-6-3023.

0520-01-12-.02 DEFINITIONS

- (1) "Center" means a Juvenile Detention Center as defined in T.C.A § 37-5-501 and licensed by the Department of Children's Services under T.C.A. § 37-5-502.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Education.
- (3) "Department" means Tennessee Department of Education.
- (4) "ESP" means an individualized Educational Service Plan, which shall be developed jointly by the home Local Education Agency and the receiving Local Education Agency.

- (5) "Home LEA" means the Local Education Agency in which the incarcerated student was enrolled at the time of the student's placement into the Center.
- (6) "Instructional Day" means a day when the receiving local education agency is in session and providing classroom instruction based on the receiving local education agency's instructional calendar.
- (7) "LEA" means Local Education Agency.
- (8) "Student" means a youth detained in a Center.
- (9) "Receiving LEA" means the LEA in which the Center is located or the LEA providing educational services to students held in a Center outside of their home LEA.

Authority: T.C.A. § 49-6-3023.

0520-01-12-.03 NOTIFICATIONS AND TRANSFER OF RECORDS

- (1) Once a student has been held in a Center outside of their home LEA for seventy-two (72) hours, the Center shall notify in writing the home LEA, the receiving LEA, and the Department and provide the name of the student incarcerated, the location of incarceration, and the date the student was incarcerated.
- (2) Students held in a Center outside of their home LEA shall remain enrolled in the home LEA for the purpose of generating BEP funding pursuant to guidelines developed by the Department.
- (3) Once a student has been held in a Center outside of his or her home LEA for five (5) instructional days, the receiving LEA shall request the student's transcripts from the home LEA.
- (4) The home LEA shall ensure the student's educational records are received by the receiving LEA no later than the student's tenth (10th) instructional day at the Center.
- (5) No later than the student's fifteenth (15th) instructional day in the Center, the receiving LEA shall work with the home LEA to develop an ESP for the student.
- (6) No later than the student's twentieth (20th) instructional day in the Center, the receiving LEA shall ensure that the student begins receiving educational services in accordance with the ESP.
- (7) When a student receiving general educational services is transferred out of the Center, the Center shall notify the Department and provide the number of instructional days the student was held.
- (8) The Department shall transfer an amount equal to the per pupil state and local funds generated and required through the Basic Education Program (BEP) from the home LEA to the receiving LEA for the length of instructional days a student was held.
- (9) Upon a student's return to his or her home LEA, the receiving LEA shall return all educational records back to the home LEA.
- (10) If a student held in a Center is enrolled in a charter school, the authorizing LEA shall be the home LEA. The charter school shall work with the home LEA to ensure all requirements regarding the transfer of records and funding are met.

Authority: T.C.A. § 49-6-3023.

0520-01-12-.04 BASIC EDUCATIONAL SERVICES, TESTING REQUIREMENTS

- (1) For students held in a Center outside their home LEA, the receiving LEA shall consult with the Center on how the receiving LEA may best provide basic educational services in, at a minimum, English Language Arts and Mathematics for the student.
- (2) Pursuant to the federal *Every Student Succeeds Act*, each Center shall comply with the following testing requirements:
 - (a) Each student shall complete a nationally norm-referenced pre-test approved by the Department, no later than the student's fifth (5th) instructional day at the Center.
 - (b) Each student shall complete a benchmark assessment at least every four (4) weeks the student remains incarcerated in the Center.
 - (c) The receiving LEA shall be responsible for ensuring the required tests are administered.

Authority: T.C.A. § 49-6-3023.

0520-01-12-.05 CALCULATION OF FUNDS

- (1) The Department shall calculate the funds to be transferred from the home LEA to the receiving LEA.
- (2) These funds shall be an amount equal to the per pupil state and local funds generated and required through the BEP received by the home LEA on a prorated daily basis for the length of the student's incarceration. These funds shall be used for the student's education.

Authority: T.C.A. § 49-6-3023.

