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Sequence Number: 03-06-16
 Rule ID(s): 6135
 File Date: 3/7/16
 Effective Date: 6/5/16

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:	Water Resources
Contact Person:	Anna R. Sartors
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
Zip:	37243
Phone:	615-532-0159
Email:	anna.r.sartors@tn.gov

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
0400-45-01	Public Water Systems
Rule Number	Rule Title
0400-45-01-.06	Maximum Contaminant Levels
0400-45-01-.07	Monitoring and Analytical Requirements
0400-45-01-.17	Operation and Maintenance Requirements
0400-45-01-.41	Revised Total Coliform Rule

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendments

Chapter 0400-45-01 Public Water Systems

Subpart (i) of part 1 of subparagraph (b) of paragraph (6) of Rule 0400-45-01-.06 Maximum Contaminant Levels is amended by deleting the phrase "(subpart V)" and substituting the phrase "(Stage 2 Disinfection Byproducts Reporting Requirements)" such that, as amended the subpart shall read:

- (i) Compliance dates. Subpart H systems serving 10,000 or more persons must comply with this part beginning January 1, 2002. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this this part beginning January 1, 2004. All systems must comply with these MCLs until the date specified for Locational Running Annual Average (Stage 2 Disinfection Byproducts Requirements (LRAA)) compliance in Rule 0400-45-01-.38.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Subpart (i) of part 2 of subparagraph (b) of paragraph (6) of Rule 0400-45-01-.06 Maximum Contaminant Levels is amended by twice deleting the phrase "subpart V" and substituting the phrase "Stage 2 Disinfection Byproducts Reporting Requirements" such that, as amended the subpart shall read:

- (i) Compliance dates. The Stage 2 Disinfection Byproducts Requirements (LRAA) MCLs for TTHM and HAA5 must be complied with as a locational running annual average (LRAA) at each monitoring location beginning the date specified for Stage 2 Disinfection Byproducts Requirements (LRAA) compliance in subparagraph (1)(c) of Rule 0400-45-01-.38.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Subparagraph (g) of paragraph (1) of Rule 0400-45-01-.07 Monitoring and Analytical Requirements is amended by deleting it in its entirety and substituting instead the following:

- (g) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine whether the coliform treatment technique trigger has been exceeded compliance with the MCL for total coliforms in paragraph (4) of Rule 0400-45-01-.06 provided the water is not served to customers before negative analytical results are obtained. Samples representing water served to customers prior to obtaining analytical results shall not be special purpose samples and shall not count toward compliance with the MCL for total coliforms in paragraph (4) of Rule 0400-45-01-.06 with the MCL for total coliforms in paragraph (4) of Rule 0400-45-01-.06. After March 31, 2016, this subparagraph is no longer applicable.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Paragraph (22) of Rule 0400-45-01-.17 Operation and Maintenance Requirements is amended by deleting it in its entirety and substituting instead the following:

- (22) All pipe, pipe or plumbing fitting or fixture, solder, or flux which is used in the installation or repair of any public water system shall be lead free. The term "lead free" shall have the meaning given it in T.C.A. § 68-221-703.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (3) of Rule 0400-45-01-.41 Revised Total Coliform Rule is amended by deleting it

in its entirety and substituting the following:

- (b) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, must not be used to determine whether the coliform treatment technique trigger has been exceeded. Repeat samples taken pursuant to paragraph (8) of this rule are not considered special purpose samples, and must be used to determine whether the coliform treatment technique trigger has been exceeded.

Authority: T.C.A. §§ 68-221-701 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. Gary G. Bible (Oil and Gas Industry)	X				
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)	X				
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)				X	
Jill E. Davis (Municipalities)	X				
Mayor Kevin Davis (Counties)	X				
Derek Gernt (Oil or Gas Property Owner)	X				
C. Monty Halcomb (Environmental Interests)	X				
Charlie R. Johnson (Public-at-large)	X				
Judy Manners (Commissioner's Designee, Department of Health)	X				
John McClurkan (Commissioner's Designee, Department of Agriculture)	X				
Frank McGinley (Agricultural Interests)	X				
D. Anthony Robinson (Manufacturing Industry)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 08/18/2015, 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: 06/19/15

