

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 09-02-13
Rule ID(s): 5521
File Date: 9/3/13
Effective Date: 2/28/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to 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.

Agency/Board/Commission:	Tennessee Higher Education Commission
Division:	Higher Education
Contact Person:	Scott Sloan, General Counsel and Associate Executive Director for Legal & Regulatory Affairs
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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
1540-01-09	Immunizations for Newly Matriculating Students
Rule Number	Rule Title
1540-01-09-.01	Definitions
1540-01-09-.02	Notice of Information
1540-01-09-.03	Waiver for Hepatitis B Vaccination
1540-01-09-.04	Proof of Immunization Against Meningococcal Disease

Chapter 1540-01-09

Immunizations for Newly Matriculating Students

Amendment

Rule 1540-01-09 is amended by inserting a "0" in the rule and/or chapter number throughout the rule where only a single digit is reflected to conform to Tenn. Comp. R. and Regs. 1360-01-01-.03(a)1.(xi), which states there are to be no single digits in rule and chapter numbers.

Rule 1540-01-09 is amended by adding the phrase "for Hepatitis B Vaccination" to the rule title "Waiver" so that as amended the Table of Contents shall read:

1540-01-09-.03 Waiver for Hepatitis B Vaccination

Rule 1540-01-09 is amended by adding the new rule title "Proof of Immunization Against Meningococcal Disease" to the Table of Contents so that as amended the Table of Contents shall read:

1540-01-09-.04 Proof of Immunization Against Meningococcal Disease

Authority: T.C.A. §§ 49-7-124, 49-7-125, and 2013 Public Acts, Chapter 114.

Paragraph (2) of Rule 1540-01-09-.01 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (2) "Institution of higher learning" for the purposes of this chapter shall mean any institution of postsecondary education that generally limits enrollment to graduates of secondary schools, and awards degrees at either the associate, baccalaureate, or graduate level. It is the intent that the Tennessee Colleges of Applied Technology operating under the jurisdiction of the Tennessee Board of Regents would be among the institutions exempt from the requirements of these rules.

Authority: T.C.A. §§ 49-7-124, T.C.A. 49-7-125, 2013 Public Acts, Chapter 114, and 2013 Public Acts, Chapter 473.

Paragraph (1) of Rule 1540-01-09-.02 Notice of Information is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

Each institution of higher learning in the state shall provide to all new incoming students, and/or the parent or guardian of new incoming students, information concerning hepatitis B disease. The information shall be provided to the student and/or parent or guardian prior to matriculation and include the risk factors and dangers of each disease as well as information on the availability and effectiveness of the respective vaccines for persons who are at-risk for the diseases. The institutions shall utilize information from the Centers for Disease Control and/or the American College Health Association in satisfying this requirement.

Authority: T.C.A. §§ 49-7-124, 49-7-125, and 2013 Public Acts, Chapter 114.

Rule 1540-01-09-.03 is amended by adding the phrase "for Hepatitis B Vaccination" to the rule title "Waiver" so that as amended the rule title shall read:

1540-01-09-.03 Waiver for Hepatitis B Vaccination.

Authority: T.C.A. § 49-7-125 and 2013 Public Acts, Chapter 114.

Rule 1540-01-09-.04 Proof of Immunization Against Meningococcal Disease is added as a new rule so that as amended the rule shall read:

- (1) New incoming students through the age of 21 who live in on-campus student housing at public institutions of higher learning shall provide proof of adequate immunization against meningococcal disease as recommended for adults in the current advisory committee on immunization practices "Recommended Adult Immunization Schedule" published by the Centers for Disease Control and Prevention.
- (2) A student may be exempted from this requirement 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; or
 2. The individual meets that criteria for contraindication published by the centers for disease control or the advisory committee on immunization practices; 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 school 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: 2013 Public Acts, Chapter 114.

The vote by the Commission on these rules was as follows:

Commission Member	Aye	No	Abstain	Absent	Signature (if required)
Cato Johnson, Chair, Bartlett - 7th Congressional District	X				
Jon Kinsey, Vice-Chair, Chattanooga - 3rd Congressional District	X				
Evan Cope, Vice-Chair, Murfreesboro - 4th Congressional District	X				
A C Wharton, Jr., Secretary, Memphis - 9th Congressional District				X	
Tre Hargett, Secretary of State				X	
Justin P. Wilson, State Comptroller				X	
David H. Lillard, Jr., State Treasurer	X				
Greg Isaacs Knoxville - 2nd Congressional District				X	
Pam Koban, Nashville 5th Congressional District	X				
Charles W. Bone, Hendersonville 6th Congressional District	X				
Sharon L. Hayes, Brownsville - 8th Congressional District	X				
Adam Jarvis, voting ex- officio, East Tennessee State University	X				

