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Sequence Number: 05-13-15
Rule ID(s): 5952
File Date: 05/26/15
Effective Date: 08/24/15

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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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:	
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-01-06	Child Nutrition Programs
Rule Number	Rule Title
0520-01-06-.01	General Regulations
0520-01-06-.04	Special Exemptions for Infrequent School-Sponsored Fundraisers

Chapter Number	Chapter Title
Rule Number	Rule Title

Substance of Proposed Rules

**CHAPTER 0520-01-06
CHILD NUTRITION PROGRAMS**

Repeal/New

The Table of Contents is amended by deleting the title for 0520-01-06-.04 and replacing it with Special Exemptions for Infrequent School-Sponsored Fundraisers, so that, as amended, the Table of Contents shall read as follows:

TABLE OF CONTENTS

0520-01-06-.01	General Regulations	0520-01-06-.04	Special Exemptions for Infrequent School-Sponsored Fundraisers
0520-01-06-.02	Schools Eligible to Receive Federal Assistance for Child Nutrition Programs		
0520-01-06-.03	Minimum Requirements for Each Participating School		

Authority: T.C.A. §§ 49-1-302, 49-6-2303.

Rule 0520-01-06-.01 General Regulations is repealed in its entirety and the following language is inserted, so that the new rule shall read:

0520-01-06-.01 GENERAL REGULATIONS

The State Board of Education adopts by reference the Compilation of Federal Regulations at 7 C.F.R. Parts 210 and 220 in their entirety unless otherwise provided herein as the policies and procedures for administration of nutrition programs and services in the state.

Authority: T.C.A. §§ 49-1-302, 49-6-2303.

Rule 0520-01-06-.04 Minimum Nutritional Standards for Individual Food Items Sold or Offered for Sale to Pupils in Grades Pre-Kindergarten through Eight (Pre-K-8) is repealed in its entirety and replaced so that the following new rule shall read:

0520-01-06-.04 SPECIAL EXEMPTIONS FOR INFREQUENT SCHOOL-SPONSORED FUNDRAISERS

Local Education Agencies may make special exemptions for the sale of food and/or beverages that do not meet the competitive food standards for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers shall take place on no more than thirty (30) days within a school year per school site. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service. The principal of the school shall ensure that the thirty (30) day limit is not exceeded.

Authority: T.C.A. §§ 49-1-302, 49-6-2303, 78 Fed. Reg. 125 (June 28, 2013).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre	X				
Roberts	X				
Rolston	X				
Sloyan	X				
Tucker	X				
Student Member	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 07/25/2014, 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: 4/7/15

Signature: [Handwritten Signature]

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director

Subscribed and sworn to before me on: 4/7/15

Notary Public Signature: [Handwritten Signature: Phyllis E. Children]

My commission expires on: _____



MY COMMISSION EXPIRES:
January 9, 2016

State Board of Education Rules
Chapter 0520-01-06 – Child Nutrition Programs
Rule 0520-01-06-.01 – General Regulations
Rule 0520-01-06-.04 -- Special Exemptions for Infrequent School-Sponsored Fundraisers

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
5/15/2015
Date

Department of State Use Only

Filed with the Department of State on: 05/26/15

Effective on: 08/24/15

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable.

Impact on Local Governments

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

This rule will have no impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The State Board of Education has the ability, pursuant to T.C.A. § 49-6-2303, to promulgate rules with regard to child nutrition programs in Tennessee. At present, the state rules governing nutrition programs cover grades PreK-8. High schools are governed by federal rules promulgated by the U.S. Department of Agriculture. However, new federal nutrition program rules were promulgated in 2010 and these will take effect at the beginning of the 2014-15 school year. By adopting the federal rules for all grades, all Tennessee child nutrition programs will use the same guidance document. This will, according to the Tennessee School Nutrition Association, lessen confusion and create more consistency across grade spans.

In addition, the new federal rules allow states to set up "special exemptions for infrequent school-sponsored fundraisers." "If a state agency does not specify the exemption frequency" the default number will be zero (0). As such, the State Board has adopted thirty (30) days as the special exemption for school-sponsored fundraisers.

- (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;

Federal Register Vol. 78, No. 125, also known as the "Healthy, Hunger-Free Kids Act of 2010."

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

School foodservice and nutrition, school administration, Tennessee School Nutrition Association and Tennessee Department of Health.

