

G.O.C. STAFF RULE ABSTRACT

BOARD: University of Tennessee Board of Trustees

CAMPUS: Chattanooga

SUBJECT: Traffic and Parking Violations, Penalties

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209(e)

EFFECTIVE DATES: January 12, 2016 through June 30, 2016

FISCAL IMPACT: The Board anticipates increase in revenue from penalties of \$105,540, which the Board states will be used primarily to cover unbudgeted City of Chattanooga storm water fees (\$65,000-\$75,000 annually), general parking operations, and maintenance.

STAFF RULE ABSTRACT: The proposed rule increases from \$20 to \$25 the fine amount for the following violations: no parking permit; other parking violations; moving violations; and immobilized vehicles.

The Board states that, while it anticipates additional revenue, its intent is to deter violators and to increase parking space for students, faculty and staff who purchase parking decals and park in the appropriate lots.

University of Tennessee Rules
Chapter 1720-02-03 Traffic and Parking Regulations

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 rules are not anticipated to have an effect on small businesses.

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 are not anticipated to have an impact on local governments.

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Sequence Number: 10-10-15
Rule ID(s): 6058
File Date: 10-14-2015
Effective Date: 1-12-2016

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Deputy General Counsel
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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
1720-02-03	Traffic and Parking Regulations
Rule Number	Rule Title
1720-02-03-.07	Penalties

**RULES
OF
THE UNIVERSITY OF TENNESSEE
(CHATTANOOGA)**

**CHAPTER 1720-02-03
TRAFFIC AND PARKING REGULATIONS**

1720-02-03-.01 INTRODUCTION.

- (1) The purpose of these regulations is to facilitate the safe and orderly operation of University business and to provide parking facilities for this operation within the limits of available space.
- (2) The Departments of Parking Services and Campus Law Enforcement are responsible for implementation and enforcement of these regulations.
- (3) Any person operating a motor vehicle on the University campus is required to obey these regulations as a condition to parking or operating the vehicle on the campus.
- (4) The responsibility for locating legal parking space rests with the operator of the motor vehicle. Lack of space will not be considered a valid excuse for violating any parking regulations.
- (5) The University shall have no responsibility for loss or damage to any vehicle or its contents operated or parked on The University of Tennessee at Chattanooga Campus or on lots leased by The University of Tennessee at Chattanooga.

1720-02-03-.02 REGISTRATION OF VEHICLES.

- (1) All motor vehicles, including motorcycles, parked on U.T.C. property between 7:00 a.m. and 5:00 p.m. or on lots leased by U.T.C. must have current U.T.C. decal/disks and be registered with the University.
- (2) Decals/disks will be sold at registration, and after registration, at Parking Services.
- (3) The decal/disk must be hung on the rear view mirror of the vehicle.
- (4) Expired decals/disks should be removed (or covered) so that only the current decal/disk is displayed.
- (5) Decals/disks must be renewed each Fall semester.
 - (a) General Parking: Decals/disks must be renewed at the beginning of each

Fall semester and will be valid until the beginning of the following Fall semester so long as the registrant remains a student or a University employee. This vehicle may be parked in any General lot.

- (b) Reserved Parking: Decals/disks must be renewed at the beginning of each Fall semester and will be valid until the beginning of the following Fall semester so long as the registrant remains a student or a University employee. This vehicle may be parked in any General lot.
- (6) The person to whom a vehicle is registered is responsible for the vehicle and all violation citations issued thereto. If the person operating the vehicle is other than the registrant when a violation is committed, both the operator and the registrant may be cited.

1720-02-03-.03 REPLACEMENT OF DECALS.

- (1) A new decal/disk will be issued at no cost for a newly acquired vehicle which replaces a currently registered vehicle upon presentation of the original decal/disk to the cashier at Parking Services.
- (2) If it is necessary for you to drive a car other than your registered vehicle, the transferable decal/disk must be placed on rearview mirror of replacement vehicle.
- (3) Lost or stolen decal/disk will be replaced for \$2.00 upon proof of loss. Only one replacement decal may be obtained at the \$2.00 charge during the academic year. If additional replacement decals are required during the academic year the charge will be the current decal price.

1720-02-03-.04 VEHICLE OPERATION.

- (1) All persons operating a vehicle on University property or in the campus area, which includes City streets running through University property, must be properly licensed operators.
- (2) Pedestrians have the right-of-way at established pedestrian crossings, except where regulated by traffic control lights or police officers.
- (3) Under normal conditions the maximum speed limit on campus streets is 15 MPH and 30 MPH on the City streets. However, vehicles may not be operated at any speed which is excessive for the conditions which may exist as a result of weather, traffic congestion, pedestrians, etc.
- (4) Traffic control signs, devices, and directions of police officers must be obeyed.
- (5) All persons operating vehicles are responsible for maintaining control of the vehicle, safe operation, and observance of traffic control signs, barriers and

devices.

- (6) Operating a motor vehicle in any area other than a street or roadway intended for motor vehicle is prohibited.
- (7) All accidents must be reported to the University Police immediately (755-4357). All vehicle break-ins or incidents should be reported immediately.

1720-02-03-.05 VIOLATIONS. The following examples constitute violations of these regulations:

- (1) Parking Permits
 - (a) No current decal/disk (parking permit).
 - (b) Current decal/disk not visible in vehicle (not affixed to vehicle).
 - (c) Unauthorized possession of decal/disk.
 - (d) Falsification of decal registration information.
 - (e) Illegal use, reproduction or alteration of decal/disk and/or parking permit.
 - (f) Tampering with wheel-lock.
- (2) Other Parking Violations/Overtime Metered Space.
 - (a) In no-parking or loading zones or unmarked spaces.
 - (b) In unauthorized area.
 - (c) Overtime parking in metered space. (Even vehicles with UTC decals/disks when parking metered areas.)
 - (d) Tampering with wheel-lock.
 - (e) Disability parking violation, as defined by State law (e.g., an unauthorized use of a disabled parking space, ramp, plate, or placard; parking a vehicle so that a portion of the vehicle encroaches into a disabled parking space in a manner which restricts, or reasonably could restrict, a person confined to a wheelchair from exiting or entering a vehicle properly parked within the disabled parking space).
- (3) Moving
 - (a) Exceeding posted speed limit.

- (b) Excessive speed for existing conditions.
 - (c) Failure to obey traffic control signal or sign.
 - (d) Failure to obey police officer.
 - (e) Operating vehicle without valid operator's license.
 - (f) Driving off roadway or street.
 - (g) Reckless driving and/or street.
 - (h) Failure to yield right-of-way at pedestrian crossing.
 - (i) Leaving scene of accident by participant.
 - (j) Failure to signal turn or stop.
 - (k) Wrong way on one-way street.
 - (l) Following too closely.
 - (m) Operating mechanically unsafe vehicle.
 - (n) Driving while under the influence of alcohol or narcotics.
 - (o) Operating vehicle causing loud, or unnecessary noise, such as loud mufflers, horns, P.A. systems, etc.
- (4) Motorcycle Parking
- (a) All cycles must have parking decals/disks.
 - (b) No motorcycle may be driven within the confines of a housing perimeter. They must be walked.
 - (c) Motorcycles are to traverse hard surface areas only, not grassy areas.
 - (d) All motor cycles are to be parked on hard surfaces, not on the grass or soil.
 - (e) Motor cycles are not to block stairways, sidewalks, or pedestrian access.
 - (f) Motorcycles should not be the occasion for the clutter and debris on the property.

- (5) Impounded Vehicle/Towed Vehicle.
 - (a) The University may tow without advance notice those vehicles parked in a fire lane, designated disabled parking space, spaces reserved for designated vehicles or in such a manner as to impede the flow of traffic or disrupt the orderly affairs of the University.
 - (b) If a vehicle has unpaid parking citations the University may impound/tow the vehicle, if advance notice and opportunity to contest have been given. Windshield notices and/or other methods of notification will be used to provide the operator of the vehicle with advance notice of out intent to tow and the operator's right to a hearing.
- (6) Fire Lane and Obstruction
 - (a) Blocking or obstructing traffic, street, sidewalk, driveway, fire hydrant, building entrance or exit, another vehicle or fire lane.

1720-02-03-.06 ENFORCEMENT.

- (1) University violation citations must be answered at Parking Services within 72 hours (excluding Saturday, Sunday and holidays) after issuance, except that staff citations may be answered within 72 hours by mail or in person to Parking Services.
- (2) City citations must be answered as indicated on the citation.
- (3) A vehicle parked in a manner which blocks a fire zone, emergency exit, flow of traffic, designated disabled parking space, spaces reserved for designated vehicles, or otherwise poses a danger or disrupts the orderly affairs of the University may be impounded, immobilized, or towed.
 - (a) The owner of the above vehicle will be afforded a hearing by a University official prior to the assessment of any tow charges, fines, or penalties.
 - (b) If penalties are assessed after such hearing, impounded, towed or immobilized vehicles will be released upon proper identification and receipt for payment of all appropriate fines and penalties (see below).
- (4) A vehicle which has accumulated \$50.00 or more in traffic citations may be impounded or immobilized or towed if the owner of such vehicle has received advance notice and the opportunity to contest has been given. Windshield notices and/or methods of notification will be used to provide the operator of the vehicle with advance notice of intent to tow and the operator's right to a hearing. In the event the owner does not request a hearing or prevail at the hearing, his vehicle will be towed, wheel-locked or impounded whenever it is next found upon the University property whether parked legally or illegally.

1720-02-03-.07 PENALTIES.

(1) Violation Fines - Staff, Students and Visitors. All violation fines will be paid at Parking Services or the Bursar's Office.

- | | | |
|-----|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) | No parking permit | \$20.00 <u>25.00</u> |
| (b) | Other parking violations | \$20.00 <u>25.00</u> |
| (c) | Overtime on meter | \$8.00 |
| (d) | Moving violations | \$20.00 <u>25.00</u> |
| (e) | Immobilized vehicles | \$20.00 <u>25.00</u> plus other fines owed |
| (f) | Impounded Vehicle/Towed Vehicles | Amount of fine plus costs |
| (g) | Disability Parking Violation | \$200.00
The fine for a disability parking violation is set by State law, Tennessee Code Annotated section 55-21-108. As of July 1, 2008, the fine was set at \$200. The fine imposed under these regulations will increase or decrease automatically when increased or decreased by State law. The fine shall not be suspended or waived. |
| (h) | Fire Lane/Obstruction | \$40.00 |

(2) Other Penalties - Students.

- (a) Students who fail to pay violation fines or penalties will not be permitted to register for course work, to continue as a student, to receive credit, to receive a degree, or to obtain a transcript until the fines or penalties are paid.
- (b) A staff member who persists in violating these regulations or fails to answer a citation will be reported to his department head and/or penalties may be collected through payroll deduction as specified in University Personnel Policies.
- (c) Repeated violation of parking regulations will be grounds for towing away, impoundment or immobilization in accordance with regulations under enforcement.
- (d) Students who persist in violating these regulations or commit a single violation under extreme circumstances will be referred to the Dean of Students office for disciplinary action which may lead to suspension or

dismissal from the University.

- (e) Once automobile owner has accumulated \$50.00 of unpaid fines, his car, if found parked upon University property or lots leased by the University, will be wheel-locked or towed in accordance with regulations under ENFORCEMENT.
- (f) Any individual (student, faculty or staff) with outstanding traffic citations will not be allowed to register a vehicle, renew their parking permit or purchase a parking permit until indebtedness is cleared.
- (g) In addition to the fine imposed for a disability parking violation, not more than five (5) hours of community service work may be imposed. Any community service work requirements imposed shall be to assist the disabled community by monitoring disabled parking spaces, providing assistance to disability centers or to disabled veterans, or other such purposes.

1720-02-03-.08 APPEALS.

- (1) The Student Conduct Board will handle all student appeals.
- (2) Student may appeal a violation citation within 10 class days of issuance by making application for appeal when answering the citation through forms furnished by the Parking Services.
- (3) Students may request that their appeals be heard by the Student Conduct Board without their being present at the Board's meeting. Failure to appear without advance notice will result in the case being considered in the student's absence and the decision of the board will be binding.
- (4) Staff and visitors appeal a violation citation through appropriate administrative channels.
- (5) No appeals may be made through Campus Law Enforcement.
- (6) Anyone failing to appeal within ten class days of issuance of citation loses the right to appeal.

1720-02-03-.09 RESTRICTIONS. University streets or grounds may not be used by any firm, corporation or person for advertising or commercial purposes.

1720-02-03-.10 SPECIAL OCCASIONS AND EMERGENCIES. On special occasions, for example: athletic events, concerts, graduation exercises, etc., and in emergencies, parking and traffic limitation may be imposed by the Departments of Parking Services and Campus Law Enforcement as required by the conditions which prevail.

1720-02-03-.11 PEDESTRIAN REGULATIONS.

- (1) Students and staff members must not endanger their safety or constitute an unreasonable impediment to lawful vehicular traffic by crossing streets at other than authorized lanes or by willfully walking or congregating in the streets.
- (2) All personnel are expected to avoid walking across lawns or against traffic signs.
- (3) Violations of these regulations will be cited through appropriate channels for disciplinary action.

University of Tennessee Rules
Chapter 1720-02-03 Traffic and Parking Regulations

* 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)
Governor Bill Haslam				x	
Commissioner Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	x				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue	x				
Shannon Brown	x				
George E. Cates	x				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	x				
Dr. William E. Evans				x	
John N. Foy	x				
Crawford Gallimore				x	
Dr. David Golden	x				
Vicky B. Gregg	x				
Raja J. Jubran	x				
Brad A. Lampley	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Miranda N. Rutan (non-voting)					
Rhedona Rose	x				
Julia T. Wells	x				
Charles E. Wharton	x				
Tommy G. Whittaker	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/25/2015, 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: 09/14/2015

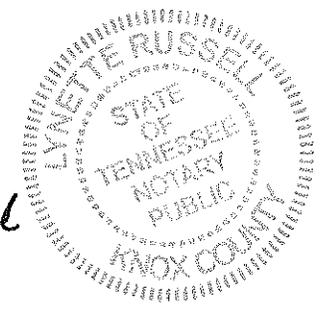
Signature:



Name of Officer: Matthew Scoggins

Title of Officer: ¹³ Deputy General Counsel

Subscribed and sworn to before me on: 9-14-15
Notary Public Signature: Lynette Russell
My commission expires on: 12-4-18



All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
10/5/2015 Date

Department of State Use Only

Filed with the Department of State on: 10-14-15
Effective on: 1-12-16
Tre Hargett

Tre Hargett
Secretary of State
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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Water Resources

SUBJECT: Public Water Systems

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-221-701 et seq.

EFFECTIVE DATES: February 22, 2016 through June 30, 2016

FISCAL IMPACT:

The Revised Total Coliform Rule is an amendment to the existing federal Total Coliform Rule. The amount of sampling should be comparable to that being done under the existing rule. The new rule does require assessments to be performed based on identified bacterial contamination but the number of cases is expected to be minimal for state and local governments. The Department will assist in the assessments for larger systems; assessments can be performed by in-house, certified operators. The assessments will trigger corrective actions to be taken that will be an additional cost to the system, but overall the corrections are expected to require minimal cost.

STAFF RULE ABSTRACT:

The Environmental Protection Agency finalized revisions to the 1989 Total Coliform Rule (TCR). The Revised Total Coliform Rule (RTCR) was published in the Federal Register on February 13, 2013. Tennessee is promulgating these rules to maintain primary enforcement authority ("primacy") from the EPA. Under the RTCR there is no longer a monthly maximum contaminant level (MCL) violation for multiple total coliform detections. Instead, the revisions require water systems that have an indication of coliform contamination in the distribution system to assess the problem and take corrective action that may reduce cases of illnesses and deaths due to potential fecal contamination and waterborne pathogen exposure. This rulemaking also updates provisions in other rules of this chapter that reference analytical methods and other requirements in the 1989 TCR (e.g., Public Notification and Ground Water Rules).