0520-01-12-.06 POINTS OF CONTACT

- (1) The Department, the Department of Children's Services, the receiving LEA, and the home LEA shall each establish a primary point of contact to resolve issues arising under these rules. The receiving LEA's and home LEA's primary point of contact shall be the person currently filling the Attendance Officer position unless the LEA designates another position. Any designation shall be done in writing and sent to the Commissioner for approval.
- (2) The Commissioner or Commissioner's designee shall maintain a list of all the primary points of contact designated in paragraph (1) of this Rule.

Authority: T.C.A. § 49-6-3023.

0520-01-12-.07 SECURITY

- (1) The Center shall be responsible for providing a secure setting for the education of students. This space shall be adequate in size and conducive to instruction for the number of students required to be educated at the Center.

- (2) The Center shall supply appropriate staff to ensure the safety of students and receiving LEA staff in the Center.
- (3) Any security decision with respect to student or staff safety shall be within the purview of the Center's director or their designee.

Authority: T.C.A. § 49-6-3023.

0520-01-12-.08 MONITORING AND MEDIATION

- (1) The Department of Children's Services, along with the Department, will regularly monitor the Center to ensure the Center's compliance with the terms of these rules.
- (2) The Department shall monitor the receiving LEA, home LEA, and the Center in order to ensure that there are appropriate educational services being offered at the Center.
- (3) The receiving LEA, home LEA, and the Center shall make any documentation or records available to the Department upon request.
- (4) If a dispute arises under these Rules, the dispute shall be mediated by the Commissioner or Commissioner's designee. The Commissioner's or Commissioner's designee's decision with regard to any mediation shall be considered a final and binding decision.

Authority: T.C.A. § 49-6-3023.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				
Wiseman	X				

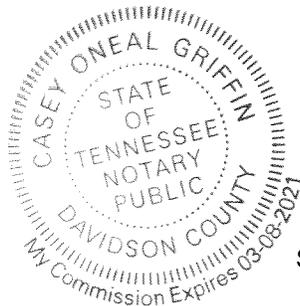
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/20/2017 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: December 14, 2017

Signature: _____

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel



Subscribed and sworn to before me on: 12-14-17

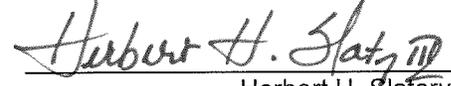
Notary Public Signature: _____

My commission expires on: 3-8-21

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): Chapter 0520-01-12 Education of Incarcerated Students

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


Herbert H. Slatery III
Attorney General and Reporter
12/28/2017
Date

Department of State Use Only

Filed with the Department of State on: 01/10/18

Effective on: 04/10/18


Tre Hargett
Secretary of State

RECEIVED
2018 JAN 10 AM 9:37
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Charter Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-13-113 and 49-13-126

EFFECTIVE DATES: April 10, 2018 through June 30, 2019

FISCAL IMPACT: N/A

STAFF RULE ABSTRACT: On May 5, 2017, Governor Haslam signed Public Chapter 307 into law to establish the High Quality Charter Schools Act. Part of the legislation included updating T.C.A. § 49-13-113 to clarify the charter school enrollment process. This item presents changes to the Charter School Enrollment Rule to align with statute. These revisions clarify that single gender charter schools must specify the intent to serve a single gender in their charter application, clarifies the preferences for students enrolling in one charter school from another charter school, provides additional time in which a charter school must conduct the lottery process, and allows charter schools that participate in the district enrollment process to use direct lottery certification.