Rulemaking Hearing(s) Conducted on: (add more dates). 08/14/2015

Date: August 26, 2015

Signature: *John McClurkan*

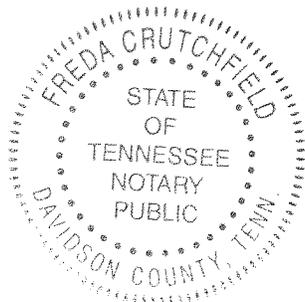
Name of Officer: John McClurkan

Title of Officer: Chairman

Subscribed and sworn to before me on: August 26, 2015

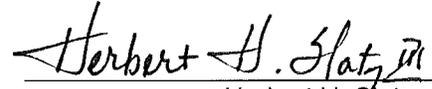
Notary Public Signature: *Freda Crutchfield*

My commission expires on: May 03, 2016



Rules of the Board of Water Quality, Oil and Gas
Rule 0400-45-01-.06 Maximum Contaminant Levels
Rule 0400-45-01-.07 Monitoring and Analytical Requirements
Rule 0400-45-01-.17 Operation and Maintenance Requirements
Rule 0400-45-01-.41 Revised Total Coliform Rule

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.



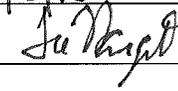
Herbert H. Slatery III
Attorney General and Reporter
2/8/2016

Date

Department of State Use Only

Filed with the Department of State on: 3/7/16 _____

Effective on: 6/5/16 _____



Tre Hargett
Secretary of State

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2016 MAR -7 PM 1:48
SECRETARY OF STATE
PUBLICATIONS

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.

There were no comments received during the public comment period.

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.

The change to the explanation of what constitutes a special purpose sample will mean that special purpose samples will not count toward bacteriological monitoring violations of the Revised Total Coliform Rule and could reduce the number of violations that small businesses that are a public water system will receive. It will also simplify sampling and recordkeeping for the systems. Special purpose samples are useful for checking on potential problem areas, such as in response to a customer complaint, or to verify whether an area that has undergone a recent installation, maintenance or repair is ready to return to service and do not reflect the overall water quality of the water distribution system. The rules are amended to reflect recent changes to the Tennessee Safe Drinking Water Act. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

- (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 rule changes benefit those small businesses which supply water to the public, such as restaurants, campgrounds, factories and trailer parks. There are approximately 19 commercial enterprises (mines, clay companies and factories) that supply their employees with their own produced water (nontransient noncommunity system – serve the same people). There are approximately 193 campgrounds, gas stations, restaurants, etc. that supply water to the public (transient noncommunity system – serve different people). There are approximately 11 trailer parks which are community public water systems that could also be 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.

There should be no additional reporting, recordkeeping or administrative costs for the change in the explanation of what constitutes a special purpose sample. It will simplify sampling and recordkeeping for the systems. The rules are amended to reflect recent changes to the Tennessee Safe Drinking Water Act. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

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

There could potentially be a reduction in violations due to the special purpose samples no longer counting toward bacteriological monitoring violations under the Revised Total Coliform Rule. It will simplify sampling and recordkeeping for the systems. The change to the definition of lead free affects the manufacture, sale and installation of piping and fixtures used for drinking water purposes by further restricting the amount of lead that the piping and fixtures may contain. This new definition is under both the Federal and Tennessee Safe Drinking Water Act. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

- (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.

None has been identified. The change to special purpose samples reflects the recent change to the federal rule and will be less burdensome to water systems as they will not count toward Revised Total Coliform Rule compliance.

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

The rules are amended to reflect recent changes to the Tennessee Safe Drinking Water Act, which matches the language of the Federal Safe Drinking Water Act. The change to what constitutes a special purpose sample reflects the recent change to the federal rule. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state 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.

It is advantageous to small businesses that special purpose samples will not count toward compliance with the Revised Total Coliform Rule. Exempting them may make it problematic to receive primary enforcement authority with EPA for the Revised Total Coliform Rule. The small businesses cannot be exempted from the lead free definition as it is under the Federal and Tennessee Safe Drinking Water Act and also covers the manufacture, sale and installation of piping and fixtures used for drinking water purposes.