The RTCR is the only microbial drinking water regulation that applies to all public water systems. Systems are required to meet a legal limit (i.e., maximum contaminant level (MCL)) for *E. coli*, as demonstrated by required monitoring. The RTCR specifies the frequency and timing of the microbial testing by public water systems based on population served, system type, and source water type. The rule also requires public notification when there is a potential health threat as indicated by monitoring results, and when the system fails to identify and fix problems as required.

The RTCR establishes a health goal (maximum contaminant level goal, or MCLG) and an MCL for *E. coli* – a more specific indicator of fecal contamination and potential harmful pathogens than total coliforms. The updated and revised federal rule replaces the MCLG and MCL for total coliforms with a treatment technique for coliforms that requires assessment and corrective action. Fecal coliform is no longer used in the RTCR. A public water system that exceeds a specified frequency of total coliform occurrence must conduct an assessment to determine if any sanitary defects exist; if any defects are found, the system must correct them. In addition, under the treatment technique requirements, a public water system that incurs an *E. coli* MCL violation must conduct a more detailed assessment and correct any sanitary defects found.

The RTCR also requires some new monitoring requirements for seasonal systems (such as water systems serving campgrounds and recreational areas), including a state-approved start-up procedure. The RTCR eliminates public notification requirements based only on the presence of total coliforms. Instead, the RTCR requires public notification when an *E. coli* MCL violation occurs indicating a potential health threat, or when a public water system fails to conduct the required assessment and take corrective action.

Public water systems are required to develop written sampling plans by March 31, 2016. The rules are effective for public water systems on April 1, 2016. A public water system may propose alternative repeat monitoring locations that are expected to better characterize or identify pathways of contamination into the distribution system. Systems may elect to specify either alternative fixed locations or criteria for selecting their repeat sampling locations on a situational basis in a standard operating procedure which is part of the sample siting plan.

Minor housekeeping changes were made to Rule 0400-45-01-33 (Control of Lead and Copper) (specifically 0400-45-01-33(7)(b)3(iii) and (8)(e)2(ii)) and Rule 0400-45-01-.40 (Ground Water Rule) (specifically 0400-45-01-.40(6)(a)3)) to comply with federal rule. Rule 0400-45-01-.17 has been amended to require explicitly drought management plans as a part of emergency operations plans (specifically paragraph (7) of Rule 0400-45-01-.17).

Rule 0400-45-01-.34 (Drinking Water Source Protection) has been amended to simplify due dates for wellhead protection plan submittals for public water systems utilizing ground water (Rule 0400-45-01-.34(1)(g)) and source water assessments for public water systems utilizing surface water (Rule 0400-45-01-.34(1)(h)).

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.

Comment: Federal provision 40 CFR 141.52(b) cites end date of applicability of the MCLG for total coliforms (under TCR) as March 31, 2016; however, the referenced state provision Rule 0400-45-01-.06(4)(b) does not appear to end the applicability of the MCLG for total coliforms.

Response: Rule 0400-45-01-.06(4)(f)2 has been modified by adding the sentence "The MCLG identified in subpart 1(iv) of this subparagraph is no longer applicable beginning April 1, 2016."

Comment: Referenced state provision Rule 0400-45-01-.31(2)(b)5 indicates that the MCL for *E. coli* is contained in Rule 0400-45-01-.06(4)(f). This is incorrect, and the *E. coli* MCL is actually presented in Rule 0400-45-01-.06(4)(g).

Response: Corrected.

Comment: Appendix A Table for Rule 0400-45-01-.19: (2)(b): *E. coli* - TDEC needs to add 0400-45-01-.41(10)(d)1 and (d)2 to its list of cited state provisions to correspond to federal provisions added as a result of the RTCR technical corrections – 141.860(d)(1) and 141.860(d)(2).

Response: Corrected

Comment: Appendix A Table for Rule 0400-45-01-.19: (2)(c): *E. coli* TDEC cites both 0400-45-01-.41(10)(a) and (b) to correspond to the federal citation 141.860(b)(1); however, only 0400-45-01-.41(10)(b) corresponds.

Response: Corrected.

Comment: Rule 0400-45-01-.40(3)(e) - the cited state provision, as presented in the Notice of Rulemaking Hearing document submitted to EPA, does not contain the introductory language included in the current version of the state rule and that is still applicable with RTCR. Immediately following the heading "Exceptions to the Triggered Source Water Monitoring Requirements", For clarity, TDEC needs to consider that its final regulation continue to include the following introductory sentence: "A ground water system is not required to comply with the source water monitoring requirements of this paragraph if either of the following conditions exists:"

Response: The language "A ground water system is not required to comply with the source water monitoring requirements of this paragraph if either of the following conditions exists:" has been added to the beginning of Rule 0400-45-01-.40(3)(e).

Comment: Rule 0400-45-01-.41(4)(a)4. - Last sentence of the referenced Rule 0400-45-01-.41(4)(a)4. contains a typo in that "...parts (10)(c)1 and (11)(c)4 of this rule" should instead read "parts (10)(c)1 and (11)(a)4 of this rule."

Response: Corrected.

Comment: Third sentence of referenced state provision Rule 0400-45-01-.41(4)(d) – "The system must continue monthly or quarterly monitoring..." In the context of the provision, the word "quarterly" does not make sense here and needs to be deleted.

Response: Corrected

Comment: Rule 0400-45-01-.41(5)(b) - language should include, ", except as provided for under subparagraph (c) of this paragraph"

- Response: The language “, except as provided for under subparagraph (c) of this paragraph” has been added to Rule 0400-45-01-.41(5)(b).
- Comment: Rule 0400-45-01-.41(5)(c)2. - although it is understood that TDEC will not allow CWS systems serving less than or equal to 1,000 to reduce their monitoring frequency to less than one sample per month, it may be appropriate to add a clause at the end of the first sentence of this provision to mirror the sentence in the federal provision and to indicate that the purpose of the special monitoring evaluation is to determine whether the system is on an appropriate monitoring schedule (i.e., in Tennessee’s case to confirm that the CWS still serves less than or equal to 1,000 people, sample sites are appropriate, etc).
- Response: The language “to determine whether the system is on an appropriate monitoring schedule and has an appropriate sampling plan.” has been added at the end of the sentence.
- Comment: Rule 0400-45-01-.41(5)(f) - this state provision appears to represent a requirement more stringent than the federal requirement in that the state provision appears to require additional routine monitoring the month following a TC+ sample result EVEN WHEN THE SYSTEM IS ON A MONTHLY ROUTINE MONITORING SCHEDULE (as all CWS serving less than or equal to 1,000 in Tennessee will be).
- Response: It was not the intent to require systems monitoring monthly to be required to perform additional routine monitoring. The Rule has been modified to state that it applies to “Non community systems monitoring quarterly.”
- Comment: Rule 0400-45-010.41(8)(b)2 indicates that when TDEC allows a system to forgo *E. coli* testing on a TC+ sample, the provisions of Rule 0400-45-01-.06(4)(d) apply. The reference to Rule 0400-45-01-.06(4)(d) appears incorrect. The correct provision to reference here appears to be Rule 0400-45-01-.06(4)(g).
- Response: Corrected.
- Comment: In referenced state provision Rule 0400-45-01-.41(9)(a)2(i), TDEC mentions an *E. coli* MCL violation, “as specified paragraph (10) of this rule.” Paragraph (10) of the rule contains several different types of violations; thus, it is suggested that the reference to the *E. coli* MCL be made more specific, to “subparagraph (10)(a) of this rule.”
- Response: Corrected.
- Comments: Referenced state regulatory provision Rule 0400-45-01-.41(11)(b)1 indicates that sanitary defects and corrective actions are covered under “paragraph (8) of this rule.” This appears incorrect, and they actually appear to be covered under paragraph (9) of the state rule.
- Response: Corrected.
- Comment: Referenced state regulatory provision Rule 0400-45-01-.41(11)(b)2 indicates that state criteria for an extension of the 24-hour period for collecting repeat samples is covered under “part (9)(a)1 of this rule.” This is incorrect, and the criteria actually appear to be covered under part (8)(a)1 of the state rule.
- Response: Corrected.
- Comment: Can permanent, dedicated, secured sampling stations be used in lieu of taps at customer locations?
- Response: Yes. Rule 0400-45-01-.41(3)(a) Sampling siting plans specifically states that “Monitoring required by paragraphs (4) through (8) of this rule may take place at a customer’s premise, dedicated sampling station, or other designated compliance sampling location. Routine and repeat sample sites and any sampling points necessary to meet the requirements of Rule 0400-45-01-.40 must be reflected in the sampling plan.”

- Comment: Would a PWS still need to fill out form CN-0800 (Bacteriological Analysis Detail Report) for every total coliform positive/*E. coli* negative sample analyzed?
- Response: Yes. The main change is that what was an MCL violation for total coliform is now a treatment technique violation. The number of samples and tracking them should not change.
- Comment: How would a PWS determine the permanent repeat sample locations which are allowed under the RTCR?
- Response: Rule 0400-45-01-41(3)(a) Sampling siting plans specifically states that "Routine and repeat sample sites and any sampling points necessary to meet the requirements of Rule 0400-45-01-.40 must be reflected in the sampling plan." The permanent sampling locations must be representative of the distribution system, whether routine or repeat and be included in the sampling plan that will be reviewed by the Department. It will be up to the water system to justify why they think the locations are representative.
- Comment: Would a PWS have to do a level 2 assessment if you have total coliform positive/*E. coli* negative samples from different locations in your distribution system in the same month, but not enough to have a 5% MCL violation for total coliform for total coliform. (In this scenario, all repeat, above, and below samples were negative for total coliform and *E. coli*.)
- Response: The level 2 assessment is not based on the total coliform 5% MCL violation (it is also no longer an MCL violation under RTCR, it is a treatment technique violation). The positive samples would have to be from the same location, not somewhere else within the distribution system. A level 2 assessment is triggered for either an *E. coli* violation or a second level 1 trigger within a rolling 12 month period. An *E. coli* MCL violation occurs under the following circumstances {Rule 0400-45-01-41(10)(a)}:
- (a) *E. coli* MCL Violation. A system is in violation of the MCL for *E. coli* when any of the conditions identified in parts 1 through 4 of this subparagraph occur.
1. The system has an *E. coli*-positive repeat sample following a total coliform-positive routine sample.
 2. The system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample.
 3. The system fails to take all required repeat samples following an *E. coli*-positive routine sample.
 4. The system fails to test for *E. coli* when any repeat sample tests positive for total coliform.
- Comment: Definitions for Level 1 and 2 Assessment: The proposed definitions in Proposed Rule 0400-45-01-.04 refer to conducting assessments consistent with Department directives. These directives are unspecified and it is unclear how these directives will be established to the required distribution systems. This definition leaves the potential for directives to be implemented without going through the formal rulemaking process.
- Response: The Department does not feel that it is necessary to define the assessments further as a part of the rulemaking in any more detail than the sanitary survey was defined by rule. The definitions for Level 1 and 2 Assessments mirror the federal rule and are in use nationally. For many of the states, including Tennessee, the Level 2 Assessments are being viewed in the same vein as sanitary surveys and the same elements/areas of concern will apply. A sanitary survey is defined as:
- Rule 0400-45-01-.04(80) "Sanitary Survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such sources, facilities,

equipment, operation and maintenance for producing and distributing safe drinking water.

The Department's sanitary survey manual was substantially revised in 2008. The Manual can be found at <http://tn.gov/environment/water/docs/water-supply/SSManual.pdf>. {The 2013 revision was merely to update the Rule chapters from the 1200 series of the Department of Health to the 0400 series of the Department of Environment and Conservation.}

The definitions for both the Level 1 Assessments {Rule 0400-45-01-.04(56)} and Level 2 Assessments {Rule 0400-45-01-.04(57)} include the language:

"Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any Department directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system."

As stated, the assessments must be tailored to specific site assessment elements with respect to the size and type of distribution system and the size, type and characteristics of the distribution system. There is no "one size fits all" and EPA has recognized this in the rule, allowing the flexibility to tailor for the individual unique water systems. The minimum elements are also addressed in the definitions.

The level 1 assessment is primarily a records review whereas the level 2 assessment, like the sanitary survey, is a hands on inspection covering source condition (condition of intake/well/spring), plant operation (focusing on proper filter operation, turbidity and chlorine residual), proper disinfection following line repair/replacement/new lines, proper tank inspections and maintenance and proper sampling technique/sampling site condition.

The Department will follow EPA guidance regarding the assessments. The Department will have to address the implementation of the level 1 and 2 assessments in detail as a part of the primacy (primary enforcement authority) package that will be submitted to EPA approval. The EPA guidance document "Revised Total Coliform Rule Assessments and Corrective Actions Guidance Manual, Interim Final" was published in September of 2014 and can be found at: <http://water.epa.gov/lawsregs/rulesregs/sdwa/tcr/upload/epa815r14006.pdf>. The EPA guidance document "The Revised Total Coliform Rule (RTCR) State Implementation Guidance—Interim Final" was published in December of 2014 and can be found at: <http://water.epa.gov/lawsregs/rulesregs/sdwa/tcr/upload/epa816r14004.pdf>.

Comment: Maximum Contaminant Level Goal (MCLG): Proposed Rule 0400-45-01-.06[4](f) would establish MCLGs for a number of contaminants at "zero." The regulation should clarify that an MCLG is a non-enforceable goal. A definition, based upon the federal definition of MCLG in 40 CFR§141.2, should be included as follows:

Maximum contaminant level goal or MCLG means that the maximum level of the contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. Maximum contaminant level goals are non-enforceable health goals.

Response: The MCLG definition has been added as a definition in Rule 0400-45-01-.04.

Comment: Maximum Contaminant Levels: The proposal would amend subparagraphs (a) and (b) of Rule 0400-45-01-.06[4], and establish new subparagraphs (f) through (j). As such, it is proposed that existing subparagraph (d) of Rule 0400-45-01-.06[4] remain unchanged. We request that subparagraph (d) be deleted.

Subparagraph (d) states that a public water system must determine compliance with the MCL for total coliforms for each month in which it is required to monitor for total coliforms. Proposed Rule 0400-45-01-.06[4](h), however, would address such subject matter and make it clear that total coliform sampling for compliance with the MCL is only required until March 31, 2016. As such, subparagraph (d) should be deleted.

Response: This mirrors the federal rule. Until April 1, 2016, the rule remains in effect. The Department believes that Rule 0400-45-01-.06(4)(a) which falls within the same paragraph (4) makes this sufficiently clear to leave subparagraph (d) in place.

(a) Until March 31, 2016, the total coliform maximum contaminant level (MCL) is based on the presence or absence of total coliforms in a sample, rather than coliform density. Beginning April 1, 2016, the MCL for total coliform shall no longer be in effect.

Comment: MCLGs for Total Coliform and *E. coli*: The federal regulation at 40 CFR§ 141.52 provides for the MCLG for total coliforms (including fecal coliform and *Escherichia coli*) to be applicable "until March 31, 2016" which, at that time, the MCLG for *Escherichia coli* (*E. coli*) becomes effective. 40 CFR § 141.52(b). Proposed Rule 0400-45-01-.06[4](f) in contrast, would purport to continue having the MCLG for total coliforms effective, even after the April 1, 2016, date for the new *E. coli* standard. See proposed Rule 0400-45-01-.06[4](f)2. Consistent with the federal rule, the total coliform MCLG should no longer be applicable once the *E. coli* MCLG is applicable. The final rule should reflect such change. Similar to the federal approach, this change can be recognized in Rule 0400-45-01-.06[4](f)2. In the alternative, the second sentence of [sub]paragraph (a) can be amended to state that "Beginning April 1, 2016, the MCL and MCLG for total coliform shall no longer be in effect."