Regulatory Flexibility Addendum

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

This rule does not affect small businesses

Impact on Local Governments

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

This rule will not impact local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

On May 5, 2017, Governor Haslam signed Public Chapter 307 into law to establish the High Quality Charter Schools Act. Part of the legislation included updating T.C.A. § 49-13-113 to clarify the charter school enrollment process. This item presents changes to the Charter School Enrollment Rule to align with statute. These revisions clarify that single gender charter schools must specify the intent to serve a single gender in their charter application, clarifies the preferences for students enrolling in one charter school from another charter school, provides additional time in which a charter school must conduct the lottery process, and allows charter schools that participate in the district enrollment process to use district lottery certification.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 49-13-113 authorizes the State Board of Education to promulgate rules concerning lottery enrollment. T.C.A. §49-13-126 authorizes the State Board of Education to promulgate rules and regulations for the administration of the Tennessee Public Charter School Act of 2002.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Charter authorizers and charter schools are most directly affected by this rule and urge adoption of this rule. The Department of Education and the State Board of Education urge adoption of this rule.

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

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

N/A

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707

Nathan James
Nathan.James@tn.gov
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(615)-532-3528

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

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

N/A

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
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Email: publications.information@tn.gov

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Sequence Number: 01-08-18
Rule ID(s): 6676
File Date: 01/10/18
Effective Date: 04/10/18

Proposed Rule(s) Filing Form

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

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

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

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.04	Enrollment

RULES
OF THE
STATE BOARD OF EDUCATION
CHAPTER 0520-14-01
CHARTER SCHOOLS

0520-14-01-.04 ENROLLMENT.

- (1) Charter schools shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply. Enrollment of eligible students, as defined in T.C.A. § 49-13-106, shall comply with T.C.A. § 49-13-113.
- (2) A charter school shall not exclude students from enrollment based on race, color, ethnicity, national origin, religion, income level, disability, proficiency in the English language, or academic ability. Students currently enrolled in a specific charter school do not need to re-apply if they remain in that specific charter school. Students moving from one charter school to another even if both schools share a sponsor or governing body are subject to the priority and preferences outlined in T.C.A. § 49-13-113.
- (3) A charter school may submit a charter school application that seeks to limit enrollment to a single gender, as long as such enrollment proposal is in compliance with federal law. Charter schools shall apply the enrollment preferences in T.C.A. § 49-13-113(b) and (c).
- ~~(a) Charter schools shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply.~~
- ~~(b) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery. Any such lottery shall be conducted within seven (7) calendar days of the close of the initial student application period. Charter schools must either have an independent accounting firm or law firm certify that each lottery conducted complied with the statutory requirements or, prior to the lottery, have their lottery process approved by the department of education.~~
- ~~(c) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis.~~
- (4) A charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building.
- (5) Students that attended the charter school during the previous school year shall be given first enrollment preference and excluded from entering into a lottery. Students that attended the charter school during the previous school year shall not be required to re-apply. Students enrolling in a charter school from another charter school, even if both schools share a sponsor or governing body, shall be subject to the preferences outlined in paragraph (9).
- (6) A charter school may give an enrollment preference to children of a teacher, sponsor, or member of the governing body of the charter school, not to exceed ten percent (10%) of total enrollment or twenty-five (25) students, whichever is less, in which case such students shall also be given first enrollment preference and excluded from entering into a lottery.

(Rule 0520-14-01-.04, continued)