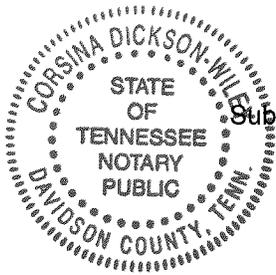
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Higher Education Commission on 07/25/2013, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 8.6.13

Signature: *Richard G. Rhoda*

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director



Subscribed and sworn to before me on: 08-06-2013

Notary Public Signature: *Corsina Dickson-Wiley*

My Commission Expires AUG. 23, 2016

My commission expires on: 08-23-2016

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.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

8-29-13

Date

Department of State Use Only

Filed with the Department of State on: 9/3/13

Effective on: 2/28/14

Tre Hargett

Tre Hargett
Secretary of State

NEC
2013 SEP -3 PM 2:29
DAVIDSON COUNTY, TENN.

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 rules affects small businesses.

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rules

The Tennessee Higher Education Commission (THEC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing amending Chapter 1540-01-09 Immunizations for Newly Matriculating Students. It is the intent of THEC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

The proposed rules implement the requirement for proof of immunization against meningococcal disease for incoming students residing in on-campus student housing at state institutions. The rule currently provides for the requirement for state institutions of postsecondary education that award degrees at the associate level or higher to provide information to newly matriculating students and/or the student's parent regarding Hepatitis B disease and further requires that the student and/or the student's parent complete and sign a waiver form indicating the student has or has not chosen to have the student vaccinated for the disease.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rules were drafted to facilitate administration of the program for all Tennessee state public institutions of higher learning with on-campus housing.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

THEC has met with and provided a copy of these rules to the Tennessee Board of Regents and University of Tennessee system. No comments or concerns regarding these rules or the schedules and deadlines for compliance and/or reporting requirements have been expressed by any of these entities.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted compliance and reporting requirements.

6. Performance standards for small businesses:

THEC expects all state institutions with students residing in on-campus student housing engaged in the administration of the newly matriculating students to comply with all applicable rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses 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 rules; 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; a statement of the probable effect on impacted small businesses and consumers; a 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 businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

Not Applicable. These rules affect only those state institutions with students residing in on-campus student housing.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no significant reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

Not Applicable. The proposed rules require immunization against meningococcal disease for incoming students residing in on-campus student housing at state institutions.

4. Less burdensome, intrusive, or costly alternative methods:

As these proposed rules present no foreseeable cost to small businesses, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these proposed 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."

The rules for the Immunizations for Newly Matriculating Students Chapter 1540-01-09, as proposed, shall have no 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;

The proposed rule acts to amend the Immunizations for Newly Matriculating Students Chapter 1540-01-09 as proposed rules. These rules currently provide for the requirement for state institutions of postsecondary education that awards degrees at the associate level or higher to provide information to newly matriculating students and/or the student's parent with information regarding Hepatitis B disease and further provides that the student and/or the student's parent to complete and sign a waiver form indicating the student has or has not chosen to have the student vaccinated for the disease.

The proposed rules will provide for the requirement that new incoming students at state institutions of higher learning who live in on-campus student housing provide proof of immunization against meningococcal disease, and specifies that adequate immunization against meningococcal disease be as recommended for adults in the current advisory committee on immunization practices "Recommended Adult Immunization Schedule" published by the Centers for Disease Control and Prevention.

- (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. § 49-7-125 mandates that new incoming students at any public or private institution of higher learning in this state shall return a completed waiver form pursuant to this section. A waiver form shall indicate that the institution has provided detailed information to the student concerning the risk factors for hepatitis B infection and the availability and effectiveness of vaccine for persons who are at-risk of the disease; and that the student, parent or guardian has received and reviewed the information and has chosen to have the student vaccinated or not to have the student vaccinated.

Tennessee 2013 Public Acts, Chapter 114, known as the "Jacob Nunley Act," mandates the requirement for providing proof of immunization against meningococcal disease for new incoming students at state institutions of higher learning who live in on-campus student housing, and specifies that adequate immunization against meningococcal disease be as recommended for adults in the current advisory committee on immunization practices "Recommended Adult Immunization Schedule" published by the Centers for Disease Control and Prevention.

Tennessee 2013 Public Acts, Chapter 114 further mandates that for the purposes of promulgation of the rules and regulations, this act shall take effect upon becoming law, the public welfare requiring it.

- (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 Tennessee Higher Education Commission (THEC), the Tennessee Board of Regents, and the University of Tennessee system are most directly affected by these proposed rules.

THEC has met with, and/or provided a copy of the proposed rules to the aforementioned entities and has received no comments or concerns regarding the proposed rules.