Response: Rule 0400-45-01-.06(4)(f)2 has been modified by adding the sentence "The MCLG identified in subpart 1(iv) of this subparagraph is no longer applicable beginning April 1, 2016."

Comment: Drought Management Plan: The proposed amendment to paragraph (7) of Rule 0400-45-01-.17 would require systems to submit drought management plan portions of the emergency operations to TDEC for approval. The regulations would purport to now require a drought management plan but establish absolutely no criteria as to what should be in such a plan and the criteria to be used by TDEC in determining whether such a plan is approvable. Before finalizing any regulation requiring a drought management plan, the Department should first propose criteria for the plan. As proposed, the regulation should not be finalized.

Response: The Department believes that drought management plans are within the scope of the emergency operations plans document authorized by existing rule and that it is appropriate to specifically include a drought management plan as a part of the EOP, particularly in light of the historic drought of 2007-2008 and a lesser drought in 2012. Rule 0400-45-01-.17(7) states that "all community water system shall prepare an emergency operations plan in order to safeguard the water supply and to alert the public of unsafe drinking water in the event of natural or man-made disasters. Emergency operation plans shall be consistent with guidelines established by the Department and shall be reviewed and approved by the Department." There are no plans to modify the publicly available guidance document for drought management plans that has been in use for a number of years and which has been used by a large number of systems to submit plans and obtain approvals.

The Department's Emergency Operations Plan guidance document for water systems was completed in October of 2007 and may be found at: http://www.tn.gov/environment/water/water-supply_drinking-water-security-emergency-planning.shtml. In the Introduction of the guidance document there is a statement that:

"An EOP includes specific response actions to routine operating emergencies (line break, power outage, mechanical failure, water contamination), natural disasters (tornado, flood, earthquake, ice storm, drought), accidents (fire, chemical spill, explosion), intentional man-made acts (vandalism, terrorism, threats), or any major catastrophic incident that causes casualties, damage or disruption to the water system.

The Department began asking for drought management plans for at risk/impacted systems as an addendum to their Emergency Operations Plans during the severe drought of 2007 – 2008. The finalized version of the drought management guidance was completed in December of 2009 and may be found at: http://tn.gov/environment/water/docs/water-supply/droughtmgtplan_guidance.pdf. To date the Department has received and approved well over 100 drought management plans. The Department will continue to use the existing guidance.

Comment: Wellhead Protection Plans: Proposed Rule 0400-45-01-.34[1](g)(3) would require a wellhead protection plan to be submitted every three years instead of the current frequency of every six years. No information has been provided as to why the current six year period is deemed to be deficient and why public water systems would now be required to submit a plan twice as frequently. We request that the current six year period be retained.

Response: The change was made to ensure consistency of submittals, minimize confusion and better keep the water systems in compliance. With the dynamics of rapidly growing communities, considerable changes can occur in three years and these were not being documented. Many of the ground water systems were submitting a new plan at three year intervals and others simply submitting a one page form stating "nothing has changed." Systems are also required to perform a contaminant source inventory annual with a update submittal to the Department in third year after the wellhead protection plan was submitted (Rule 0400-45-01-.34(1)(g)3). In the Department's experience, the annual inventories were not being done and in many cases the inventory submittal in third year was also in many cases "nothing has changed." Systems are also required to submit an updated plan whenever there were "significant new potential contamination sources" (Rule 0400-45-01-.34(1)(f)13), which is not taking place.

The Department has been entering the contaminant source inventory information into a GIS database and this has proven difficult owing to the inconsistency of the submittals. It is difficult to provide any Departmental assistance without being aware of the situations that may exist within the wellhead protection areas. The change was made to ensure consistency of submittals. The difference in alternating between an update (including a revised contaminant source inventory) and a plan in sequential three year intervals (Rule 0400-45-01-.34(1)(g)3) requires very little additional effort and will cut down on confusion and will better keep water systems in compliance with the rule.

Comment: Exceptions to the Triggered Source Water Monitoring Requirements: It appears that proposed Rule 0400-45-01-.40(3)(e) inadvertently omitted the following language: "A ground water system is not required to comply with the source water monitoring requirements of this paragraph if either of the following conditions exists." The existing regulation, as well as 40 CFR § 141.402(a)(5), contains such language. The omitted language should be retained in the State's rule.

Response: Corrected.

Comment: Analytical Methodology: Proposed Rule 0400-45-01-.41(2)(a)5 sets forth a table of analytical procedures. In comparing the table to the federal regulation, the following editorial errors were identified: (a) Organism: Total Coliforms, last row. The words "Modified Colitag® Test2" should be moved from the "Citation" column to the "Method" column and (b) Organism: Escherichia coli, Methodology Category: Membrane Filtration Methods. Footnote designation "2 4" should be added to "Chromocult®."

Response: Corrected.

Comment: Recordkeeping: Proposed Rule 0400-45-01-.41(11)(b)(2) cross-references part (9)(a)1. The cross-reference should be (8)(a)1.

Response: Corrected.

Issues raised during legal review of these amendments.

The amendment to paragraph (22) of Rule 0400-45-01-.17 was proposed to eliminate a conflict with recently amended Federal Safe Drinking Water Act regarding "lead free" terminology. The federal statutory change made the definition of "lead free" in T.C.A. §§ 68-221-701 et seq. and in Chapter 0400-45-01 less stringent making it necessary to amend both. Amending T.C.A. §§ 68-221-701 et seq. and Chapter 0400-45-01 simultaneously has created timing issues; T.C.A. §§ 68-221-701 et seq. must be amended first. Therefore, the proposed amendment to paragraph (22) of Rule 0400-45-01-.17 is being removed from the rulemaking to eliminate this timing issue.

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.

- (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.

All community and non-community public water systems are affected by the Revised Total Coliform Rule. This is a federal rule that the Department is promulgating to maintain continuing primary enforcement authority from EPA. Small businesses that serve water to the public and meet the definition of a public water system are all regulated by the Revised Total Coliform Rule. There are 162 water systems that would be considered small businesses. Of the 162, the majority of the businesses are campgrounds and resorts (53), followed by boat docks/marinas (21), restaurants (21), gas stations/markets (18) and mobile home parks (12). These are non-community systems with the exception of the mobile home parks.

- (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.

This is a revision to the existing federal Total Coliform Rule which is also contained in the state rules for primacy (primary enforcement authority from EPA). Additional reporting will be in the form of assessments and corrective actions where bacterial contamination is identified through routine sampling. The Department intends to perform the assessments for the small water systems to minimize the additional cost to the systems. The more advanced level 2 assessments must be done by Department personnel or certified water system operators.

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

Water systems that identify bacterial contamination through routine sampling will be required to have assessments performed to determine the cause of the contamination. The businesses will have to take corrective action where deficiencies in the treatment or distribution system are found that have led to bacterial contamination. The Department is endeavoring to minimize the impact to the small water systems (less than 10,000 in population) by performing the assessments which will be free of charge.

- (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.

No less burdensome method has been identified. The Revised Total Coliform Rule is a federal rule. If the Department did not promulgate these regulations and obtain primacy from EPA, the systems would be regulated directly by EPA. EPA would not perform the assessments for the water systems which would be an additional burden on the systems.

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

The Revised Total Coliform Rule is a federal rule, published in 40 CFR 141.851-861. The Department rule mirrors the federal rule with the exception of the Department having chosen to retain some aspects of the existing Total Coliform Rule to minimize confusion, tracking issues and to be more protective of public health by not allowing sampling frequency waivers.

- (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.

This is a federal rule. Exempting small businesses would cause the Department to be unable to obtain primacy from EPA in which case EPA would directly implement the rule.

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 have an impact on local governments.

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Sequence Number: 11-13-15
 Rule ID(s): 6070
 File Date: 11-24-15
 Effective Date: 2-22-16

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 Rollins
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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
0400-45-01	Public Water Systems
Rule Number	Rule Title
0400-45-01-.04	Definitions
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-.19	Notification of Customers
0400-45-01-.31	Filtration and Disinfection
0400-45-01-.32	Fees for Public Water Systems
0400-45-01-.33	Control of Lead and Copper
0400-45-01-.34	Drinking Water Source Protection
0400-45-01-.35	Consumer Confidence Reports
0400-45-01-.36	Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors
0400-45-01-.37	Stage 2 Initial Distribution System Evaluation for Disinfection Byproducts
0400-45-01-.40	Ground Water Rule
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

Rule 0400-45-01-.04 Definitions is amended by deleting it in its entirety and substituting instead the following:

0400-45-01-.04 Definitions.

- (1) "Action level" is the concentration of lead or copper in water which may determine the treatment requirements that a water system is required to complete.
- (2) "Bag Filters" are pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed on a non-rigid fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.
- (3) "Bank Filtration" is a water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by nearby pumping water supply or other wells.
- (4) "Benchmark" A disinfection benchmark is the lowest monthly average value of the monthly logs of *Giardia Lamblia* inactivation.
- (5) "Business Plan" means a document which identifies source(s) of income or revenue sufficient to meet expenses over a three (3) year period. The business plan will identify costs related to retaining a certified operator, estimated annual infrastructure repair costs, depreciation, facility maintenance fees, estimated annual monitoring costs, estimated costs of providing public notices, estimated administrative costs, and any and all other operational, treatment, and related costs (e.g. chemicals and other supplies used to treat water, etc.). The business plan must include the re-payment of borrowed and amortized funds.
- (6) "Capacity Development Plan" means a document(s) identifying what actions a public water system is taking or shall take to become a "viable water system." Such plan shall include information concerning retention of a Certified Operator in direct charge; system ownership and accountability; staffing and organizational structure; fiscal management and controls, source water assessment and protection plan; "business plan;" and any and all other information identifying any further action that shall be taken.
- (7) "Cartridge filters" are pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed a rigid or semi-rigid self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.
- (8) "Clean compliance history" is, for the purposes of Rule 0400-45-01-.41, a record of no MCL violations under paragraph (4) of Rule 0400-45-01-.06; no monitoring violations under Rule 0400-45-01-.07 or Rule 0400-45-01-.41; and no coliform treatment technique trigger exceedances or treatment technique violations under Rule 0400-45-01-.41.
- ~~(8)~~(9) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.
- ~~(9)~~(10) "Combined distribution system" is the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.
- ~~(10)~~(11) "Community Water System" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(11)(12) "Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor for certain contaminants. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

(12)(13) "Compliance period" means a three year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; the third from January 1, 1999 to December 31, 2001.

(13)(14) "Comprehensive performance evaluation (CPE)" is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance, the comprehensive performance evaluation must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

(14)(15) "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

(15)(16) "Connection" means the point at which there is a meter or service tap if no meter is present.

(16)(17) "Consecutive system" is a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

(17)(18) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(18)(19) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(19)(20) "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(20)(21) "CT" or "CTcalc" is the product of "residual disinfectant concentration" (C) in mg/1 determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T". If a public water system applies disinfectants at more than one point prior to the first customer, it must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation ratio". In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s). "CT_{99.9}" is the CT value required for 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts. CT_{99.9} for a variety of disinfectants and conditions appear in Tables 1.1 through 1.6, 2.1, and 3.1 of part (5)(b)3 of Rule 0400-45-01-.31.

$$\frac{CT_{calc}}{CT_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as

$$\sum \frac{(CT_{calc})}{(CT_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than 1.0 is assumed to provide a 3-log inactivation of *Giardia lamblia* cyst.

Disinfectant concentrations must be determined by tracer studies or an equivalent demonstration approved by the Department.

(24)(22) "Department" when used in these regulations shall mean the Division of Water Supply, Tennessee Department of Environment and Conservation, or one of the Division's Field Offices.

(22)(23) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (1) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (2) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(23)(24) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(24)(25) "Disinfectant" means any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(25)(26) "Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. Where only one "C" is measured, "T" is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is (a) for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and (b) for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

(26)(27) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(27)(28) "Disinfection profile" is a summary of daily *Giardia lamblia* inactivation through the treatment plant. The procedure for developing a disinfection profile is contained in 40 CFR 141.172.

(28)(29) "Distribution System" means all water lines up to the point of a meter. For unmetered systems distribution system includes all lines up to the customer's service tap.

(29)(30) "Domestic or other non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(30)(31) "Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(31)(32) "Dual sample set" is a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an IDSE under the provisions of Rule 0400-45-01-37 and determining compliance with the TTHM and HAA5 MCLs under the provisions of Rule 0400-45-01-38.

(32)(33) "Effective corrosion inhibitor residual" for the purpose of the lead and copper rules only, means a concentration sufficient to form a passivating film on the interior walls of a pipe.

(33)(34) "Engineer" means the person or firm who designed the public water system and conceived, developed, executed or supervised the preparation of the plan documents.

- (34)(35) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.
- (35)(36) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.
- (36)(37) "Filter profile" is a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.
- (37)(38) "Filtration" means a process for removing particulate matter from water by passage through porous media.
- (38)(39) "Finished water" is water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).
- (39)(40) "First draw sample" means a one-liter sample of tap water, for the purposes of the lead and copper rules, that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.
- (40)(41) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.
- (41)(42) "Flowing stream" is a course of running water flowing in a definite channel.
- (42)(43) "GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as best available technology for compliance with disinfection byproducts shall be 120 days.
- (43)(44) "GAC20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.
- (44)(45) "Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
- (45)(46) "Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.
- (46)(47) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the Department. The Department determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.
- (47)(48) "Haloacetic acids (five) (HAA5)" mean the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.
- (48)(49) "Halogen" means one of the chemical elements chlorine, bromine or iodine.
- (49)(50) "Human Consumption" - means the use of water that involves any drinking or ingestion of the water by humans, any human skin contact or food preparation where the food is not brought to boiling temperatures after contact with the water.

~~(50)~~(51) "Initial compliance period" means the first full three-year compliance period which begins January 1, 1993. For public water systems having fewer than 150 service connections initial compliance period shall be January 2, 1996, for the following contaminants:

(a)	Antimony	(m)	endrin
(b)	Beryllium	(n)	glyphosate
(c)	Cyanide	(o)	oxamyl
(d)	Nickel	(p)	picloram
(e)	Thallium	(q)	simazine
(f)	dichloromethane	(r)	benzo(a)pyrene
(g)	1,2,4-trichlorobenzene	(s)	di(2ethylhexyl)adipate
(h)	1,1,2-trichloroethane	(t)	di(2ethylhexyl)phthalate
(i)	dalapon	(u)	hexachlorobenzene
(j)	dinoseb	(v)	hexachlorocyclopentadiene
(k)	diquat	(w)	2,3,7,8 TCDD
(l)	endothall		

~~(54)~~(52) "Lake/reservoir" refers to a natural or man-made basin or hollow on the earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

~~(52)~~(53) "Large water system" for the purpose of lead and copper rule, means a water system that serves more than 50,000 persons.

~~(53)~~(54) "Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

~~(54)~~(55) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

~~(56)~~ "Level 1 assessment" is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. It is conducted by the system operator or owner. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any Department directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

~~(57)~~ "Level 2 assessment" is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. A Level 2 assessment provides a more detailed examination of the system (including the system's monitoring and operational practices) than does a Level 1 assessment through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. It is conducted by an individual approved by the Department, which may include the system operator. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any Department directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system. The system must comply with any expedited actions or additional actions required by the Department in the case of an *E. coli* MCL violation.