- (7) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis.
- (8) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery.
 - (a) Any such lottery shall be conducted within thirty (30) calendar days of the close of the initial student application period.
 - (b) A charter school shall provide to the Department of Education certification by an independent accounting firm or by a law firm that each lottery conducted for enrollment purposes complied with the requirements of T.C.A. § 49-13-113. Charter schools that choose to participate in the enrollment process of their chartering authority may use certification from the chartering authority to satisfy this requirement.
 - (c) In lieu of an independent accounting firm or law firm, charter schools may request that the Department of Education review and approve the lottery process prior to the lottery.
- (9) A charter school shall give enrollment preferences in the following order:
 - (a) Students enrolled in a pre-K program operated by the charter school sponsor;
 - (b) Students enrolled in a charter school that has an articulation agreement with the enrolling charter school; provided, that the articulation agreement has been approved by the chartering authority;
 - (c) Siblings of students already enrolled in the charter school;
 - (d) Students from a group or groups set forth in T.C.A. § 49-13-106(b)(1)(C) if the charter school has been approved with the focus of serving such students;
 - (e) Students residing within the LEA in which the charter school is located who were enrolled in another public school during the previous school year; and
 - (f) Students residing outside the LEA in which the charter school is located who were enrolled in another public school during the previous school year; if permitted through the chartering authority's out-of-district enrollment policy.
- (10) If enrollment within a group of preference set out in paragraph (9) exceeds the planned capacity of the school, enrollment within that group shall be determined on the basis of a lottery.
- (11) A non-charter public school converting partially or entirely to a charter school under T.C.A. § 49-13-106 shall give enrollment preference to students who reside within the former attendance area of that public school. Parents whose children are enrolled in the existing public school to be converted shall have the option to enroll their children in another public school operated by the LEA without penalty. The enrollment preference for students who reside within the former attendance area excludes those students from entering into a lottery.
- (12) Students living in other school zones may enroll in a conversion charter school after those living in the school zone have the opportunity to enroll, but only if there is program, class, grade level, and building capacity to serve the out-of-zone students. If applications by out-of-zone students exceed the charter school's capacity, then enrollment of out-of-zone students shall be determined on the basis of a lottery. Out-of-zone students who attended the school the previous school year and such students' siblings may be given preference in enrollment.

(Rule 0520-14-01-.04, continued)

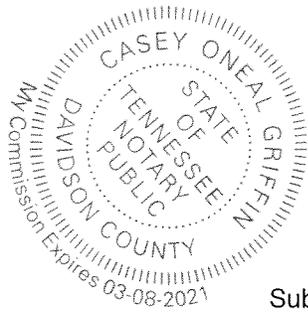
(13) A charter school may refuse to admit any student who is expelled from another public school or district or who is in the process of being expelled from another public school or district.

Authority: T.C.A. §§ 49-13-113 and 49-13-126. **Administrative History:** Original rule filed March 25, 2010; effective August 29, 2010. Repeal and new rule filed March 21, 2012; effective August 29, 2012.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				
Wiseman	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/20/2017 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 12/19/17

Signature: [Handwritten Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 12-15-17

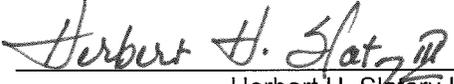
Notary Public Signature: [Handwritten Signature]

My commission expires on: 3-8-21

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): Chapter 0520-14-01-.04 Enrollment

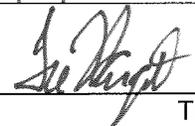
All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
1/5/2018
Date

Department of State Use Only

Filed with the Department of State on: 01/10/18

Effective on: 04/10/18


Tre Hargett
Secretary of State

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PUBLIC AFFAIRS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Achievement School District

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-13-106 and 49-1-614

EFFECTIVE DATES: April 10, 2018 through June 30, 2019

FISCAL IMPACT: N/A

STAFF RULE ABSTRACT: These revisions update the Achievement School District ("ASD") Rule to clarify the charter school authorization and waiver processes. Specifically, the updates clarify that the ASD authorization application for charter schools must be approved by the department, and the decision to grant or deny a charter application must be made within ninety (90) days. These revisions also remove outdated references to blanket waivers and outlines the process for the submission of ASD school waiver requests, areas where waivers may not be granted by the Commissioner, the Commissioner's review of waiver request, and the effective period for each waiver granted.

Regulatory Flexibility Addendum

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

This rule does not affect small businesses.

Impact on Local Governments

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

This rule will not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These revisions update the Achievement School District ("ASD") Rule to clarify the charter school authorization and waiver processes. Specifically, the updates clarify that the ASD authorization application for charter schools must be approved by the department, and the decision to grant or deny a charter application must be made within ninety (90) days. These revisions also remove outdated references to blanket waivers and outlines the process for the submission of ASD school waiver requests, areas where waivers may not be granted by the Commissioner, the Commissioner's review of waiver request, and the effective period for each waiver granted.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 49-13-106 provides that charter schools may be authorized by the ASD, and T.C.A. § 49-1-614 gives the commissioner the authority to grant waivers from state board rules or statutes to ASD schools that show how the state board rule or statute inhibits or hinders the school's ability to meet its goals or comply with its mission statement.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The Achievement School District is most directly affected by this rule and urges adoption of this rule. The Department of Education and State Board of Education urge adoption of this rule.