The State Board of Education staff consulted with the executive committee of the Tennessee School Nutrition Association, Representative Kane and his legislative staff (who initially sponsored a bill last legislative session to set the number of days for school-sponsored fundraisers) and the Tennessee Department of Health in drafting these rules. All 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;

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;

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

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

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

N/A

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-06
CHILD NUTRITION PROGRAMS**

TABLE OF CONTENTS

0520-01-06-.01	General Regulations	0520-01-06-.04	Minimum Nutritional Standards for Individual Food Items Sold or Offered for Sale to Pupils in Grades Pre-Kindergarten through Eight (Pre-K-8) Special Exemptions for Infrequent School-Sponsored Fundraisers
0520-01-06-.02	Schools Eligible to Receive Federal Assistance for Child Nutrition Programs		
0520-01-06-.03	Minimum Requirements for Each Participating School		

0520-01-06-.01 GENERAL REGULATIONS

~~The State Board of Education adopts the current Compilation of Federal Regulations (CFR) which govern child nutrition programs.~~

The State Board of Education adopts by reference the Compilation of Federal Regulations at 7 C.F.R. Parts 210 and 220 in their entirety unless otherwise provided herein as the policies and procedures for administration of nutrition programs and services in the state.

0520-01-06-.02 SCHOOLS ELIGIBLE TO RECEIVE FEDERAL ASSISTANCE FOR CHILD NUTRITION PROGRAMS

- (1) The State Department of Education shall determine which schools are eligible to participate in the national school lunch, school breakfast, and other food service programs based upon an application submitted by the local board of education.
- (2) The State Department of Education shall enter into a USDA approved standard form of agreement with the appropriate local board of education. The agreement shall cover the operation of the national school lunch program, school breakfast program, and any other applicable child nutrition programs. This agreement shall contain all of the conditions prescribed in the federal-state agreement. The State Department of Education shall not reimburse a school in the absence of an agreement nor permit retroactive agreements.

0520-01-06-.03 MINIMUM REQUIREMENTS FOR EACH PARTICIPATING SCHOOL

Facilities and equipment for the storage, preparation, and serving of food shall be maintained by the local school system.

0520-01-06-.04 MINIMUM NUTRITIONAL STANDARDS FOR INDIVIDUAL FOOD ITEMS SOLD OR OFFERED FOR SALE TO PUPILS IN GRADES PRE-KINDERGARTEN THROUGH EIGHT (PRE-K-8) SPECIAL EXEMPTIONS FOR INFREQUENT SCHOOL-SPONSORED FUNDRAISERS

LEAs may make special exemptions for the sale of food and/or beverages that do not meet the competitive food standards for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers shall take place on no more than thirty (30) days within a school

year per school site. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service. The principal of the school shall ensure that the thirty (30) days limit is not exceeded.

~~(1) — Introduction.~~

~~The federal Child Nutrition Reauthorization Act, which applies to all schools that participate in the federal school lunch program, requires every school to adopt a wellness plan by June 30, 2006. As a component of a locally adopted wellness program, these nutritional guidelines are minimal and local boards of education may adopt more stringent guidelines.~~

~~Each local board of education shall develop and implement a district policy that, at a minimum, ensures compliance with these rules and designates a person responsible for oversight. The person designated as responsible for district compliance shall register with the state department of education.~~

~~Within one year of the revision of the Dietary Guidelines for Americans (DGA), the State Board of Education, in consultation and cooperation with the Department of Education and the Department of Health, shall review these rules.~~

~~(2) — Definitions.~~

~~(a) — School day: Starting 45 minutes before the beginning of the official school day and continuing until 30 minutes after the end of the official school day.~~

~~(b) — Low calorie beverage (includes flavored, sweetened, and non-caffeinated water): A flavored, non-carbonated beverage that does not contain additional caloric sweeteners and does not contain more than 15 calories per serving.~~

~~(c) — Beverage serving: One serving of beverage that does not exceed 8 fluid ounces, except non-flavored, non-carbonated, non-caffeinated water.~~

~~(d) — Foods and beverages of minimal nutritional value: Those foods the United States Department of Agriculture (USDA) School Food and Nutrition Service defines as foods and beverages of minimal nutritional value including but not limited to: soda, gum, hard candies, marshmallow candies, licorice and candy coated popcorn.~~

~~(3) — Nutritional Quality Standards~~

~~These standards are developed for foods and beverages sold or offered for sale during the school day in schools that include students in grades Pre-kindergarten through 8. These standards apply to food items sold or offered for sale during the school day including but not limited to school stores items, fund raising items, a la carte items, vending machine items, snack bars items, etc. These standards do not apply to foods served as a federally reimbursable meal to pupils. However, it is strongly recommended that schools meet these standards in federally reimbursable meals.~~

~~(a) — Beverages that can be offered for sale in schools include the following:~~

~~1. — Fluid milk that is flavored or unflavored; is reduced fat, low fat, or skim/non-fat; and meets state and local standards for pasteurized fluid milk and/or USDA approved alternative dairy beverages;*~~

~~2. — Beverages that are 100% fruit and vegetable juices;~~

~~3. — Water that is non-flavored, non-sweetened, and non-carbonated; and~~

4. ~~Low-calorie beverages (includes flavored, sweetened, and non-caffeinated water) that are flavored, non-carbonated beverages, containing no additional-caloric sweeteners and no more than 15-calories per serving.~~