~~(55)~~(58) "Locational running annual average (LRAA)" is the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

- ~~(56)~~(59) "Man-Made Beta Particle and Photon Emitter" means all radionuclides emitting beta particles and/or photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69", except the daughter products of thorium-232, uranium-235 and uranium-238.
- ~~(57)~~(60) "Maximum Contaminant Level" means the maximum permissible level of a contaminant in water which is delivered at the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.
- (61) "Maximum contaminant level goal" or "MCLG" means that the maximum level of the contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. Maximum contaminant level goals are non-enforceable health goals.
- ~~(58)~~(62) "Maximum residual disinfectant level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a PWS is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a PWS is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.
- ~~(59)~~(63) "Maximum Total Trihalomethane Potential (MTP)" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after 7 days at a temperature of 25°C or above.
- ~~(60)~~(64) "Medium-size water system" for the purpose of the lead and copper rule means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.
- ~~(61)~~(65) "Membrane filtration" is a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.
- ~~(62)~~(66) "Near the first service connection" means at one of the twenty percent of all service connections in the entire system that are nearest the water supply treatment facility, as measured by the water transport time within the distribution system.
- ~~(63)~~(67) "Non-Community Water System" means a public water system that is not a community water system. A non-community water system is either a "transient non-community water system" (TNCWS) or a "non-transient non-community water system" (NTNCWS).
- ~~(64)~~(68) "Non-Transient Non-Community Water System" or NTNCWS" means a non-community water system that regularly serves at least twenty-five (25) of the same persons over six (6) months per year.
- ~~(65)~~(69) "Optimal corrosion control treatment" for the purpose of lead and copper rule only means the corrosion control treatment that minimizes the lead and copper concentrations at user's taps while insuring that the treatment does not cause the water system to violate any primary drinking water regulation.

~~(66)~~(70)"Person" means any individual, corporation, company, association, partnership, State, municipality, utility district, water cooperative, or Federal agency.

~~(67)~~(71)"Picocurie" (pCi) means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

~~(68)~~(72)"Plan Documents" mean reports, proposals, preliminary plans, survey and basis of design data, general and detailed construction plans, profiles, specifications and all other information pertaining to public water system planning.

~~(69)~~(73)"Plant intake" refers to the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

~~(70)~~(74)"Point of disinfectant application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

~~(71)~~(75)"Point-of-Entry Treatment Device" (POE) means a device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

~~(72)~~(76)"Point-of-Use Treatment Device" (POU) means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

~~(73)~~(77)"Presedimentation" is a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

~~(74)~~(78)"Primary Drinking Water Regulation" means a regulation promulgated by the Department which:

- (a) applies to public water systems;
- (b) specifies contaminants which, in the judgment of the Department, may have any adverse effect on the health of persons;
- (c) specified for each such contaminant either:
 - 1. a maximum contaminant level, if, in the judgment of the Department, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or
 - 2. if, in the judgment of the Department, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Department which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of Rule 0400-45-01-.06; and
- (d) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; or treatment techniques including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

~~(75)~~(79)"Public Water System" means a system for the provision of piped water for human consumption if such serves 15 or more connections or which regularly serves 25 or more individuals daily at least 60 days out of the year and includes:

- (a) any collection, treatment, storage or distribution facility under control of the operator of such system and used primarily in connection with such system; and
- (b) any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system,

The population of a water system shall be determined by actual count or by multiplying the household factor by the number of connections in the system. The household factor shall be taken from the latest federal census for that county or city. Water systems serving multi-family residences such as apartment complexes and mobile home parks shall include each individual residence unit as a connection in determining the population for the system.

~~(76)~~(80) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millerem (mrem)" is 1/1000 of a rem.

~~(77)~~(81) "Repeat compliance period" means any subsequent compliance period after the initial compliance period.

~~(78)~~(82) "Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in mg/l in a representative sample of water.

~~(79)~~(83) "Safe Drinking Water Act" means the Federal law codified in 42 United States Code 300f et seq., Public Law 93-523, dated December 16, 1974 and subsequent amendments.

~~(84)~~ "Sanitary defect" is a defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place.

~~(80)~~(85) "Sanitary Survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such sources, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

~~(86)~~ "Seasonal system" is a non-community water system that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and end of each operating season.

~~(84)~~(87) "Secondary Drinking Water Regulation" mean a regulation promulgated by the Department which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Department are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water

(a) which may adversely affect the odor or appearance of such water and consequently may cause the persons served by the public water system providing such water to discontinue its use, or

(b) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

~~(82)~~(88) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

~~(83)~~(89) "Service line sample" means a one-liter sample of water collected in accordance with part (7)(b)3 of Rule 0400-45-01-.33, that has been standing for at least 6 hours in a service line.

~~(84)~~(90) "Single family structure" for the purpose of lead and copper rules means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

~~(85)~~(91) "Slow sand filtration" means a process involving passage of a raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.

~~(86)~~(92) "Small water system" for the purpose of the lead and copper rules only, means a water system that serves 3,300 or fewer persons.

~~(87)~~(93) "Subpart H systems" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to the requirements of Rules 0400-45-01-.17, 0400-45-01-.31 and 0400-45-01-.39.

~~(88)~~(94) "Supplier of Water" means any person who owns or operates a public water system.

- ~~(89)~~(95) "Surface water" means all water which is open to the atmosphere and subject to surface runoff.
- ~~(90)~~(96) "SUVA" means Specific Ultraviolet Absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV 254/ (in m) by its concentration of dissolved organic carbon (DOC) (in mg/L).
- ~~(91)~~(97) "System with a single service connection" means a system which supplies drinking water to consumers via a single service line.
- ~~(92)~~(98) "Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47 millimeter diameter membrane filter used for coliform detection.
- ~~(93)~~(99) "Total Organic Carbon" (TOC) means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.
- ~~(94)~~(100) "Total trihalomethane" (TTHM) means the sum of concentration in milligrams per liter of the trihalomethane compounds-trihalomethane (chloroform), dibromochloromethane, bromodichloro-methane and tribromomethane (bromoform), rounded to two significant figures.
- ~~(95)~~(101) "Transient Non-Community Water System" or "TNCWS" means a non-community water system that regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. A transient non-community water system is a public water supply system that generally serves a transient population such as hotels, motels, restaurants, camps, service stations churches, industry, and rest stops.
- ~~(96)~~(102) "Trihalomethane" (THM) means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.
- ~~(97)~~(103) "Two-stage lime softening" is a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes.
- ~~(98)~~(104) "Uncovered finished water storage facility" is a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere.
- ~~(99)~~(105) "Viable Water System" means a public water system which has the commitment and the financial, managerial and technical capacity to consistently comply with the Tennessee Safe Drinking Water Act and these regulations.
- ~~(100)~~(106) "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.
- ~~(101)~~(107) "Waterborne disease outbreak" means a significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.
- ~~(102)~~(108) "Wholesale system" is a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

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

Subparagraph (a) of paragraph (4) of Rule 0400-45-01-.06 Maximum Contaminant Levels is amended by deleting it in its entirety and substituting instead the following:

- (a) The Until March 31, 2016, the total coliform maximum contaminant level (MCL) is based on the presence or absence of total coliforms in a sample, rather than coliform density. Beginning April 1, 2016, the MCL for total coliform shall no longer be in effect.

The number of total coliform positive samples shall not exceed any of the following:

1. For a system which collects at least 40 samples per month, if no more than 5.0 percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.
2. For a system which collects fewer than 40 samples/month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.
3. A public water system which has exceeded the MCL for total coliforms must report the violation to the Department no later than the end of the next business day after it learns of the violation and notify the public in accordance with the schedule of Rule 0400-45-01-.19 using the language specified in Rule 0400-45-01-.19.
4. A public water system which has failed to comply with the coliform monitoring requirements, including a sanitary survey requirement must report the monitoring violation to the Department within ten (10) days after the system discovers the violation and notify the public in accordance with Rule 0400-45-01-.19.

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

Subparagraph (b) of paragraph (4) of Rule 0400-45-01-.06 Maximum Contaminant Levels is amended by deleting it in its entirety and substituting instead the following:

- (b) Until March 31, 2016, Any any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample, constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in Rule 0400-45-01-.19, this is a tier-1 violation that may pose an acute risk to health.

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

Paragraph (4) of Rule 0400-45-01-.06 Maximum Contaminant Levels is amended by adding subparagraphs (f) through (j) to read as follows:

- (f) Maximum contaminant level goals for microbiological contaminants.

1. MCLGs for the following contaminants are as indicated:

Contaminant	MCLG
(i) <i>Giardia lamblia</i>	zero
(ii) Viruses	zero
(iii) <i>Legionella</i>	zero
(iv) Total coliforms (including fecal coliforms and <i>Escherichia coli</i>)	zero
(v) <i>Cryptosporidium</i>	zero
(vi) <i>Escherichia coli (E. coli)</i>	zero

2. The MCLG identified in subpart 1(iv) of this subparagraph is no longer applicable beginning April 1, 2016.

- (g) Beginning April 1, 2016, a system is in compliance with the MCL for *E. coli* for samples taken under the provisions of Rule 0400-45-01-.41 unless any of the conditions identified in parts 1 through 4 of this subparagraph occur. For purposes of the public notification requirements in Rule 0400-45-01-.19, violation of the MCL may pose an acute risk to health.

1. The system has an *E. coli*-positive repeat sample following a total coliform positive routine sample.

2. The system has a total coliform positive repeat sample following an *E. coli*-positive routine sample.
 3. The system fails to take all required repeat samples following an *E. coli*-positive routine sample.
 4. The system fails to test for *E. coli* when any repeat sample tests positive for total coliform.
- (h) Until March 31, 2016, a public water system must determine compliance with the MCL for total coliforms in subparagraphs (a) and (b) of this paragraph for each month in which it is required to monitor for total coliforms. Beginning April 1, 2016, a public water system must determine compliance with the MCL for *E. coli* in subparagraph (g) of this paragraph for each month in which it is required to monitor for total coliforms.
- (i) The EPA Administrator, pursuant to section 1412 of the Federal Safe Drinking Water Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms in subparagraphs (a) and (b) of this paragraph and for achieving compliance with the maximum contaminant level for *E. coli* in subparagraph (g) of this paragraph:
1. Protection of wells from fecal contamination by appropriate placement and construction;
 2. Maintenance of a disinfectant residual throughout the distribution system;
 3. Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, cross connection control, and continual maintenance of positive water pressure in all parts of the distribution system;
 4. Filtration and/or disinfection of surface water, as described in Rules 0400-45-01-.17, 0400-45-01-.31 and 0400-45-01-.39, or disinfection of ground water, as described in Rule 0400-45-01-.40, using strong oxidants such as chlorine, chlorine dioxide, or ozone; and
 5. For systems using ground water, compliance with the requirements of an EPA-approved State Wellhead Protection Program developed and implemented under section 1428 of the Federal Safe Drinking Water Act.
- (j) The EPA Administrator, pursuant to section 1412 of the Federal Safe Drinking Water Act, hereby identifies the technology, treatment techniques, or other means available identified in subparagraph (i) of this paragraph as affordable technology, treatment techniques, or other means available to systems serving 10,000 or fewer people for achieving compliance with the maximum contaminant level for total coliforms in subparagraphs (a) and (b) of this paragraph and for achieving compliance with the maximum contaminant level for *E. coli* in subparagraph (g) of this paragraph.

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

Subparagraph (a) 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:

- (a) Reserved Effective April 1, 2016, violations for total coliform and fecal coliform shall no longer be considered MCL violations and violations regarding total coliform shall be treatment technique triggers as described in Rule 0400-45-01-.41. Paragraph (5) of this rule further delineates the transition to Rule 0400-45-01-.41.

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

Rule 0400-45-01-.07 Monitoring and Analytical Requirements is amended by adding subparagraph (5) to read as follows:

(5) Subparagraphs (1)(c) and (4)(c) of this rule are applicable until March 31, 2016. The provisions of paragraphs (2) and (3) of this rule and Rules 0400-45-01-.06(4)(c), 0400-45-01-.14(10)(a), and 0400-45-01-.06(4)(a)3 are applicable until all required repeat monitoring under paragraph (2) of this rule and fecal coliform or *E. coli* testing under Rule 0400-45-01-.06(4)(c) that was initiated by a total coliform-positive sample taken before April 1, 2016, is completed, as well as analytical method, reporting, recordkeeping, public notification, and consumer confidence report requirements associated with that monitoring and testing. Beginning April 1, 2016, the provisions of Rule 0400-45-01-.41 are applicable, with systems required to begin regular monitoring at the same frequency as the system specific frequency required on March 31, 2016.

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

Paragraph (7) of Rule 0400-45-01-.17 Operation and Maintenance Requirements is amended by deleting it in its entirety and substituting instead the following:

(7) ~~Within one year after the effective date of these regulations all~~ All community water system shall prepare and maintain an emergency operations plan in order to safeguard the water supply and to alert the public of unsafe drinking water in the event of natural or man-made disasters. Emergency operation plans shall be consistent with guidelines established by the Department and shall be reviewed and approved by the Department. Systems shall include a drought management plan as a part of the emergency operations plan. The drought management plans portions of the emergency operations shall be submitted for approval as follows:

(a) Systems serving 3,000 or more connections including consecutive systems: June 30, 2016.

(b) Systems serving more than 1,000 connections and less than 3,000 connections including consecutive systems: June 30, 2017.

(c) Systems serving 1,000 connections or less: June 30, 2018.

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

The table which is subparagraph (a) of paragraph (2) of Rule 0400-45-01-.19 Notification of Customers is amended by adding the following sentence at the end of part 1 of the table such that as amended the part 1 of the table shall read:

1. Violation of the MCL for total coliforms when fecal coliform or *E. coli* are present in the water distribution system as specified in Rule 0400-45-01-.06, or when the water system fails to test for fecal coliforms or *E. coli* when any repeat sample tests positive for coliform as specified in Rule 0400-45-01-.07; Violation of the MCL for *E. coli* (as specified in Rule 0400-45-01-.06(4)(f));

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

Part 2 of subparagraph (b) of paragraph (3) of Rule 0400-45-01-.19 Notification of Customers is amended by deleting it in its entirety and substituting instead the following:

2. The public water system must repeat the notice every three months as long as the violation or situation persists, unless the primacy agency determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. ~~The department will not allow less frequent repeat notice for an MCL violation under the Total Coliform rule or a treatment technique violation under Rule 0400-45-01-.31. The department~~ Department will not through its rules or policies permit across-the-board reductions in the repeat notice frequency for other ongoing violations requiring a Tier 2 repeat notice. ~~The Department will not allow through its rules or policies less frequent repeat notice for an MCL or treatment technique violation under Rule 0400-45-01-.07 (Monitoring) or Rule 0400-45-01-.41 (Revised Total Coliform Rule) or a treatment technique violation under Rule 0400-45-01-.31 (Filtration and Disinfection).~~ Department determinations allowing

repeat notices to be given less frequently than once every three months must be in writing.

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

Subparagraph (a) of paragraph (4) of Rule 0400-45-01-.19 Notification of Customers is amended by deleting it in its entirety and substituting instead the following:

- (a) Which violations or situations require a Tier 3 public notice? Table 0400-45-01-.19(4) lists the violation categories and other situations requiring a Tier 3 public notice. Appendix A to this rule identifies the tier assignment for each specific violation or situation.

Table 0400-45-01-.19(4)

Violation Categories and Other Situations Requiring a Tier 3 Public Notice

1. Monitoring violations for the primary drinking water contaminants, except where a Tier 1 notice is required under subparagraph (2)(a) of this rule or where the department determines that a Tier 2 notice is required;
2. Failure to comply with an approved departmental or EPA testing procedure, except where a Tier 1 notice is required under subparagraph (2)(a) of this rule or where the department determines that a Tier 2 notice is required;
3. Operation under a variance granted under Section 1415 or an exemption granted under Section 1416 of the Safe Drinking Water Act;
4. Availability of unregulated contaminant monitoring results, as required under paragraph (7) of this rule; and
5. Exceedance of the fluoride secondary maximum contaminant level (SMCL), as required under paragraph (8) of this rule; and
6. Reporting and Recordkeeping violations under Rule 0400-45-01-.41.