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

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

N/A

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov
(615)-253-5707

Nathan James
Nathan.James@tn.gov
(615)-532-3528

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov
(615)- 253-1960

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov
(615)-253-5707

Nathan James
Nathan.James@tn.gov
(615)-532-3528

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov
(615)- 253-1960

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707

Nathan James
Nathan.James@tn.gov
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(615)-532-3528

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

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

N/A

**Department of State
Division of Publications**

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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-09-18
Rule ID(s): 6677
File Date: 01/10/18
Effective Date: 04/10/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	Andrew Johnson Tower, 1st Floor 710 James Robertson Pkwy
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-14-03	Achievement School District
Rule Number	Rule Title
0520-14-03-.01	Authorization of Charter Schools
0520-14-03-.02	Waivers

**RULES OF THE STATE BOARD OF EDUCATION
CHAPTER 0520-14-03
ACHIEVEMENT SCHOOL DISTRICT**

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0520-14-03-.01 Authorization of Charter Schools
0520-14-03-.02 Waivers

0520-14-03-.01 AUTHORIZATION OF CHARTER SCHOOLS.

- (1) Charter schools may be authorized by the Achievement School District (ASD) to operate any school placed in the ASD in accordance with T.C.A. § 49-13-106.
- (2) The ASD authorization application for charter schools shall be approved by the Department of Education and shall at a minimum include the requirements identified in T.C.A. § 49-13-107.
- (3) The decision to grant or deny a charter application submitted by a sponsor shall be made within ninety (90) days of receipt of the completed application.
- (4) Decisions of the superintendent to grant or deny ASD charter applications are final and not subject to appeal.
 - (a) ~~through an application process established by the achievement school district (ASD). The application shall be reviewed according to procedures established by the superintendent of the ASD.~~

~~By signing and submitting an application, the sponsor requests a waiver of all education statutes and rules of the state board or department of education, except those listed in T.C.A. § 49-13-105 or included by reference (such as statutes and rules related to licensing of charter school teachers) in Title 49, Chapter 13 (the Tennessee Public Charter Schools Act). The approval of a charter school by the superintendent shall include the approval of these waivers by the commissioner of education, and such automatic waivers shall be reflected in the contract between the charter school and the ASD.~~

Authority: T.C.A. §§ 49-13-112, 49-13-126. **Administrative History:** Original rule filed March 28, 2012; effective August 29, 2012.

0520-14-03-.02 WAIVERS.

- (1) Pursuant to T.C.A. § 49-1-614 the Achievement School District (ASD) or any entity the ASD contracts with to operate or manage schools that have been placed in the ASD may apply to the commissionerCommissioner for a waiver of any state board rule that inhibits or hinders the ability of the school to increase student achievement.
- (2) Charter schools authorized by the ASD shall follow the waiver procedures outlined in sState bBoard rRule 0520-14-02.
- (3) The commissioner shallCommissioner shall not waive rules related to the following:
 - (a) Federal and state civil rights;
 - (b) Federal, state, and local health and safety;

- (c) Federal and state public records;
- (d) Immunizations;
- (e) Possession of weapons on school grounds;
- (f) Background checks and fingerprinting of personnel;
- (g) Federal and state special education services;
- (h) Student due process;
- (i) Parental rights;
- (j) Federal and state student assessment and accountability;
- (k) Open meetings; and
- (l) At least the same equivalent time of instruction as required in regular public schools; and
- (m) State board rules and regulations specific to the operation of the ASD.