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

There are no opinions of the Attorney General and reporter or any judicial ruling that directly relates to the rule.

- (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 is no financial impact resulting from the proposed rule changes.

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

Scott Sloan, General Counsel and Associate Executive Director for Legal & Regulatory Affairs for the Tennessee Higher Education Commission

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

Scott Sloan, General Counsel and Associate Executive Director for Legal & Regulatory Affairs for the Tennessee Higher Education Commission

- (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

Scott Sloan, General Counsel and Associate Executive Director for Legal & Regulatory Affairs
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- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

There is none received to date.

**RULES OF
TENNESSEE HIGHER EDUCATION COMMISSION**

**CHAPTER 1540-01-09
IMMUNIZATIONS FOR NEWLY MATRICULATING STUDENTS**

TABLE OF CONTENTS

1540-01-09-.01 Definitions	1540-01-09-.04 Proof of Immunization Against Meningococcal Disease
1540-02-09-.02 Notice of Information	
1540-01-09-.03 Waiver for Hepatitis B Vaccination	

1540-01-09-.01 DEFINITIONS.

- (1) "New incoming students" or "student" for the purpose of this chapter shall mean those students enrolling in an institution of higher learning for the first time, regardless of the level at which the student is matriculating. Additionally, the terms shall apply only to persons enrolled in a course or courses offered for college credit toward an associate's degree or higher.

- (2) "Institution of higher learning" for the purposes of this chapter shall mean any institution of postsecondary education that generally limits enrollment to graduates of secondary schools, and awards degrees at either the associate, baccalaureate, or graduate level. It is the intent that the ~~Tennessee Colleges of Applied Technology~~~~Tennessee Technology Centers~~ operating under the jurisdiction of the Tennessee Board of Regents would be among the institutions exempt from the requirements of these rules.

Authority: *T.C.A. §§ 49-7-124, 49-7-125, 2013 Public Acts, Chapter 114, and 2013 Public Acts, Chapter 473 Acts of 2003; Public Chapters 104 and 136. Administrative History:* Original rule filed August 14, 2003; effective December 29, 2003.

1540-01-09-.02 NOTICE OF INFORMATION.

(1) — Each institution of higher learning in the state shall provide to all new incoming students, and/or the parent or guardian of new incoming students, information concerning hepatitis B disease. ~~All new incoming students who will be living in on-campus student housing, and/or their parent or guardian, shall also be given information concerning meningococcal disease. In each instance,~~ (The information shall be provided to the student and/or parent or guardian prior to matriculation and include the risk factors and dangers of each disease as well as information on the availability and effectiveness of the respective vaccines for persons who are at-risk for the diseases. The institutions shall utilize information from the Centers for Disease Control and/or the American College Health Association in satisfying this requirement.

Authority: *T.C.A. §§ 49-7-124, 49-7-125, and 2013 Public Acts, Chapter 114 Acts of 2003; Public Chapters 104 and 136. Administrative History:* Original rule filed August 14, 2003; effective December 29, 2003.

1540-01-09-.03 WAIVER FOR HEPATITIS B VACCINATION.

- (1) Prior to matriculating into the institution, the new incoming student and/or the student's parent or guardian shall complete and sign a waiver form to indicate that the student and/or the student's parent or guardian has received the information required by Rule 1540-1-9-.02 and has chosen to have the student vaccinated or has not chosen to have the student vaccinated for Hepatitis B disease.

(Rule 1540-01-09-.03, continued)

- (2) The waiver may be part of the information document required by Rule 1540-1-9-.02.
- (3) A student who is eighteen (18) years of age may sign the waiver, but for minors, the student's parent or guardian must sign the waiver.
- (4) The institution shall maintain the signed waiver forms in a manner and location consistent with the maintenance of similar confidential education records.

Authority: *T.C.A. § 49-7-125 and 2013 Public Acts, Chapter 114Acts of 2003; Public Chapters 104 and 136.* **Administrative History:** *Original rule filed August 14, 2003; effective December 29, 2003.*

1540-01-09-.04 PROOF OF IMMUNIZATION AGAINST MENINGOCOCCAL DISEASE

- (1) New incoming students through the age of 21 who live in on-campus student housing at public institutions of higher learning shall provide proof of adequate immunization against meningococcal disease as recommended for adults in the current advisory committee on immunization practices "Recommended Adult Immunization Schedule" published by the Centers for Disease Control and Prevention.
- (2) A student may be exempted from this requirement 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; or
 2. The individual meets that criteria for contraindication published by the centers for disease control or the advisory committee on immunization practices; 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 school 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: *2013 Public Acts, Chapter 114.*