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

I.A.1 and 2 of Appendix A of Rule 0400-45-01-.19 of Rule 0400-45-01-.19 Notification of Customers is amended by deleting the entries for "Total Coliform" and "Fecal Coliform/*E. coli*" under I.A. Microbiological Contaminants and replacing them with the following entries such that, as amended, the entries for I.A.1 and I.A.2 shall read as follows:

Appendix A TO Rule 0400-45-01-.19
NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE¹

Contaminant	MCL/MRDL/TT violations ²		Monitoring & Testing procedure violations	
	Tier of Public Notice Required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR) ³				
A. Microbiological				

Contaminants				
1. a. Total coliform bacteria †	2	0400-45-01-.06(4)(a)	3	0400-45-01-.07(1) and (2)
1. b. Total coliform (TT violations resulting from failure to perform assessments or corrective actions, monitoring violations, and reporting violations) ‡	2	0400-45-01-.41(10)(a) through (b)	3	0400-45-01-.41(10)(c) through (d)
1. c. Seasonal system failure to follow Department-approved start-up plan prior to serving water to the public or failure to provide certification to the Department. ‡	2	0400-45-01-.41(10)(b)2		
2. a. Fecal coliform/ <i>E. coli</i> †	1	0400-45-01-.06(4)(b)	⁴ 1,3	0400-45-01-.07(1) and (2)
2. b. <i>E. coli</i> ‡	1	0400-45-01-.41(10)(a)	3	0400-45-01-.41(10)(c) 0400-45-01-.41(10)(d)1 and 2
2. c. <i>E. coli</i> (TT violations resulting from failure to perform level 2 assessments or corrective action) ‡	2	0400-45-01-.41(10)(b)		

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

The Appendix A -- Endnotes of Appendix A TO Rule 0400-45-01-.19 of Rule 0400-45-01-.19 Notification of Customers is amended by adding the two following endnotes at the beginning of the sequence of Endnotes to read as follows:

- † Until March 31, 2016
- ‡ Beginning April 1, 2016

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

A. Microbiological Contaminants of Appendix B TO Rule 0400-45-.19 of Rule 0400-45-01-.19 Notification of Customers is amended deleting it in its entirety and substituting instead the following:

Appendix B to Rule 0400-45-01-.19
Standard Health Effects Language for Public Notification

Contaminant	MCLG ¹ mg/L	MCL ² mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR)			
A. Microbiological <u>Microbiological</u> Contaminants			
1a. Total coliform †	Zero	See footnote ³	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
1b. Fecal coliform/ <i>E. coli</i> †	Zero	Zero	Fecal coliforms and <i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
1c. Fecal indicators (GWR) i. <i>E. coli</i> ii. Enterococci	Zero None	TT TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
1d. Ground Water Rule (GWR) TT violations	None	1 NTU ⁵ /2 NTU	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.

<p><u>1e. Revised Total Coliform Rule: Coliform Assessment and/or Corrective Action Violations ‡</u></p>	<p><u>N/A</u></p>	<p><u>II</u></p>	<p><u>Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessments to identify problems and correct any problems that are found. [THE SYSTEM MUST USE THE FOLLOWING APPLICABLE SENTENCES.]</u> <u>We failed to conduct the required assessment.</u> <u>We failed to correct all identified sanitary defects that were found during the assessment(s).</u></p>
<p><u>1f. Revised Total Coliform Rule: <i>E. coli</i> Assessment and/or Corrective Action Violations ‡</u></p>	<p><u>N/A</u></p>	<p><u>II</u></p>	<p><u><i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We violated the standard for <i>E. coli</i>, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct a detailed assessment to identify problems and to correct any problems that are found. [THE SYSTEM MUST USE THE FOLLOWING APPLICABLE SENTENCES.]</u> <u>We failed to conduct the required assessment.</u> <u>We failed to correct all identified sanitary defects that were found during the assessment that we conducted.</u></p>
<p><u>1g. <i>E. coli</i> ‡</u></p>	<p><u>Zero</u></p>	<p><u>In compliance unless one of the following conditions occurs:</u> <u>(1) The system has</u></p>	<p><u><i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes.</u></p>

		<p><u>an <i>E. coli</i>-positive repeat sample following a total coliform-positive routine sample.</u></p> <p>(2) <u>The system has a total coliform-positive repeat sample following an <i>E. coli</i>-positive routine sample.</u></p> <p>(3) <u>The system fails to take all required repeat samples following an <i>E. coli</i>-positive routine sample.</u></p> <p>(4) <u>The system fails to test for <i>E. coli</i> when any repeat sample tests positive for total coliform.</u></p>	<p><u>Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems.</u></p>
<p><u>1h. Revised Total Coliform Rule Seasonal System TT Violations †.</u></p>	<p><u>N/A</u></p>	<p><u>TT</u></p>	<p><u>When this violation includes the failure to monitor for total coliforms or <i>E. coli</i> prior to serving water to the public, the mandatory language found at Rule 0400-45-01-.19(5)(d)2 must be used.</u></p> <p><u>When this violation includes the failure to complete other actions, the appropriate elements found in Rule 0400-45-01-.19(5)(a) must be used.</u></p>

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

The Appendix B – Endnotes of Appendix B TO Rule 0400-45-01-.19 of Rule 0400-45-01-.19 Notification of Customers is amended by adding the two following endnotes at the beginning of the sequence of Endnotes to read as follows:

- † Until March 31, 2016.
- ‡ Beginning April 1, 2016.

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

Part 5 of subparagraph (b) of paragraph (2) of Rule 0400-45-01-.31 Filtration and Disinfection is amended by deleting it in its entirety and substituting instead the following:

5. The public water system must comply with the maximum contaminant level (MCL) for total coliforms in paragraph (4) of Rule 0400-45-01-.06 and the MCL for *E. coli* in subparagraph (4)(g) of Rule 0400-45-01-.06. The system must achieve the standard at a frequency of at least 11 months of the 12 previous months that the system served water to the public, on an ongoing basis, unless the Department determines that failure to meet this requirement was not caused by a deficiency in treatment of the source water.

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

Part 6 of subparagraph (b) of paragraph (5) of Rule 0400-45-01-.31 Filtration and Disinfection is amended by deleting it in its entirety and substituting instead the following:

6. Until March 31, 2016, The the residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in paragraph (1) of Rule 0400-45-01-.07, except that the Department may allow a public water system which uses a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the Department determines that such points are more representative of treated (disinfected) water quality within the distribution system. Beginning April 1, 2016, the residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in paragraphs (4) through (8) of Rule 0400-45-01-.41. The Department may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the Department determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in part (10)(a)4 of Rule 0400-45-01-.14, may be measured in lieu of residual disinfectant concentration.

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

Part 3 of subparagraph (c) of paragraph (5) of Rule 0400-45-01-.31 Filtration and Disinfection is amended by deleting it in its entirety and substituting instead the following:

3. Until March 31, 2016, The the residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in paragraph (1) of Rule 0400-45-01-.07. Beginning April 1, 2016, the residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in paragraphs (4) through (8) of Rule 0400-45-01-.41. The Department may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the Department determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in part (10)(a)4 of Rule 0400-45-01-.14, may be measured in lieu of residual disinfectant concentration.

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

Part 3 of subparagraph (b) of paragraph (7) of Rule 0400-45-01-.33 Lead and Copper Rule is amended by adding subpart (iii) to read as follows:

- (iii) If the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

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

Subpart (ii) of part 2 of subparagraph (e) of paragraph (8) of Rule 0400-45-01-.33 Lead and Copper Rule is amended by deleting it in its entirety and substituting instead the following:

- (ii) A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters specified in part 1 of this subparagraph to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead specified in subpart (10)(a)1(ii) of this rule subparagraph (10)(e) of Rule 0400-45-01-.14, that its tap water copper level at the 90th percentile is less than

or equal to 0.65 mg/L for copper in part (1)(c)2 of this rule, and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under subparagraph (3)(f) of this rule. Monitoring conducted every three years shall be done no later than every third calendar year.

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

Part 3 of subparagraph (g) of paragraph (1) of Rule 0400-45-01-.34 Drinking Water Source Protection is amended by deleting it in its entirety and substituting instead the following:

3. A review of the potential contaminant source inventory must be performed at minimum annually by the category 2, 3, and 4 community systems. Such review shall be documented and kept on file at the water system office. Wellhead protection plans shall be submitted to the Department on a ~~six (6)~~ three year cycle, ~~with an update required three (3) years into the cycle.~~ Category 1 community systems shall perform the reviews as a part of their required submittals to the Department every three years with the submittal dates coinciding with the category 2, 3, and 4 community submittals.

(i) ~~Category 4 Noncommunity ground water~~ systems shall submit their plans in a format acceptable to the Department in a timeframe based on grand division. On or before June 30, 2005, ~~Category 4 noncommunity ground water~~ systems in the Western Grand Division are required to submit their plans and every three years subsequently. On or before June 30, 2006, ~~Category 4 noncommunity ground water~~ systems in the Central Grand Division are required to submit their plans and every three years subsequently. On or before June 30, 2007, ~~Category 4 noncommunity ground water~~ systems in the Eastern Grand Division are required to submit their plans and every three years subsequently. A change in ownership shall require the submission of a new wellhead protection plan within ~~ninety (90)~~ days of the change of ownership.

(ii) ~~Category 1, 2, 3, and 4 community~~ systems shall submit plans in a ~~six (6)~~ three year cycle. Once a plan has been submitted, the PWS shall submit ~~an update to the a new plan three (3) years thereafter.~~ The PWS shall submit a complete new plan with an updated contaminant source inventory ~~six (6) years after the submittal of the previous plan.~~ For water systems in compliance with an approved plan in place at the effective date of this rule, updates of wellhead protection plans in a form acceptable to the Department shall be submitted on or before December 31, 2007. ~~This update shall include a review of the potential contaminant sources within the wellhead protection area.~~ For water systems existing at the effective date of this rule, complete new inventories and plans shall be due on December 31, 2010 and at ~~six (6) year intervals thereafter.~~ Complete plans to include contaminant source inventory maps and photographs shall be submitted on or before December 31, 2016, and every three years subsequently.

The addition of new significant potential contaminant sources during the annual potential contaminant source inventory review shall require an addendum to be submitted to the Department within ninety ~~90~~ days of the review.

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

Subparagraph (h) of paragraph (1) of Rule 0400-45-01-.34 Drinking Water Source Protection is amended by deleting it in its entirety and substituting instead the following:

(h) Public Water Systems Using a Surface Water Source

A community or nontransient noncommunity PWS using a surface water source must at minimum annually perform a survey within the Critical Source Water Protection Zone for significant potential contaminant sources as well as an inventory of wastewater and stormwater discharges

permitted by the Department within Zone A of the Source Water Management Zone. Source water inventory updates for community surface water systems existing at the effective date of this rule shall be submitted to the Department on or before December 31, 2006 and at three (3) year intervals subsequently. Community and nontransient noncommunity systems using a surface water source shall submit complete contaminant source inventories, including maps, showing the potential contaminant sources at three year intervals beginning on December 31, 2015. New water supply sources shall have source approvals in writing by the Department prior to initiation of operation as a public water supply source. An existing water system that was previously not designated as a public water system shall have sixty (60) days upon notification of the determination as a public water system to submit source approval documentation for the Department's review.

The emergency operations plan for community surface water systems shall include a procedure for notifying the Department of any condition which may impact the water source. ~~The community~~ Community PWS shall establish a procedure for notifying the owner or operator of any potential contaminant source which is believed to be discharging substances which may endanger the water supply of the community PWS.

This notification shall cite the provisions of the Tennessee Safe Drinking Water Act specifically including the language in T.C.A. § 68-221-711(5) (i.e., "The discharge by any person of sewage or any other waste or contaminant at such proximity to the intake, well or spring serving a public water system in such a manner or quantity that it will or will likely endanger the health or safety of customers of the system or cause damage to the system" is prohibited) and this rule, as well as any local ordinances which implement or support source water protection. Such notification to the owner or operator shall also request the owner or operator to abate the activity or discharge. A copy of such notification shall be submitted to the Department.

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

Subparagraph (d) of paragraph (1) of Rule 0400-45-01-.35 Consumer Confidence Reports is amended by deleting it in its entirety and substituting instead the following:

- (d) For the purpose of this rule, detected means: at or above the levels prescribed by Table 0400-45-01-.14(10)(d) for inorganic contaminants, at or above the levels prescribed by Rule 0400-45-01-.26 for volatile organic chemicals, at or above by Table 0400-45-01-.10(1)(r) for other organic chemicals, at or above the DBP levels prescribed by ~~subpart (5)(b)2(iv) of Rule 0400-45-01-.36~~ subparagraph (10)(d) of Rule 0400-45-01-.14 and at or above the levels prescribed by paragraph (1) of Rule 0400-45-01-.11 for radioactive contaminants.

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

Subparagraph (c) of paragraph (3) of Rule 0400-45-01-.35 Consumer Confidence Reports is amended by adding part 4 to read as follows:

- 4. A report that contains information regarding a Level 1 or Level 2 Assessment required under Rule 0400-45-01-.41 must include the applicable definitions:
 - (i) Level 1 Assessment: A Level 1 assessment is a study of the water system to identify potential problems and determine (if possible) why total coliform bacteria have been found in our water system.
 - (ii) Level 2 Assessment: A Level 2 assessment is a very detailed study of the water system to identify potential problems and determine (if possible) why an *E. coli* MCL violation has occurred and/or why total coliform bacteria have been found in our water system on multiple occasions.

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

Subparts (iv) of part 4 of subparagraph (d) of paragraph (3) of Rule 0400-45-01-.35 Consumer Confidence Reports) is amended by deleting it in its entirety and substituting instead the following:

- (iv) For contaminants subject to an MCL, except turbidity and total coliforms, fecal coliform, and E. coli, the highest contaminant level used to determine compliance with an NPDWR and the range of detected levels, as follows:
 - (I) If compliance with the MCL is determined annually or less frequently: The highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL;
 - (II) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a monitoring location: the highest average of any of the monitoring locations and the range of all monitoring locations expressed in the same units as the MCL. For the MCLs for TTHM and HAA5 in paragraph (6) of Rule 0400-45-01-.06, systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all locations that exceed the MCL.
 - (III) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all monitoring locations: the average and range of detection expressed in the same units as the MCL. The system is required to include individual sample results for the IDSE conducted under Rule 0400-45-01-.37 when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.

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

Subparts (vii) through (ix) of part 4 of subparagraph (d) of paragraph (3) of Rule 0400-45-01-.35 Consumer Confidence Reports) are amended by deleting them in their entirety and substituting instead the following:

- (vii) For total coliform analytical results until March 31, 2016:
 - (I) The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or
 - (II) The highest monthly percentage of positive samples for systems collecting at least 40 samples per month;
- (viii) For fecal coliform and E. coli until March 31, 2016: The total number of positive samples; and
- (ix) The likely source(s) of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in Appendix A to this rule, which are most applicable to the system; and

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

Part 4 of subparagraph (d) of paragraph (3) of Rule 0400-45-01-.35 Consumer Confidence Reports is amended by adding subpart (x) to read as follows:

- (x) For E. coli analytical results under Rule 0400-45-01-.41: The total number of positive samples.