- (4) All waiver requests shall be submitted in writing to the ~~commissioner~~ Commissioner by the ASD on behalf of the school.
- (5) All waiver requests shall include a listing of the specific state board rule(s) requested to be waived.
- (6) All waiver requests shall include detailed documentation of the grounds for requesting the waiver and specific evidence showing how the state board rule inhibits or hinders the school's ability to increase student achievement.
- (7) The ~~commissioner~~ Commissioner shall notify the ASD if the waiver request is approved or denied within thirty (30) days of receiving a request.
- (8) All waivers approved by the ~~commissioner~~ Commissioner shall be effective for one (1) academic year. A new request must be filled each year in order to renew the waiver.

Authority: T.C.A. §§ 49-1-614, 49-13-105, 49-13-126.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				
Wiseman	X				

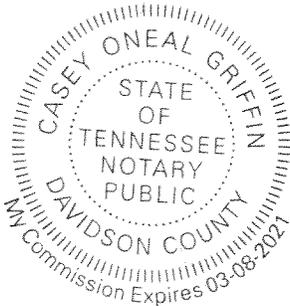
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 10/20/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 12/14/2017

Signature: _____

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel



Subscribed and sworn to before me on: 12-14-17

Notary Public Signature: _____

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-14-03 Achievement School District

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
12/28/2017 Date

Department of State Use Only

Filed with the Department of State on: 01/10/18

Effective on: 04/10/18

 Tre Hargett
 Secretary of State

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 PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Rules of Procedure for Commissioner Review of Charter School Waiver Requests

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-1-201(c)(20)(C) and 49-13-105

EFFECTIVE DATES: April 26, 2018 through June 30, 2019

FISCAL IMPACT: N/A

STAFF RULE ABSTRACT: T.C.A. § 49-13-105 provides that the Commissioner of Education or chartering authority may grant waivers from State Board rules or statute to charter schools that show how the State Board rule or statute inhibits or hinders the charter school's ability to meet its goals or comply with its mission statement. Rule 0520-14-02 governs the process for Charter Schools requesting a waiver.

These revisions seek to provide clarity around the process for the submission of waiver requests, areas where waivers may not be granted by the Commissioner or the chartering authority, the Commissioner's review of waiver requests, and the effective period for each waiver granted. These revisions also repeal superfluous rules.

Regulatory Flexibility Addendum

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

This rule does not affect small businesses

Impact on Local Governments

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

This rule will not impact local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

T.C.A. § 49-13-105 provides that the Commissioner of Education or chartering authority may grant waivers from State Board rules or statute to charter schools that show how the State Board rule or statute inhibits or hinders the charter school's ability to meet its goals or comply with its mission statement. Rule 0520-14-02 governs the process for Charter Schools requesting a waiver.

These revisions seek to provide clarity around the process for the submission of waiver requests, areas where waivers may not be granted by the Commissioner or the chartering authority, the Commissioner's review of waiver requests, and the effective period for each waiver granted. These revisions also repeal superfluous rules.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 49-1-201(c)(20)(C) provides that the Commissioner may prepare and promulgate, without board approval, rules and regulations that are solely necessary for the administrative operation and functions of the department; however, this authority shall not supersede the powers of the state board in policy matters and may be used only in performance of the Commissioner's administrative responsibilities;

T.C.A. § 49-13-105 provides that the Commissioner of Education or chartering authority may grant waivers from State Board rules or statute to charter schools that show how the State Board rule or statute inhibits or hinders the charter school's ability to meet its goals or comply with its mission statement.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Charter Authorizers are most directly affected by this rule and urge adoption of this rule. The Department of Education and the State Board of Education urge adoption of this rule.