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 Department anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenues for 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 changes in Rule 0400-45-01-.06 are more accurate references to state rule. The rule currently references subpart V of the federal rule (40 CFR 141.851 et al), but will instead more accurately reference Tennessee's terminology which is Rule 0400-45-01-.38, Stage 2 Disinfection Byproduct Requirements (LRAA).

The change in Rule 0400-45-01-.07(1)(g) is to sunset the existing special purpose sample rule at the end of the day on March 31, 2016 to coincide with the start of the Revised Total Coliform Rule on April 1, 2016.

The change in Rule 0400-45-01-.17(22) for what is defined as "lead free" reflects the recent change in the Tennessee Safe Drinking Water Act.

The change in Rule 0400-45-01-.41(3)(b) is being made to reflect the recent exemption included in the federal rule on special purpose samples. Special purpose samples are useful for checking on potential problem areas, such as in response to a customer complaint, or to verify whether an area that has undergone a recent installation, maintenance or repair is ready to return to service and do not reflect the overall water quality of the water distribution system. The Revised Total Coliform Rule requires a specific number of samples for the water system's sampling plan per monitoring period, which does not allow for a fluctuating number of special purpose samples each monitoring period. Systems are not allowed to take additional samples beyond the number of approved samples. This prevents a situation where a system is showing false compliance because of excessive sampling.

- (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 rules are being promulgated under the authority of T.C.A. §§ 68-221-701 et seq. The lead free definition is being changed to reflect recent changes to the Tennessee Safe Drinking Water Act. The lead free definition is in the Federal Safe Drinking Water Act but there currently is no associated federal rule. The Federal Revised Total Coliform Rule is in Subpart Y of 40 CFR 141 at 141.851 et al.

- (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;

All community and non-community public water systems are affected by this rule. The Tennessee Association of Utility Districts is supportive of the Department adding these changes. The change to special purpose samples has been welcomed by TAUD in that it will simplify compliance.

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

The Department is not aware of any.

- (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;

No increase expected. There may be a cost savings by reducing the number of violations with the change in the special purpose samples.

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

Anna R. Sartors
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
anna.r.sartors@tn.gov

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

Jenny Howard
Deputy 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) 532-0131
Jenny.Howard@tn.gov

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

The Department is not aware of any.

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Rulemaking Hearing Rule(s) Filing Form

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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:	Water Resources
Contact Person:	Anna R. Sartors
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
Zip:	37243
Phone:	615-532-0159
Email:	anna.r.sartors@tn.gov

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
0400-45-01	Public Water Systems
Rule Number	Rule Title
0400-45-01-.06	Maximum Contaminant Levels
0400-45-01-.07	Monitoring and Analytical Requirements
0400-45-01-.17	Operation and Maintenance Requirements
0400-45-01-.41	Revised Total Coliform Rule

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendments

Chapter 0400-45-01 Public Water Systems

Subpart (i) of part 1 of subparagraph (b) of paragraph (6) of Rule 0400-45-01-.06 Maximum Contaminant Levels is amended by deleting the phrase "(subpart V)" and substituting the phrase "(Stage 2 Disinfection Byproducts Reporting Requirements)" such that, as amended the subpart shall read:

- (i) Compliance dates. Subpart H systems serving 10,000 or more persons must comply with this part beginning January 1, 2002. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this this part beginning January 1, 2004. All systems must comply with these MCLs until the date specified for Locational Running Annual Average ~~(subpart V)~~ (Stage 2 Disinfection Byproducts Requirements (LRAA)) compliance in Rule 0400-45-01-.38.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Subpart (i) of part 2 of subparagraph (b) of paragraph (6) of Rule 0400-45-01-.06 Maximum Contaminant Levels is amended by twice deleting the phrase "subpart V" and substituting the phrase "Stage 2 Disinfection Byproducts Reporting Requirements" such that, as amended the subpart shall read:

- (i) Compliance dates. ~~The subpart V~~ Stage 2 Disinfection Byproducts Requirements (LRAA) MCLs for TTHM and HAA5 must be complied with as a locational running annual average (LRAA) at each monitoring location beginning the date specified for ~~subpart V~~ Stage 2 Disinfection Byproducts Requirements (LRAA) compliance in subparagraph (1)(c) of Rule 0400-45-01-.38.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Subparagraph (g) of paragraph (1) of Rule 0400-45-01-.07 Monitoring and Analytical Requirements is amended by deleting it in its entirety and substituting instead the following:

- (g) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine whether the coliform treatment technique trigger has been exceeded compliance with the MCL for total coliforms in paragraph (4) of Rule 0400-45-01-.06 provided the water is not served to customers before negative analytical results are obtained. Samples representing water served to customers prior to obtaining analytical results shall not be special purpose samples and shall not count toward compliance with the MCL for total coliforms in paragraph (4) of Rule 0400-45-01-.06 with the MCL for total coliforms in paragraph (4) of Rule 0400-45-01-.06. After March 31, 2016, this subparagraph is no longer applicable.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Paragraph (22) of Rule 0400-45-01-.17 Operation and Maintenance Requirements is amended by deleting it in its entirety and substituting instead the following:

- (22) All pipe, pipe or plumbing fitting or fixture, solder, or flux which is used in the installation or repair of any public water system shall be lead free. The term "lead free" shall have the meaning given it in T.C.A. § 68-221-703. This shall not apply to lead joints necessary for the repair of cast iron pipes. The term "lead free" in this paragraph is defined as follows:

~~(a) When used with respect to solders and flux shall mean solders and flux containing not more than two-tenths of one percent (0.2%) lead and~~

~~(b) When used with respect to pipes and pipe fittings shall mean pipes and pipe fittings containing not more than eight percent (8.0%) lead.~~

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (3) of Rule 0400-45-01-.41 Revised Total Coliform Rule is amended by deleting it in its entirety and substituting the following:

(b) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, must not be used to determine whether the coliform treatment technique trigger has been exceeded, provided the water is not served to customers before negative analytical results are obtained. Samples representing water served to customers prior to obtaining analytical results shall not be special purpose samples and shall count toward compliance with the coliform treatment technique trigger. Repeat samples taken pursuant to paragraph (8) of this rule are not considered special purpose samples, and must be used to determine whether the coliform treatment technique trigger has been exceeded.

Authority: T.C.A. §§ 68-221-701 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. Gary G. Bible (Oil and Gas Industry)	X				
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)	X				
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)				X	
Jill E. Davis (Municipalities)	X				
Mayor Kevin Davis (Counties)	X				
Derek Gernt (Oil or Gas Property Owner)	X				
C. Monty Halcomb (Environmental Interests)	X				
Charlie R. Johnson (Public-at-large)	X				
Judy Manners (Commissioner's Designee, Department of Health)	X				
John McClurkan (Commissioner's Designee, Department of Agriculture)	X				
Frank McGinley (Agricultural Interests)	X				
D. Anthony Robinson (Manufacturing Industry)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 08/18/2015, 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: 06/19/15

Rulemaking Hearing(s) Conducted on: (add more dates). 08/14/2015

Date: August 26, 2015

Signature: _____

Name of Officer: John McClurkan

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Rules of the Board of Water Quality, Oil and Gas
Rule 0400-45-01-.06 Maximum Contaminant Levels
Rule 0400-45-01-.07 Monitoring and Analytical Requirements
Rule 0400-45-01-.17 Operation and Maintenance Requirements
Rule 0400-45-01-.41 Revised Total Coliform Rule

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
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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.

There were no comments received during the public comment period.

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.

The change to the explanation of what constitutes a special purpose sample will mean that special purpose samples will not count toward bacteriological monitoring violations of the Revised Total Coliform Rule and could reduce the number of violations that small businesses that are a public water system will receive. It will also simplify sampling and recordkeeping for the systems. Special purpose samples are useful for checking on potential problem areas, such as in response to a customer complaint, or to verify whether an area that has undergone a recent installation, maintenance or repair is ready to return to service and do not reflect the overall water quality of the water distribution system. The rules are amended to reflect recent changes to the Tennessee Safe Drinking Water Act. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

- (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 rule changes benefit those small businesses which supply water to the public, such as restaurants, campgrounds, factories and trailer parks. There are approximately 19 commercial enterprises (mines, clay companies and factories) that supply their employees with their own produced water (nontransient noncommunity system – serve the same people). There are approximately 193 campgrounds, gas stations, restaurants, etc. that supply water to the public (transient noncommunity system – serve different people). There are approximately 11 trailer parks which are community public water systems that could also be 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.