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

Subparagraph (h) of paragraph (3) of Rule 0400-45-01-.35 Consumer Confidence Reports is amended by adding part 7 to read as follows:

7. Systems required to comply with Rule 0400-45-01-.41.

- (i) Any system required to comply with the Level 1 assessment requirement or a Level 2 assessment requirement that is not due to an *E. coli* MCL violation must include in the report the text found in items (I), (II), and (III) of this subpart as appropriate, filling in the blanks accordingly, and the text found in subitems (IV) and II of this subpart if appropriate.
 - (I) Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.
 - (II) During the past year we were required to conduct [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s). [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s) were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.
 - (III) During the past year [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were required to be completed for our water system. [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.
 - (IV) Any system that has failed to complete all the required assessments or correct all identified sanitary defects is in violation of the treatment technique requirement and must also include one or both of the following statements, as appropriate:
 - I. During the past year we failed to conduct all of the required assessment(s).
 - II. During the past year we failed to correct all identified defects that were found during the assessment.
- (ii) Any system required to conduct a Level 2 assessment due to an *E. coli* MCL violation must include in the report the text found in items (I) and (II) of this subpart, filling in the blanks accordingly, and the text found in subitems (III) and II of this subpart, if appropriate.
 - (I) *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We found *E. coli* bacteria, indicating the

need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.

(II) We were required to complete a Level 2 assessment because we found *E. coli* in our water system. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(III) Any system that has failed to complete the required assessment or correct all identified sanitary defects is in violation of the treatment technique requirement and must also include one or both of the following statements, as appropriate:

I. We failed to conduct the required assessment.

II. We failed to correct all sanitary defects that were identified during the assessment that we conducted.

(iii) If a system detects *E. coli* and has violated the *E. coli* MCL, in addition to completing the table as required in part (d)4 of this paragraph, the system must include one or more of the following statements to describe any noncompliance, as applicable:

(I) We had an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(II) We had a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(III) We failed to take all required repeat samples following an *E. coli*-positive routine sample.

(IV) We failed to test for *E. coli* when any repeat sample tests positive for total coliform.

(iv) If a system detects *E. coli* and has not violated the *E. coli* MCL, in addition to completing the table as required in part (d)4 of this paragraph, the system may include a statement that explains that although they have detected *E. coli*, they are not in violation of the *E. coli* MCL.

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

Appendix A TO Rule 0400-45-01-.35 of Rule 0400-45-01-.35 Consumer Confidence Reports is amended by deleting the entries under Microbiological contaminants for "Total Coliform Bacteria," and "Fecal Coliform and *E. coli*" and replacing those two entries with the following four entries to include in the following order "Total Coliform Bacteria †", "Total Coliform Bacteria ‡", "Fecal Coliform and *E. coli* †" and "*E. coli* ‡" to read as follows, with the remainder of the table unchanged:

Appendix A to Rule 0400-45-01-.35

Contaminant (units)	Traditional MCL In mg/L	To convert for CCR, multiply by	MCL in CCR Units	MCLG	Major Sources In drinking water	Health effects language
Microbiological						

contaminants:						
Total Coliform Bacteria †	MCL (systems that collect ≥ 40 samples/month) 5% of monthly samples are positive; (systems that collect < 40 samples/month) 1 positive monthly sample.		MCL (systems that collect ≥ 40 samples/month) 5% of monthly samples are positive; (systems that collect < 40 samples/month) 1 positive monthly sample.	0 40	Naturally present in the environment.	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Total Coliform Bacteria †	II		II	N/A	Naturally present in the environment.	Use language found in 0400-45-01-.35 (3)(h)7(i)
Fecal Coliform and <i>E. coli</i> †	0		0	0	Human and animal fecal waste.	Fecal coliforms and <i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special risk for infants, young children, some of the elderly, and people with severely compromised immune

<u>E. coli</u> ‡	<u>Routine and repeat samples are total coliform-positive and either is E. coli-positive or system fails to take repeat samples following E. coli-positive routine sample or system fails to analyze total coliform-positive repeat sample for E. coli.</u>		<u>Routine and repeat samples are total coliform-positive and either is E. coli-positive or system fails to take repeat samples following E. coli-positive routine sample or system fails to analyze total coliform-positive repeat sample for E. coli.</u>	<u>0</u>	<u>Human and animal fecal waste.</u>	<u>systems. E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems.</u>
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Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Appendix A TO Rule 0400-45-01-.35 of Rule 0400-45-01-35 Consumer Confidence Reports is amended by adding the following immediately following the table and prior to footnote 1:

† Until March 31, 2016

‡ Beginning April 1, 2016

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

Subpart (i) of part 1 of subparagraph (c) of paragraph (6) of Rule 0400-45-01-.36 Disinfectant Residuals, Disinfectant Byproducts, and Disinfection Precursors is amended by deleting it in its entirety and substituting instead the following:

- (i) Routine monitoring. Until March 31, 2016, Community community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in Rule 0400-45-01-.07. Beginning April 1, 2016, community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified paragraphs (4) through (8) of Rule 0400-45-01-.41. Subpart H systems may use the results of residual disinfectant

concentration sampling conducted under part 6 of subparagraph (b) of paragraph (5) of Rule 0400-45-01-.31 for unfiltered systems or part 3 of subparagraph (c) of paragraph (5) of Rule 0400-45-01-.31 for systems which filter, in lieu of taking separate samples.

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

Item (l) of subpart (i) of part 1 of subparagraph (a) of paragraph (3) of Rule 0400-45-01-.37 Stage 2 Initial Distribution System Evaluation for Disinfection Byproducts is amended by deleting it in its entirety and substituting instead the following:

- (l) TTHM and HAA5 results must be based on samples collected and analyzed in accordance with ~~paragraph (5) of Rule 0400-45-01-.36~~ subparagraph (10)(k) of Rule 0400-45-01-.14. TTHM and HAA5 results must be based on samples collected no earlier than five years prior to the study plan submission date.

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

Paragraph (3) of Rule 0400-45-01-.40 Ground Water Rule is amended by deleting it in its entirety and substituting instead the following:

(3) Ground water source microbial monitoring and analytical methods.

(a) A ground water system must conduct triggered source water monitoring if the conditions identified in parts 1 and either part 2 or 3 of this subparagraph exist.

1. The system does not provide at least 4-log treatment of viruses (using inactivation, removal or a Department-approved combination of 4-log virus inactivation and removal) before or at the first customer for each ground water source; and
2. The system is notified that a sample collected under paragraph (1) of Rule 0400-45-01-.07 is total coliform-positive and the sample is not invalidated under paragraph (3) of Rule 0400-45-01-.07- until March 31, 2016; or
3. The system is notified that a sample collected under paragraphs (4) through (7) of Rule 0400-45-01-.41 is total coliform-positive and the sample is not invalidated under subparagraph (3)(c) of Rule 0400-45-01-.41 beginning April 1, 2016.

(b) A ground water system must collect, within 24 hours of notification of the total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-positive sample was collected under paragraph (1) of Rule 0400-45-01-.07 until March 31, 2016, or collected under paragraphs (4) through (7) of Rule 0400-45-01-.41 beginning April 1, 2016, except as provided in part 2 of this subparagraph.

1. The Department may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the ground water source sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Department must specify how much time the system has to collect the sample.
2. If approved by the Department, systems with more than one ground water source may meet the requirements of this subparagraph by sampling representative ground water source or sources. If directed by the Department, systems must submit for Department approval a triggered source water monitoring plan that identifies one or more ground water sources that are representative of each monitoring site in the system's sample siting plan under paragraph (1) of Rule 0400-45-01-.07 until March 31, 2016, and that the system intends to use for representative sampling under this paragraph.
3. Until March 31, 2016, A a ground water system serving 1,000 people or fewer may use a repeat sample collected from a ground water source to meet both the requirements of

paragraph (2) of Rule 0400-45-01-.07 and to satisfy the monitoring requirements of this subparagraph for that ground water source only if the Department approves the use of *E. coli* as a fecal indicator for source water monitoring under this paragraph. If the repeat sample collected from the ground water source is *E. coli* positive, the system must comply with subparagraph (c) of this paragraph. Beginning April 1, 2016, the use of ground water source sample as a repeat sample shall no longer be allowed to meet the requirements of paragraph (2) of Rule 0400-45-01-.07.

(c) If the Department does not require corrective action under part 2 of subparagraph (a) of paragraph (4) of this rule for fecal-indicator positive source water sample collected under subparagraph (b) of this paragraph that is not invalidated under subparagraph (h) of paragraph (3) this rule, the system must collect five additional source water samples from the same source within 24 hours of being notified of the fecal indicator-positive sample.

(d) Consecutive and Wholesale Systems

1. In addition to the other requirements of this paragraph, a consecutive ground water system that has a total coliform-positive sample collected under paragraph (1) of Rule 0400-45-01-.07 until March 31, 2016, or under Rule 0400-45-01-.41(4) through 0400-45-01-.41(7) beginning April 1, 2016, must notify the wholesale system(s) within 24 hours of being notified of the total coliform-positive sample.

2. In addition to the other requirements of this paragraph, a wholesale ground water system must comply with subparts (i) and (ii) of this part.

(i) A wholesale ground water system that receives notice from a consecutive system it serves that a sample collected under paragraph (1) of Rule 0400-45-01-.07, until March 31, 2016, or under Rule 0400-45-01-.41(4) through 0400-45-01-.41(7) beginning April 1, 2016, is total coliform-positive must, within 24 hours of being notified, collect a sample from its ground water source(s) under subparagraph (b) of this paragraph and analyze it for a fecal indicator under subparagraph (g) of this paragraph.

(ii) If the sample collected under subpart (3)(d)2(i) of this rule is fecal indicator-positive, the wholesale ground water system must notify all consecutive systems served by that ground water source of the fecal indicator source water positive within 24 hours of being notified of the ground water source sample monitoring result and must meet the requirements of subparagraph (c) of this paragraph.

(e) Exceptions to the Triggered Source Water Monitoring Requirements.

A ground water system is not required to comply with the source water monitoring requirements of this paragraph if either of the following conditions exists:

1. The Department determines, and documents in writing, that the total coliform-positive sample collected under paragraph (1) of Rule 0400-45-01-.07, until March 31, 2016, or under Rule 0400-45-01-.41(4) through 0400-45-01-.41(7) beginning April 1, 2016, is caused by a distribution system deficiency; or

2. The total coliform-positive sample collected under paragraph (1) of Rule 0400-45-01-.07, until March 31, 2016, or under Rule 0400-45-01-.41(4) through 0400-45-01-.41(7) beginning April 1, 2016, is collected at a location that meets Department criteria for distribution system conditions that will cause total coliform-positive samples and the system requests in writing that the Department make the determination as to whether the total coliform-positive sample was due to distribution system conditions that will cause total coliform-positive samples.

(f) Assessment Source Water Monitoring. If directed by the Department, ground water systems must conduct assessment source water monitoring that meets Department-determined requirements for such monitoring. A ground water system conducting assessment source water

monitoring may use a triggered source water sample collected under subparagraph (b) of this paragraph to meet the requirements of subparagraph (f) of this paragraph. Department-determined assessment source water monitoring requirements may include:

1. Collection of a total of 12 ground water source samples that represent each month the system provides ground water to the public,
 2. Collection of samples from each well unless the system obtains written Department approval to conduct monitoring at one or more wells within the ground water system that are representative of multiple wells used by that system and that draw water from the same hydrogeologic setting,
 3. Collection of standard sample volume of at least 100 ml for fecal indicator analysis regardless of fecal indicator or analytical method used,
 4. Analysis of all ground water source samples using one of the analytical methods listed in part (10)(a)6 of Rule 0400-45-01-.14 for the presence of *E. coli* or enterococci,
 5. Collection of ground water samples at a location prior to any treatment of the ground water source unless the Department approves a sampling location after treatment, and
 6. Collection of ground water source samples at the well itself unless the system's configuration does not allow for sampling at the well itself and the Department approves an alternate sampling location that is representative of the water quality of that well.
- (g) Analytical and Sampling methods.
1. A ground water system subject to the source water monitoring requirements of this paragraph must collect a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used.
 2. The analytical method to be used is prescribed in part (10)(a)6 of Rule 0400-45-01-.14.
- (h) Invalidation of fecal indicator-positive ground water source sample. A ground water system may obtain Department invalidation of a fecal indicator-positive ground water source sample collected under this paragraph only under the conditions specified in parts 1 and 2 of this subparagraph.
1. The system provides the Department with written notice from the laboratory that improper sample analysis has occurred; or
 2. The Department determines and documents in writing that there is substantial evidence that a fecal-indicator positive ground water source sample is not related to source water quality.
- (i) If the Department invalidates a fecal indicator-positive ground water sample, the ground water system must collect another source water sample under this paragraph within 24 hours of being notified by the Department of its invalidation decision and have it analyzed for the same fecal indicator using the analytical methods in part (10)(a)6 of Rule 0400-45-01-.14. The Department may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Department must specify how much time the system has to collect the sample.
- (j) Sampling location. Any ground water source sample required under this paragraph must be collected at a location prior to any treatment of the ground water source unless the Department approves a sampling location after treatment.
1. If the system's configuration does not allow sampling at the well itself, the system may collect a sample at a Department-approved location to meet the requirements of this paragraph if the sample is representative of the water quality of that well.

- (k) **New Sources.** If directed by the Department, a ground water system that places a new ground water source into service after November 30, 2009, must conduct assessment source water monitoring under subparagraph (f) of this paragraph. If directed by the Department, the system must begin monitoring before the ground water source is used to provide water to the public.
- (l) **Public Notification.** A ground water system with a ground water source sample collected under this paragraph that is fecal indicator-positive and that is not invalidated under subparagraph (h) of this paragraph, including consecutive systems served by the ground water source, must conduct public notification under paragraph (2) of Rule 0400-45-01-.19.
- (m) **Monitoring Violations.** Failure to meet the requirements of subparagraphs (a) through (k) of this paragraph is a monitoring violation and requires the ground water system to provide public notification under paragraph (4) of Rule 0400-45-01-.19.

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

Part 3 of subparagraph (a) of paragraph (6) of Rule 0400-45-01-.40 Ground Water Rule is amended by deleting it in its entirety and substituting instead the following:

- 3. If a ground water system subject to the requirements of subparagraph (a) of paragraph (3) of this rule does not conduct source water monitoring under part 2 of subparagraph (e) of paragraph (3) of this rule, the system must provide documentation to the Department within 30 days of the total coliform positive sample that it met the Department criteria and request in writing that the Department make the determination.

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

Part 4 of subparagraph (b) of paragraph (6) of Rule 0400-45-01-.40 Ground Water Rule is amended by inserting the phrase "until March 31, 2016, or under Rule 0400-45-01-.41(3) beginning April 1, 2016" at the end of the first sentence such that as amended the part shall read:

- 4. For consecutive systems, documentation of notification to the wholesale system(s) of total-coliform positive samples that are not invalidated under paragraph (3) of Rule 0400-45-01-.07 until March 31, 2016, or under Rule 0400-45-01-.41(3) beginning April 1, 2016. Documentation shall be kept for a period of not less than five years.

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

New Rule

Chapter 0400-45-01 Public Water Systems

Chapter 0400-45-01 Public Water Systems is amended by adding a new rule to read as follows:

0400-45-01-.41 Revised Total Coliform Rule

- (1) **General requirements.**
 - (a) The requirements of this rule constitute both maximum contaminant level and treatment technique requirements as national primary drinking water regulations.
 - (b) The provisions of this rule apply to all public water systems.
 - (c) Systems must comply with the provisions of this rule beginning April 1, 2016, unless otherwise specified in this rule.

(d) Failure to comply with the applicable requirements of paragraphs (1) through (11) of this rule, including requirements established by the Department pursuant to these provisions, is a violation of the national primary drinking water regulations under this rule.

(2) Analytical methods and laboratory certification.

(a) Analytical methodology.

1. The standard sample volume required for analysis, regardless of analytical method used, is 100 ml.
2. Systems need only determine the presence or absence of total coliforms and *E. coli*; a determination of density is not required.
3. The time from sample collection to initiation of test medium incubation may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10 deg. C during transit.
4. If water having residual chlorine (measured as free, combined, or total chlorine) is to be analyzed, sufficient sodium thiosulfate (Na₂S₂O₃) must be added to the sample bottle before sterilization to neutralize any residual chlorine in the water sample. Dechlorination procedures are addressed in Section 9060A.2 of Standard Methods for the Examination of Water and Wastewater (20th and 21st editions).
5. Systems must conduct total coliform and *E. coli* analyses in accordance with one of the analytical methods in the following table or one of the alternative methods listed in Rule 0400-45-01-.14(10)(a)4.