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

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

N/A

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

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

Elizabeth Taylor
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1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
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Nathan James
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(615)-532-3528

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

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

N/A

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For Department of State Use Only

Sequence Number: 01-22-18
Rule ID(s): 6695
File Date: 1/26/18
Effective Date: 4/26/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	Andrew Johnson Tower, 1st Floor 710 James Robertson Pkwy
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-14-02	Rules of Procedure for Commissioner Review of Charter School Waiver Requests
Rule Number	Rule Title
0520-14-02-.01	Purpose and Scope
0520-14-02-.02	Requirements for Requesting Waivers
0520-14-02-.03	Commissioner's Review of Waiver Requests
0520-14-02-.04	Criteria for Granting Waiver

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-14-02
RULES OF PROCEDURE FOR COMMISSIONER REVIEW
OF CHARTER SCHOOL WAIVER REQUESTS

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0520-14-02-.01 PURPOSE AND SCOPE.

0520-14-02-.04 CHARTER01 CHARTER SCHOOL WAIVERS

- (1) Pursuant to T.C.A. § 49-1-201(c) (20) (C), the commissioner may prepare and promulgate, without state board of education approval, such rules and regulations as are solely necessary for the administrative operation and functions of the department; however, this authority shall not supersede the powers of the state board of education in policy matters and may be used only in performance of the commissioner's administrative responsibilities.
- (12) These rules implement the provisions of Tennessee Code Annotated, § 49-13-105, of the Tennessee Public Charter Schools Act of 2002, permitting Pursuant to T.C.A. § 49-13-105 a sponsor of a proposed charter school (including charter schools authorized by the Achievement School District) may to apply to either the chartering authority or to the commissioner of education for a waiver of any state board rule or statute that inhibits or hinders the proposed charter school's ability to meet its goals or comply with its mission statement. The commissioner of education shall apply the following rules and regulations in considering charter school waiver requests.
- (2) Waivers may shall not be granted by the commissioner or chartering authority for requirements related to:
- (a) Federal and state civil rights;
 - (b) Federal, state, and local health and safety;
 - (c) Federal and state public records;
 - (d) Immunizations;
 - (e) Possession of weapons on school grounds;
 - (f) Background checks and fingerprinting of personnel;
 - (g) Federal and state special education services;
 - (h) Student due process;
 - (i) Parental rights;

- ~~_____ (j) Federal and state student assessment and accountability;~~
- ~~_____ (k) Open meetings; or~~
- ~~_____ (l) At least the same equivalent time of instruction as required in regular public schools; or;~~
- ~~_____ (l) Teacher evaluation.~~
- (3) Waiver requests from the requirements in the charter school statute, T.C.A. Title 49, Chapter 13, or State Board of Education rules and regulations specific to charter schools shall not be considered.
- (4) Chartering authorities shall include submit each all locally approved waivers in accordance with procedures set by the Department of Education as part of the annual authorizing report required pursuant to T.C.A. § 49-13-120.
- (5) All waivers approved by the Commissioner or a chartering authority shall be effective for one (1) academic year. A new request must be filed each year in order to renew the waiver, the term of the charter agreement or for a length of time specified by the Commissioner or chartering authority.

Authority: T.C.A. §§49-1-201(c)(20)(C) and 49-13-105107. *Administrative History:* Original rule filed November 26, 2003; effective March 29, 2004.

0520-14-02-02 REQUIREMENTS OF COMMISSIONER'S REVIEW OF WAIVER REQUESTS FOR REQUESTING WAIVERS FROM THE COMMISSIONER.

- ~~(1) All waiver requests shall be submitted in writing to the commissioner by the sponsor of the proposed charter school no later than sixty (60) days prior to the school's intention to implement the waiver, if granted.~~
- (1) All waiver requests shall be submitted in writing to the Commissioner by the sponsor of the charter school.
- (2) All waiver requests shall include a listing of the specific state board rule or statute requested to be waived.
- ~~(3) All waiver requests shall include the missions and goals of the charter school as contained in the application filed with the local board of education pursuant to T.C.A. § 49-13-107.~~
- (34) All waiver requests shall include detailed documentation of the grounds for requesting the waiver and specific evidence showing how the state board rule or statute currently inhibits or hinders the proposed charter school's ability to meet its goals or comply with its mission statement.
- ~~(45) All waiver requests filed with the commissioner-Commissioner of education-Education shall indicate if the charter school has contain information on other waiver requests filed the same waiver request with their a local board of education including and include the status of that waiver requests.~~
- (5) Incomplete requests shall not be considered.

