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Sequence Number: 03-39-16
 Rule ID(s): 6162
 File Date: 3/31/16
 Effective Date: 6/29/16

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:	1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-253-5707
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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-.04	Special Exemptions for School-Sponsored Fundraisers

Chapter Number	Chapter Title
Rule Number	Rule Title

CHAPTER 0520-01-06
CHILD NUTRITION PROGRAMS
Repeal/New

Rule 0520-01-06-.04 Special Exemptions for Infrequent School-Sponsored Fundraisers is repealed in its entirety and replaced so that the new rule shall read:

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

Local Education Agencies (LEA) may set special exemptions for infrequent school-sponsored fundraisers that sell foods or beverages that do not meet the nutrition standards for Smart Snacks. Such specially exempted fundraisers shall take place no more than twenty (20) days per semester 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 twenty (20) day limit per semester is not exceeded.

LEAs shall include the special exemptions set for infrequent school-sponsored fundraisers in the Local Wellness Policy required by the Healthy, Hunger-Free Kids Act of 2010.

LEAs may request approval to exceed the twenty (20) day limit per semester from the Department of Education.

Authority: T.C.A. §§ 49-1-302, 49-6-2303, 78 Fed. Reg. 125 (June 28, 2013). Administrative History: Original rule filed May 25, 2005; effective August 8, 2005. Amendment filed November 30, 2007; effective March 28, 2008. Repeal and new rule filed May 26, 2015; effective August 24, 2015; Amendment.

* 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				
Tucker	X				
Troutt				X	

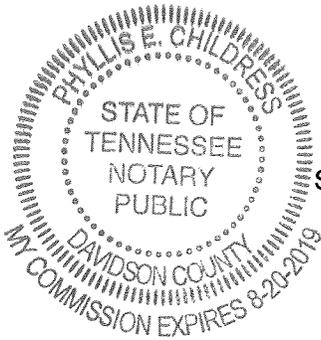
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 01/29/2016 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the 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: 3/10/16

Signature: [Signature]

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director



Subscribed and sworn to before me on: 3/10/16

Notary Public Signature: [Signature]

My commission expires on: _____

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.

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

3/23/2016 Date

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Effective on: 6/29/16

[Signature]
Tre Hargett
Secretary of State

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;

This rule allows Local Education Agencies to make special exemptions outside of the sale of food and/or beverages that do not meet the United States Department of Agriculture's competitive food standards for the purpose of conducting an infrequent school-sponsored fundraiser. This new rule changes the maximum allowable exemptions from thirty (30) days within a school year per school site to twenty (20) days per semester, with the option to request additional exemption days through a waiver from the Department of Education.

- (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;

78 Fed. Reg. 125, known as the Healthy, Hunger-Free Kids Act of 2010, establishes regulatory requirements for food sold in other areas of the school campus or at other times in the school day. The Act includes a provision that allows states to set up "special exemptions for infrequent school-sponsored fundraisers."

T.C.A. § 49-6-2303 authorizes the State Board of Education to promulgate rules with regard to child nutrition programs in Tennessee.

- (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 boards of education and their school nutrition departments are most directly affected by this rule.

During the August 19, 2015, hearing of the Government Operations Committee of the Tennessee General Assembly, committee members expressed concern over the sufficiency of thirty (30) exemption days and asked that the Board consider increasing the allowable number of exemption days.

- (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;

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

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

N/A

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

Repeal/New

Rule 0520-01-06-.04 Special Exemptions for Infrequent School-Sponsored Fundraisers 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

LEAs may set special exemptions for infrequent school-sponsored fundraisers that sell foods or beverages that do not meet the nutrition standards for Smart Snacks. Such specially exempted fundraisers shall take place no more than twenty (20) days per semester 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 twenty (20) day limit per semester is not exceeded.

LEAs shall include the special exemptions set for infrequent school-sponsored fundraisers in the Local Wellness Policy required by the Healthy, Hunger-Free Kids Act of 2010.

LEAs may request approval to exceed the twenty (20) day limit per semester from the Department of Education.

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

~~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.~~