Table 0400-45-01-.41(2)(a)5.

Organism	Methodology category	Method ¹	Citation ¹
Total Coliforms	Lactose Fermentation Methods	Standard Total Coliform Fermentation Technique	Standard Methods 9221 B.1, B.2 (20 th ed.; 21 st ed.) ²³ Standard Methods Online 9221 B.1, B.2-99 ²³
		Presence-Absence (P-A) Coliform Test	Standard Methods 9221 D.1, D.2 (20 th ed.; 21 st ed.) ²⁷ Standard Methods Online 9221 D.1, D.2-99 ²⁷
	Membrane Filtration Methods	Standard Total Coliform Membrane Filter Procedure	Standard Methods 9222 B, C (20 th ed.; 21 st ed.) ²⁴ Standard Methods Online 9222 B-97 ²⁴ , 9222 C-97 ²⁴
		Membrane Filtration using MI medium m-ColiBlue24® Test ²⁴ Chromocult® ²⁴	EPA Method 1604 ²
	Enzyme Substrate Methods	Colilert®	Standard Methods 9223 B (20 th ed.; 21 st ed.) ²⁵ Standard Methods Online 9223 B-97 ²⁵
		Colisure®	Standard Methods 9223 B (20 th ed.; 21 st ed.) ²⁵⁶ Standard Methods

			Online 9223 B-97 ^{2 5 6}
		E*Colite® Test ² Readycult® Test ² Modified Colitag® Test ²	
Escherichia coli.			
	Escherichia coli Procedure (following Lactose Fermentation Methods).	EC-MUG medium	Standard Methods 9221 F.1 (20 th ed.; 21 st ed.) ²
	Escherichia coli Partition Method	EC broth with MUG (EC-MUG)	Standard Methods 9222 G.1c(2) (20 th ed.; 21 st ed.) ^{2 8}
		NA-MUG medium	Standard Methods 9222 G.1c(1) (20 th ed.; 21 st ed.) ²
	Membrane Filtration Methods	Membrane Filtration using MI medium- m-ColiBlue24® Test ^{2 4} Chromocult® ^{2 4}	EPA Method 1604 ²
	Enzyme Substrate Methods	Colilert®	Standard Methods 9223 B (20 th ed.; 21 st ed.) ^{2 5} Standard Methods Online 9223 B-97 ^{2 5 6}
		Colisure®	Standard Methods 9223 B (20 th ed.; 21 st ed.) ^{2 5} ₆ Standard Methods Online 9223 B-97 ^{2 5 6}
		E*Colite® Test ² Readycult® Test ² Modified Colitag® Test ²	

¹ The procedures must be done in accordance with the documents listed in footnote 2 below, incorporation by reference. For Standard Methods, either editions, 20th (1998) or 21st (2005), may be used. For the Standard Methods Online, the year in which each method was approved by the Standard Methods Committee is designated by the last two digits following the hyphen in the method number. The methods listed are the only online versions that may be used. For vendor methods, the date of the method listed in footnote 2 is the date/version of the approved method. The methods listed are the only versions that may be used for compliance with this rule. Laboratories should be careful to use only the approved versions of the methods, as product package inserts may not be the same as the approved versions of the methods.

² Incorporation by reference:

- (i) American Public Health Association, 800 I Street, NW., Washington, DC 20001.
 - (l) "Standard Methods for the Examination of Water and Wastewater," 20th edition (1998);
 - I. Standard Methods 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," B.1, B.2, "Standard Total Coliform Fermentation Technique."
 - II. Standard Methods 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," D.1, D.2, "Presence-Absence (P-A) Coliform Test."
 - III. Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," B, "Standard Total Coliform Membrane Filter Procedure."
 - IV. Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," C, "Delayed-Incubation Total Coliform Procedure."
 - V. Standard Methods 9223, "Enzyme Substrate Coliform Test," B, "Enzyme Substrate Test," Colilert® and Colisure®.
 - VI. Standard Methods 9221, "Multiple Tube Fermentation Technique for Members of the Coliform Group," F.1, "Escherichia coli Procedure: EC-MUG medium."
 - VII. Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," G.1.c(2), "Escherichia coli Partition Method: EC broth with MUG (EC-MUG)."

- VIII. Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," G.1.c(1), "Escherichia coli Partition Method: NA-MUG medium."
- (II) "Standard Methods for the Examination of Water and Wastewater," 21st edition (2005);
 - I. Standard Methods 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," B.1, B.2, "Standard Total Coliform Fermentation Technique."
 - II. Standard Methods 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," D.1, D.2, "Presence-Absence (P-A) Coliform Test."
 - III. Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," B, "Standard Total Coliform Membrane Filter Procedure."
 - IV. Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," C, "Delayed-Incubation Total Coliform Procedure."
 - V. Standard Methods 9223, "Enzyme Substrate Coliform Test," B, "Enzyme Substrate Test," Colilert® and Colisure®.
 - VI. Standard Methods 9221, "Multiple Tube Fermentation Technique for Members of the Coliform Group," F.1, "Escherichia coli Procedure: EC-MUG medium."
 - VII. Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," G.1.c(2), "Escherichia coli Partition Method: EC broth with MUG (EC-MUG)."
 - VIII. Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," G.1.c(1), "Escherichia coli Partition Method: NA-MUG medium."
- (III) "Standard Methods Online" available at <http://www.standardmethods.org>:
 - I. Standard Methods Online 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group" (1999), B.1, B.2-99, "Standard Total Coliform Fermentation Technique."
 - II. Standard Methods Online 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group" (1999), D.1, D.2-99, "Presence-Absence (P-A) Coliform Test."
 - III. Standard Methods Online 9222, "Membrane Filter Technique for Members of the Coliform Group" (1997), B-97, "Standard Total Coliform Membrane Filter Procedure."
 - IV. Standard Methods Online 9222, "Membrane Filter Technique for Members of the Coliform Group" (1997), C-97, "Delayed-Incubation Total Coliform Procedure."
 - V. Standard Methods Online 9223, "Enzyme Substrate Coliform Test" (1997), B-97, "Enzyme Substrate Test", Colilert® and Colisure®.
- (ii) Charm Sciences, Inc., 659 Andover Street, Lawrence, MA 01843-1032, telephone 1-800-343-2170;
 - (I) E*Colite®—"Charm E*Colite™ Presence/Absence Test for Detection and Identification of Coliform Bacteria and Escherichia coli in Drinking Water," January 9, 1998.
- (iii) CPI International, Inc., 5580 Skylane Blvd., Santa Rosa, CA, 95403, telephone 1-800-878-7654;
 - (I) modified Colitag®, ATP D05-0035—"Modified Colitag™ Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water," August 28, 2009.
- (iv) EMD Millipore (a division of Merck KGaA, Darmstadt Germany), 290 Concord Road, Billerica, MA 01821, telephone 1-800-645-5476;
 - (I) Chromocult—"Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and Escherichia coli for Finished Waters," November 2000, Version 1.0.
 - (II) Readycult®—"Readycult® Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and Escherichia coli in Finished Waters," January 2007, Version 1.1.
- (v) EPA's Water Resource Center (MC-4100T), 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone 1-202-566-1729;
 - (I) EPA Method 1604, EPA 821-R-02-024—"EPA Method 1604: Total Coliforms and Escherichia coli in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium)," September 2002, <http://www.epa.gov/nerlcwww/1604sp02.pdf>.
- (vi) Hach Company, P.O. Box 389, Loveland, CO 80539, telephone 1-800-604-3493;
 - (I) m-ColiBlue24®—"Membrane Filtration Method m-ColiBlue24® Broth," Revision 2, August 17, 1999.

3 Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system
conducts at least 25 parallel tests between lactose broth and lauryl tryptose broth using the water
normally tested, and if the findings from this comparison demonstrate that the false-positive rate and
false-negative rate for total coliforms, using lactose broth, is less than 10 percent.

4 All filtration series must begin with membrane filtration equipment that has been sterilized by autoclaving.
Exposure of filtration equipment to UV light is not adequate to ensure sterilization. Subsequent to the
initial autoclaving, exposure of the filtration equipment to UV light may be used to sanitize the funnels
between filtrations within a filtration series. Alternatively, membrane filtration equipment that is pre-
sterilized by the manufacturer (i.e., disposable funnel units) may be used.

5 Multiple-tube and multi-well enumerative formats for this method are approved for use in presence-
absence determination under this rule.

6 Colisure® results may be read after an incubation time of 24 hours.

7 A multiple tube enumerative format, as described in Standard Methods for the Examination of Water and
Wastewater 9221, is approved for this method for use in presence-absence determination under this
regulation.

8 The following changes must be made to the EC broth with MUG (EC-MUG) formulation: Potassium
dihydrogen phosphate, KH_2PO_4 , must be 1.5g, and 4-methylumbelliferyl-Beta-D-glucuronide must be 0.05
g.

(b) Laboratory certification. Systems must have all compliance samples required under this rule
analyzed by a laboratory certified by the Department to analyze drinking water samples. The
laboratory used by the system must be certified for each method (and associated contaminant(s))
used for compliance monitoring analyses under this rule.

(3) General monitoring requirements for all public water systems.

(a) Sample siting plans.

1. Systems must develop a written sample siting plan that identifies sampling sites and a
sample collection schedule that are representative of water throughout the distribution
system no later than March 31, 2016. These plans are subject to Department review and
revision. Systems must collect total coliform samples according to the written sample
siting plan. Monitoring required by paragraphs (4) through (8) of this rule may take place
at a customer's premise, dedicated sampling station, or other designated compliance
sampling location. Routine and repeat sample sites and any sampling points necessary
to meet the requirements of Rule 0400-45-01-.40 must be reflected in the sampling plan.
2. Systems must collect samples at regular time intervals throughout the month, except that
systems that use only ground water and serve 4,900 or fewer people may collect all
required samples on a single day if they are taken from different sites.
3. Systems must take at least the minimum number of required samples even if the system
has had an *E. coli* MCL violation or has exceeded the coliform treatment technique
triggers in subparagraph (9)(a) of this rule.
4. A system may conduct more compliance monitoring than is required by this subpart to
investigate potential problems in the distribution system and use monitoring as a tool to
assist in uncovering problems. A system may take more than the minimum number of
required routine samples and must include the results in calculating whether the coliform
treatment technique trigger in subparts (9)(a)1(i) and (ii) of this rule has been exceeded
only if the samples are taken in accordance with the existing sample siting plan and are
representative of water throughout the distribution system.
5. Systems must identify repeat monitoring locations in the sample siting plan. Unless the
provisions of subpart (i) of this part are met, the system must collect at least one repeat
sample from the sampling tap where the original total coliform-positive sample was taken,
and at least one repeat sample at a tap within five service connections upstream and at
least one repeat sample at a tap within five service connections downstream of the
original sampling site. If a total coliform-positive sample is at the end of the distribution
system, or one service connection away from the end of the distribution system, the

system must still take all required repeat samples. However, the Department may allow an alternative sampling location in lieu of the requirement to collect at least one repeat sample upstream or downstream of the original sampling site. Systems required to conduct triggered source water monitoring under Rule 0400-45-01-.40(3)(a) must take ground water source sample(s) in addition to repeat samples required under this rule.

- (i) Systems may propose repeat monitoring locations to the Department that the system believes to be representative of a pathway for contamination of the distribution system. A system may elect to specify either alternative fixed locations or criteria for selecting repeat sampling sites on a situational basis in a standard operating procedure (SOP) in its sample siting plan. The system must design its SOP to focus the repeat samples at locations that best verify and determine the extent of potential contamination of the distribution system area based on specific situations. The Department may modify the SOP or require alternative monitoring locations as needed.
 - (ii) Reserved.
6. The Department may review, revise, and approve, as appropriate, repeat sampling proposed by systems under subpart 5(i) of this subparagraph. The system must demonstrate that the sample siting plan remains representative of the water quality in the distribution system. The Department may determine that monitoring at the entry point to the distribution system (especially for undisinfected ground water systems) is effective to differentiate between potential source water and distribution system problems.
- (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.
 - (c) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subparagraph does not count toward meeting the minimum monitoring requirements of this rule.
 - 1. The Department may invalidate a total coliform-positive sample only if the conditions of subpart (i), (ii), or (iii) of this part are met.
 - (i) The laboratory establishes that improper sample analysis caused the total coliform-positive result.
 - (ii) The Department, on the basis of the results of repeat samples collected as required under subparagraph (8)(a) of this rule, determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The Department cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected at a location other than the original tap are total coliform-negative (e.g., a total coliform-positive sample cannot be invalidated on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the system has only one service connection).
 - (iii) The Department has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition that does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required under subparagraph (8)(a) of this rule, and use them to determine whether a coliform treatment technique trigger in paragraph (9) of this

rule has been exceeded. To invalidate a total coliform-positive sample under this subparagraph, the decision and supporting rationale must be documented in writing, and approved and signed by the supervisor of the Department official who recommended the decision. The Department shall make this document available to EPA and the public. The written documentation must identify the specific cause of the total coliform-positive sample, and what action the system has taken, or will take, to correct this problem. The Department may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

2. A laboratory must invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. The Department may waive the 24-hour time limit on a case-by-case basis. Alternatively, the Department may implement criteria for waiving the 24-hour sampling time limit to use in lieu of case-by-case extensions.
- (4) Routine monitoring requirements for non-community water systems serving 1,000 or fewer people using only ground water.
- (a) General.
 1. The provisions of this paragraph apply to non-community water systems using only ground water (except ground water under the direct influence of surface water, as defined in Rule 0400-45-01-.04) and serving 1,000 or fewer people.
 2. Following any total coliform-positive sample taken under the provisions of this paragraph, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in paragraph (8) of this rule.
 3. Once all monitoring required by this paragraph and paragraph (8) of this rule has been completed for a calendar month, systems must determine whether any coliform treatment technique triggers specified in paragraph (9) of this rule have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by paragraph (9) of this rule.
 4. For the purpose of determining eligibility for remaining on or qualifying for quarterly monitoring under the provisions of parts (d)4 and (e)2 of this paragraph for transient non-community water systems, the Department may elect to not count monitoring violations under part (10)(c)1 of this rule if the missed sample is collected no later than the end of the monitoring period following the monitoring period in which the sample was missed. The system must collect the make-up sample in a different week than the routine sample for that monitoring period and should collect the sample as soon as possible during the monitoring period. This authority does not affect the provisions of parts (10)(c)1 and (11)(a)4 of this rule.
 - (b) Monitoring frequency for total coliforms. Systems must monitor each calendar quarter that the system provides water to the public, except for seasonal systems or as provided under subparagraphs (c) through (e) and (g) of this paragraph. Seasonal systems must meet the monitoring requirements of subparagraph (f) of this paragraph.
 - (c) Transition to the Revised Total Coliform Rule.