~~* There are no USDA approved alternative dairy beverages at this time. Public Law 108-265 (Child Nutrition Program Reauthorization) authorizes the Secretary of Agriculture to establish nutritionally equivalent non-dairy beverages by July 1, 2005.~~

~~(b) A food item that can be sold individually includes food that meets the following standards:~~

1. ~~Calories from total fat must be at or below 35%, excluding nuts, seeds, and nut butters. This is determined by dividing the calories from total fat by the total calories and multiplying by 100. If calories from fat are not available, multiply the grams of fat by 9 to equal calories from fat.~~
2. ~~Calories from saturated fat must be at or below 10%. This is determined by dividing the calories from saturated fat by the total calories and multiplying by 100. If calories from saturated fat are not available, multiply the grams of saturated fat by 9 to equal calories from saturated fat.~~
3. ~~Calories from sugar must be at or below 35% by weight. This is determined by dividing the grams of sugar by the gram weight of the product and multiplying by 100. This includes both naturally occurring and added sugars. This limit does not include fruits and vegetables as defined below.~~
4. ~~Chips, cereals, crackers, French fries, baked goods, and other snack items may contain no more than 230 mg. of sodium per serving; pastas, meats, and soups may contain no more than 480 mg. of sodium per serving; and pizza, sandwiches, and main dishes may contain no more than 600 mg. of sodium.~~

~~(c) Fruits and Non-Fried Vegetables that can be sold individually include the following:~~

1. ~~Fruits and vegetables may be fresh, frozen, canned or dried, and they must be found in the Food Buying Guide for Child Nutrition Programs. (<http://schoolmeals.nal.usda.gov/FBG/2003FBG/%20Section%202.pdf>).~~
2. ~~Examples of products that cannot be sold as a fruit or vegetable include:~~
 - (i) ~~Snack-type foods made from vegetables or fruits, such as potato chips and banana chips;~~
 - (ii) ~~Pickle relish, jam, and jelly; and~~
 - (iii) ~~Tomato catsup and chili sauce.~~
3. ~~Fruits and non-fried vegetables are exempt from portion-size limits.~~

~~(d) Limit on portion sizes of foods and beverages sold individually are the following:~~

1. ~~One and one-quarter ounces for chips, crackers, popcorn, cereal, trail mix, nuts, seeds, dried fruit, or jerky;~~
2. ~~One ounce for cookies;~~

3. Two ounces for cereal bars, granola bars, pastries, muffins, doughnuts, bagels and other bakery items;
4. Four fluid ounces for frozen desserts, including, but not limited to, low-fat or fat-free ice cream;
5. One ounce pure cheese that is lowfat or fat free containing 3.5 grams or less of fat.
6. Eight ounces for non-frozen yogurt; and
7. Eight fluid ounces for beverages, excluding non-flavored water;

- (e) The portion size of a la carte entrees and side dishes, including potatoes, shall not be greater than the size of comparable portions offered as part of school meals. Fruits and non-fried vegetables are exempt from portion-size limits.
- (f) Individual food items that are part of a day's reimbursable school lunch or part of the reimbursable school breakfast program may be sold on that day for that meal as an a la carte item. All other school a la carte items are not to exceed the State Board of Education's standards for foods sold individually.

(4) Implementation.

- (a) Schools serving pre-kindergarten through grade 5, shall implement these rules no later than one (1) year after the original effective date of these rules. This does not apply to high schools in which pre-kindergarten children are the only students in the building below grade 9.
- (b) Schools serving grades 6, 7, or 8 shall implement at least 50% of the nutritional quality standards set forth above no later than one (1) year after the original effective date of these rules and shall implement all of the nutritional quality standards within the following year. Schools that serve grades 6, 7, or 8 and also serve higher grade levels must meet the standards.

(5) Evaluation of Effectiveness

Each local board of education shall monitor implementation of these rules and shall evaluate the effectiveness thereof. School systems shall include a wide range of constituency groups in planning and implementing the evaluation and shall consider measures such as:

- (a) Participation rates in school meal programs;
- (b) Student satisfaction surveys to monitor the effects of consumption of healthy snacks on children's health, behavior, and school performance and to monitor satisfaction with snack choices;
- (c) Parent satisfaction surveys to monitor the effects of consumption of healthy snacks on children's health, behavior, and school performance and to monitor satisfaction with snack choices;
- (d) Frequency and types of health problems noted on school nurse logs;
- (e) Frequency and types of mental health and behavioral problems noted on counselor logs;
- (f) Incidence of student behavior infractions;

~~(g) — Teacher surveys of students' classroom behavior, attention span, and memory; and~~

~~(h) — Test scores.~~