There should be no additional reporting, recordkeeping or administrative costs for the change in the explanation of what constitutes a special purpose sample. It will simplify sampling and recordkeeping for the systems. The rules are amended to reflect recent changes to the Tennessee Safe Drinking Water Act. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

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

There could potentially be a reduction in violations due to the special purpose samples no longer counting toward bacteriological monitoring violations under the Revised Total Coliform Rule. It will simplify sampling and recordkeeping for the systems. The change to the definition of lead free affects the manufacture, sale and installation of piping and fixtures used for drinking water purposes by further restricting the amount of lead that the piping and fixtures may contain. This new definition is under both the Federal and Tennessee Safe Drinking Water Act. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

- (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.

None has been identified. The change to special purpose samples reflects the recent change to the federal rule and will be less burdensome to water systems as they will not count toward Revised Total Coliform Rule compliance.

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

The rules are amended to reflect recent changes to the Tennessee Safe Drinking Water Act, which matches the language of the Federal Safe Drinking Water Act. The change to what constitutes a special purpose sample reflects the recent change to the federal rule. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state 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.

It is advantageous to small businesses that special purpose samples will not count toward compliance with the Revised Total Coliform Rule. Exempting them may make it problematic to receive primary enforcement authority with EPA for the Revised Total Coliform Rule. The small businesses cannot be exempted from the lead free definition as it is under the Federal and Tennessee Safe Drinking Water Act and also covers the manufacture, sale and installation of piping and fixtures used for drinking water purposes.

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 Department anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenues for 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 changes in Rule 0400-45-01-.06 are more accurate references to state rule. The rule currently references subpart V of the federal rule (40 CFR 141.851 et al), but will instead more accurately reference Tennessee's terminology which is Rule 0400-45-01-.38, Stage 2 Disinfection Byproduct Requirements (LRAA).

The change in Rule 0400-45-01-.07(1)(g) is to sunset the existing special purpose sample rule at the end of the day on March 31, 2016 to coincide with the start of the Revised Total Coliform Rule on April 1, 2016.

The change in Rule 0400-45-01-.17(22) for what is defined as "lead free" reflects the recent change in the Tennessee Safe Drinking Water Act.

The change in Rule 0400-45-01-.41(3)(b) is being made to reflect the recent exemption included in the federal rule on special purpose samples. Special purpose samples are useful for checking on potential problem areas, such as in response to a customer complaint, or to verify whether an area that has undergone a recent installation, maintenance or repair is ready to return to service and do not reflect the overall water quality of the water distribution system. The Revised Total Coliform Rule requires a specific number of samples for the water system's sampling plan per monitoring period, which does not allow for a fluctuating number of special purpose samples each monitoring period. Systems are not allowed to take additional samples beyond the number of approved samples. This prevents a situation where a system is showing false compliance because of excessive sampling.

- (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 rules are being promulgated under the authority of T.C.A. §§ 68-221-701 et seq. The lead free definition is being changed to reflect recent changes to the Tennessee Safe Drinking Water Act. The lead free definition is in the Federal Safe Drinking Water Act but there currently is no associated federal rule. The Federal Revised Total Coliform Rule is in Subpart Y of 40 CFR 141 at 141.851 et al.

- (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;

All community and non-community public water systems are affected by this rule. The Tennessee Association of Utility Districts is supportive of the Department adding these changes. The change to special purpose samples has been welcomed by TAUD in that it will simplify compliance.

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

The Department is not aware of any.

- (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;

No increase expected. There may be a cost savings by reducing the number of violations with the change in the special purpose samples.

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

Anna R. Sartors
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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;

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

The Department is not aware of any.