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 Number: 09-03-13
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Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Higher Education Commission
Division:	Higher Education
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment
 New
 Repeal

Statement of Necessity:

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

Pursuant to T.C.A § 4-5-208, an agency may proceed without prior notice or hearing to adopt an emergency rule, if the agency finds that 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 the chapter would not adequately protect the public.

The submitted rule Chapter 1540-01-09 Immunizations for Newly Matriculating Students outlines the requirements and procedures for newly matriculating students attending state postsecondary institutions, and meets the threshold criteria under T.C.A. § 4-5-208(a)(1), thereby requiring immediate implementation.

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/RuleTitle per row)

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 Tennessee Higher Education 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 an emergency rule(s), lawfully promulgated and adopted.

Date: 8.6.13

Signature: [Handwritten Signature]

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director



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

Notary Public Signature: [Handwritten Signature]

My commission expires on: 08-23-2016

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.

[Handwritten Signature]
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 for: 180 *days

Effective through: 3/2/14

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

[Handwritten Signature]
Tre Hargett
Secretary of State

RECEIVED
2013 SEP -3 PM 2:30
[Vertical Stamp]

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 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 emergency rules act to amend the Immunizations for Newly Matriculating Students Chapter 1540-01-09 as proposed emergency 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 emergency 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. The emergency rules also specify 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," amends T.C.A. § 49-7-124 and 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. Public Chapter 114 also 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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404 James Robertson Parkway
Nashville, TN 37243
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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

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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 114 Acts 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.*