- (6) The commissioner ~~Commissioner~~ may request additional information to supplement a completed request.
- (7) The commissioner ~~Commissioner~~ shall notify the charter school and its chartering authority if the waiver request is approved or denied within thirty (30) days of receiving a request.

Authority: T.C.A. §§49-1-201(c)(20)(C), ~~49-13-105~~, and 49-13-107. **Administrative History:** Original rule filed November 26, 2003; effective March 29, 2004.

0520-14-02-03 COMMISSIONER'S REVIEW OF WAIVER REQUESTS ~~REPEALED~~.

- ~~(1) Incomplete requests (requests not containing the information listed under Rule 0520-14-2-02(1) through (5) above), shall not be considered.~~
- ~~(2) The commissioner may request additional information to supplement a completed request. Additional information shall be requested by the commissioner within 2 days of receiving the request from the sponsor.~~
- ~~(3) The commissioner shall take action on all waiver requests, within ten (10) days of receipt of the request unless the commissioner has requested additional information from the sponsor.~~
- ~~(4) In the event the commissioner requests additional information, the commissioner shall take action on the waiver request within ten (10) days from the receipt of the additional information.~~
- ~~(5) All approved waivers shall be effective for one (1) academic year and may be renewed annually by filing a new request pursuant to the above listed procedure.~~

Authority: T.C.A. §§49-1-201(c)(20)(C) and 49-13-105. **Administrative History:** Original rule filed November 26, 2003; effective March 29, 2004.

0520-14-02-04 CRITERIA FOR GRANTING WAIVER REQUESTS ~~REPEALED~~

- ~~(1) All waivers shall be granted for one academic year and may be renewed annually by filing a new request pursuant to the above listed procedure.~~
- ~~(2) Pursuant to T.C.A. § 49-13-105(b), the commissioner shall not waive regulatory or statutory requirements related to:
 - ~~(a) Federal and state civil rights;~~
 - ~~(b) Federal, state, and local health and safety;~~
 - ~~(c) Federal and state public records;~~
 - ~~(d) Immunizations;~~
 - ~~(e) Possession of weapons on school grounds;~~
 - ~~(f) Background checks and fingerprinting of personnel;~~
 - ~~(g) Federal and state special education services;~~
 - ~~(h) Student due process;~~~~

(Rule 0520-14-2-.04, continued)

- (i) Parental rights;
 - (j) Federal and state student assessment and accountability;
 - (k) Open meetings; and
 - (l) At least the same equivalent time of instruction as required in regular public schools.
- (3) ~~The commissioner shall not consider requests for waivers of the enrollment eligibility limitations contained in T.C.A. § 49-13-106.~~

Authority: T.C.A. §§49-1-201(c)(20)(C) and 49-13-105. **Administrative History:** Original rule filed November 26, 2003; effective March 29, 2004.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				
Wiseman	X				

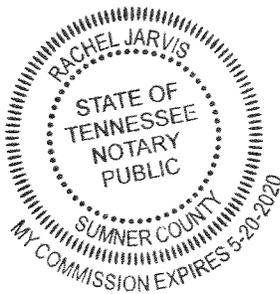
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/20/2017 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: December 15, 2017

Signature: 

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel



Subscribed and sworn to before me on: 12.20.17

Notary Public Signature: 

My commission expires on: 5.20.20

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): Chapter 0520-14-02 Rules of Procedure for Commissioner Review of Charter School Waiver Requests

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

Herbert H. Slattery III
Herbert H. Slattery III
Attorney General and Reporter
1/19/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/26/18

Effective on: 4/26/18

Tre Hargett
Tre Hargett
Secretary of State

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