1. Systems, including seasonal systems, must continue to monitor according to the total coliform monitoring schedules under Rule 0400-45-01-.07 that were in effect on March 31, 2016, unless any of the conditions for increased monitoring in subparagraph (d) of this paragraph are triggered on or after April 1, 2016, or unless otherwise directed by the Department.
 2. Beginning April 1, 2016, the Department must perform a special monitoring evaluation during each sanitary survey to review the status of the system, including the distribution system, to determine whether the system is on an appropriate monitoring schedule. After the Department has performed the special monitoring evaluation during each sanitary survey, the Department may modify the system's monitoring schedule, as necessary, or it may allow the system to stay on its existing monitoring schedule, consistent with the provisions of this paragraph. For seasonal systems on quarterly monitoring, this evaluation must include review of the approved sample siting plan, which must designate the time period(s) for monitoring based on site-specific considerations (e.g., during periods of highest demand or highest vulnerability to contamination). The seasonal system must collect compliance samples during these time periods.
- (d) Increased Monitoring Requirements for systems on quarterly monitoring. A system on quarterly monitoring that experiences any of the events identified in parts 1 through 4 of this subparagraph must begin monthly monitoring the month following the event. The system must continue monthly monitoring until the requirements in subparagraph (e) of this paragraph for quarterly monitoring are met. A system on monthly monitoring for reasons other than those identified in parts 1 through 4 of this subparagraph is not considered to be on increased monitoring for the purposes of subparagraph (e) of this paragraph.
1. The system triggers a Level 2 assessment or two Level 1 assessments under the provisions of paragraph (9) of this rule in a rolling 12-month period.
 2. The system has an *E. coli* MCL violation.
 3. The system has a coliform treatment technique violation.
 4. The system has two monitoring violations of this rule, or one monitoring violation of this rule and one Level 1 assessment under the provisions of paragraph (9) of this rule in a rolling 12-month period for a system on quarterly monitoring.
- (e) Requirements for returning to quarterly monitoring. The Department may reduce the monitoring frequency for a system on monthly monitoring triggered under subparagraph (d) of this paragraph to quarterly monitoring if the system meets the criteria in parts 1 and 2 of this subparagraph.
1. Within the last 12 months, the system must have a completed sanitary survey or a site visit by the Department or a voluntary Level 2 assessment by a party approved by the Department, be free of sanitary defects, and have a protected water source; and
 2. The system must have a clean compliance history for a minimum of 12 months.
- (f) Seasonal systems.
1. Beginning April 1, 2016, all seasonal systems must demonstrate completion of a Department-approved start-up procedure, which must include a negative total coliform sample result as a part of that procedure prior to serving water to the public.
 2. A seasonal system must monitor every month that it is in operation unless it meets the criteria in subparts (i) and (ii) of this part to be eligible for monitoring less frequently than monthly beginning April 1, 2016, except as provided under subparagraph (c) of this paragraph.

- (i) Seasonal systems monitoring less frequently than monthly must have an approved sample siting plan that designates the time period for monitoring based on site-specific considerations (e.g., during periods of highest demand or highest vulnerability to contamination). Seasonal systems must collect compliance samples during this time period.
 - (ii) To be eligible for quarterly monitoring, the system must meet the criteria in subparagraph (e) of this paragraph.
 - (g) Additional routine monitoring the month following a total coliform-positive sample. Systems collecting samples on a quarterly frequency must conduct additional routine monitoring the month following one or more total coliform-positive samples (with or without a Level 1 treatment technique trigger). Systems must collect at least three routine samples during the next month. Systems may either collect samples at regular time intervals throughout the month or may collect all required routine samples on a single day if samples are taken from different sites. Systems must use the results of additional routine samples in coliform treatment technique trigger calculations under subparagraph (9)(a) of this rule.
- (5) Routine monitoring requirements for community water systems serving 1,000 or fewer people using only ground water.
- (a) General.
 - 1. The provisions of this paragraph apply to community water systems using only ground water (except ground water under the direct influence of surface water, as defined in Rule 0400-45-01-.04) and serving 1,000 or fewer people.
 - 2. Following any total coliform-positive sample taken under the provisions of this paragraph, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in paragraph (8) of this rule.
 - 3. Once all monitoring required by this paragraph and in paragraph (8) of this rule has been completed for a calendar month, systems must determine whether any coliform treatment technique triggers specified in paragraph (9) of this rule have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by paragraph (9) of this rule.
 - (b) Monitoring frequency for total coliforms. The monitoring frequency for total coliforms is one sample/month, except as provided for under subparagraph (c) of this paragraph.
 - (c) Transition to the Revised Total Coliform Rule.
 - 1. All systems must continue to monitor according to the total coliform monitoring schedules under Rule 0400-45-01-.07 that were in effect on March 31, 2016, unless otherwise directed by the Department.
 - 2. Beginning April 1, 2016, the Department must perform a special monitoring evaluation during each sanitary survey to review the status of the system, including the distribution system, to determine whether the system is on an appropriate monitoring schedule and has an appropriate sampling plan.
 - (d) Additional routine monitoring the month following a total coliform-positive sample. Non-community systems monitoring quarterly must collect at least three routine samples during the next month following one or more total coliform-positive samples (with or without a Level 1 treatment technique trigger). Systems may either collect samples at regular time intervals throughout the month or may collect all required routine samples on a single day if samples are taken from different sites. Systems must use the results of additional routine samples in coliform treatment technique trigger calculations.
- (6) Routine monitoring requirements for subpart H public water systems serving 1,000 or fewer people.

- (a) General.
 - 1. The provisions of this paragraph apply to subpart H public water systems of this part serving 1,000 or fewer people.
 - 2. Following any total coliform-positive sample taken under the provisions of this paragraph, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in paragraph (8) of this rule.
 - 3. Once all monitoring required by this paragraph and in paragraph (8) of this rule has been completed for a calendar month, systems must determine whether any coliform treatment technique triggers specified in paragraph (9) of this rule have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by paragraph (9) of this rule.
 - 4. Seasonal systems.
 - (i) Beginning April 1, 2016, all seasonal systems must demonstrate completion of a Department-approved start-up procedure, which must include a negative total coliform sample result as a part of the procedure prior to serving water to the public.
 - (ii) Reserved.
 - (b) Routine monitoring frequency for total coliforms. Subpart H systems of this paragraph (including consecutive systems) must monitor monthly. Systems may not reduce monitoring.
 - (c) Unfiltered subpart H systems. A subpart H system of this paragraph that does not practice filtration in compliance with Rules 0400-45-01-.08 (Turbidity Sampling and Analytical Requirements), 0400-45-01-.31 (Filtration and Disinfection) and 0400-45-01-.39 (Enhanced Treatment for Cryptosporidium) must collect at least one total coliform sample near the first service connection each day the turbidity level of the source water, measured as specified in Rule 0400-45-01-.08(3)(a), exceeds 1 NTU. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance, unless the Department determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection and identifies an alternative sample collection schedule. Sample results from this coliform monitoring must be included in determining whether the coliform treatment technique trigger in paragraph (9) of this rule has been exceeded.
- (7) Routine monitoring requirements for public water systems serving more than 1,000 people.
- (a) General.
 - 1. The provisions of this paragraph apply to public water systems serving more than 1,000 persons.
 - 2. Following any total coliform-positive sample taken under the provisions of this paragraph, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in paragraph (8) of this rule.
 - 3. Once all monitoring required by this paragraph and in paragraph (8) of this rule has been completed for a calendar month, systems must determine whether any coliform treatment technique triggers specified in paragraph (9) of this rule have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by paragraph (9) of this rule.
 - 4. Seasonal systems.

- (i) Beginning April 1, 2016, all seasonal systems must demonstrate completion of a Department-approved start-up procedure, which must include a negative total coliform sample result as a part of the procedure prior to serving water to the public.
 - (ii) Reserved.
- (b) Monitoring frequency for total coliforms. The monitoring frequency for total coliforms is based on the population served by the system, as follows:

Total Coliform Monitoring Frequency for
Public Water Systems Serving More than 1,000 People

Population Served	Minimum number of samples per month
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390
2,270,001 to 3,020,000	420
3,020,001 to 3,960,000	450
3,960,000 or more	480

- (c) Unfiltered subpart H systems. A subpart H system of this rule that does not practice filtration in compliance with Rules 0400-45-01-.08 (Turbidity Sampling and Analytical Requirements), 0400-45-01-.31 (Filtration and Disinfection) and 0400-45-01-.39 (Enhanced Treatment for Cryptosporidium) must collect at least one total coliform sample near the first service connection each day the turbidity level of the source water, measured as specified in Rule 0400-45-01-.08(3)(a), exceeds 1 NTU. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance, unless the Department determines that the system, for logistical reasons outside the system's control,

cannot have the sample analyzed within 30 hours of collection and identifies an alternative sample collection schedule. Sample results from this coliform monitoring must be included in determining whether the coliform treatment technique trigger in paragraph (9) of this rule has been exceeded.

(8) Repeat monitoring and *E. coli* requirements.

(a) Repeat monitoring.

1. If a sample taken under paragraphs (4) through (7) of this rule is total coliform-positive, the system must collect a set of repeat samples within 24 hours of being notified of the positive result. The system must collect no fewer than three repeat samples for each total coliform-positive sample found. The Department may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. Alternatively, the Department may implement criteria for the system to use in lieu of case-by-case extensions. In the case of an extension, the Department must specify how much time the system has to collect the repeat samples. The Department cannot waive the requirement for a system to collect repeat samples in parts 1 through 3 of this subparagraph.
2. The system must collect all repeat samples on the same day, except that the Department may allow a system with a single service connection to collect the required set of repeat samples over a three-day period or to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 300 ml.
3. The system must collect an additional set of repeat samples in the manner specified in parts 1 through 3 of this subparagraph if one or more repeat samples in the current set of repeat samples is total coliform-positive. The system must collect the additional set of repeat samples within 24 hours of being notified of the positive result, unless the Department extends the limit as provided in part 1 of this subparagraph. The system must continue to collect additional sets of repeat samples until either total coliforms are not detected in one complete set of repeat samples or the system determines that a coliform treatment technique trigger specified in subparagraph (9)(a) of this rule has been exceeded as a result of a repeat sample being total coliform-positive and notifies the Department. If a trigger identified in paragraph (9) of this rule is exceeded as a result of a routine sample being total coliform-positive, systems are required to conduct only one round of repeat monitoring for each total coliform-positive routine sample.
4. After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.
5. Results of all routine and repeat samples taken under paragraphs (4) through (8) of this rule not invalidated by the Department must be used to determine whether a coliform treatment technique trigger specified in paragraph (9) of this rule has been exceeded.

(b) *Escherichia coli* (*E. coli*) testing.

1. If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if *E. coli* are present. If *E. coli* are present, the system must notify the State by the end of the day when the system is notified of the test result, unless the system is notified of the result after the Department office is closed and the Department does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the Department before the end of the next business day.

2. The Department has the discretion to allow a system, on a case-by-case basis, to forgo *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is *E. coli*-positive. Accordingly, the system must notify the Department as specified in part 1 of subparagraph (b) of this paragraph and the provisions of Rule 0400-45-01-.06(4)(g) apply.
- (9) Coliform treatment technique triggers and assessment requirements for protection against potential fecal contamination.
- (a) Treatment technique triggers. Systems must conduct assessments in accordance with subparagraph (b) of this paragraph after exceeding treatment technique triggers in parts 1 and 2 of this subparagraph.
 1. Level 1 treatment technique triggers.
 - (i) For systems taking 40 or more samples per month, the system exceeds 5.0% total coliform-positive samples for the month.
 - (ii) For systems taking fewer than 40 samples per month, the system has two or more total coliform-positive samples in the same month.
 - (iii) The system fails to take every required repeat sample after any single total coliform-positive sample.
 2. Level 2 treatment technique triggers.
 - (i) An *E. coli* MCL violation, as specified in subparagraph (10)(a) of this rule.
 - (ii) A second Level 1 trigger as defined in part 1 of this subparagraph, within a rolling 12-month period, unless the Department has determined a likely reason that the samples that caused the first Level 1 treatment technique trigger were total coliform-positive and has established that the system has corrected the problem.
 - (b) Requirements for assessments.
 1. Systems must ensure that Level 1 and 2 assessments are conducted in order to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. Level 2 assessments must be conducted by parties approved by the Department.
 2. When conducting assessments, systems must ensure that the assessor evaluates minimum elements that include review and identification of inadequacies in sample sites; sampling protocol; sample processing; atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., small ground water systems); and existing water quality monitoring data. The system must conduct the assessment consistent with any Department directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.
 3. Level 1 Assessments. A system must conduct a Level 1 assessment consistent with Department requirements if the system exceeds one of the treatment technique triggers in part (a)1 of this paragraph.
 - (i) The system must complete a Level 1 assessment as soon as practical after any trigger in part (a)1 of this paragraph. In the completed assessment form, the system must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment form may also note that no sanitary defects were identified. The

system must submit the completed Level 1 assessment form to the Department within 30 days after the system learns that it has exceeded a trigger.

- (ii) If the Department reviews the completed Level 1 assessment and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the Department must consult with the system. If the Department requires revisions after consultation, the system must submit a revised assessment form to the Department on an agreed-upon schedule not to exceed 30 days from the date of the consultation.
 - (iii) Upon completion and submission of the assessment form by the system, the Department must determine if the system has identified a likely cause for the Level 1 trigger and, if so, establish that the system has corrected the problem, or has included a schedule acceptable to the Department for correcting the problem.
4. Level 2 Assessments. A system must ensure that a Level 2 assessment consistent with Department requirements is conducted if the system exceeds one of the treatment technique triggers in part (a)2 of this paragraph. The system must comply with any expedited actions or additional actions required by the Department in the case of an *E. coli* MCL violation.
- (i) The system must ensure that a Level 2 assessment is completed by the Department or by a party approved by the Department as soon as practical after any trigger in part (a)2 of this paragraph. The system must submit a completed Level 2 assessment form to the Department within 30 days after the system learns that it has exceeded a trigger. The assessment form must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment form may also note that no sanitary defects were identified.
 - (ii) The system may conduct Level 2 assessments if the system has staff or management with the certification or qualifications specified by the Department unless otherwise directed by the Department.
 - (iii) If the Department reviews the completed Level 2 assessment and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the Department must consult with the system. If the Department requires revisions after consultation, the system must submit a revised assessment form to the Department on an agreed-upon schedule not to exceed 30 days.
 - (iv) Upon completion and submission of the assessment form by the system, the Department must determine if the system has identified a likely cause for the Level 2 trigger and determine whether the system has corrected the problem, or has included a schedule acceptable to the Department for correcting the problem.
- (c) Corrective Action. Systems must correct sanitary defects found through either Level 1 or 2 assessments conducted under subparagraph (b) of this paragraph. For corrections not completed by the time of submission of the assessment form, the system must complete the corrective action(s) in compliance with a timetable approved by the Department in consultation with the system. The system must notify the Department when each scheduled corrective action is completed.
 - (d) Consultation. At any time during the assessment or corrective action phase, either the water system or the Department may request a consultation with the other party to determine the appropriate actions to be taken. The system may consult with the Department on all relevant information that may impact on its ability to comply with a requirement of this rule, including the method of accomplishment, an appropriate timeframe, and other relevant information.

(10) Violations.

(a) *E. coli* MCL Violation. A system is in violation of the MCL for *E. coli* when any of the conditions identified in parts 1 through 4 of this subparagraph occur.

1. The system has an *E. coli*-positive repeat sample following a total coliform-positive routine sample.
2. The system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample.
3. The system fails to take all required repeat samples following an *E. coli*-positive routine sample.
4. The system fails to test for *E. coli* when any repeat sample tests positive for total coliform.

(b) Treatment technique violation.

1. A treatment technique violation occurs when a system exceeds a treatment technique trigger specified in subparagraph (9)(a) of this rule and then fails to conduct the required assessment or corrective actions within the timeframe specified in subparagraphs (9)(b) and (c) of this rule.
2. A treatment technique violation occurs when a seasonal system fails to complete a Department-approved start-up procedure prior to serving water to the public.

(c) Monitoring violations.

1. Failure to take every required routine or additional routine sample in a compliance period is a monitoring violation.
2. Failure to analyze for *E. coli* following a total coliform-positive routine sample is a monitoring violation.

(d) Reporting violations.

1. Failure to submit a monitoring report or completed assessment form after a system properly conducts monitoring or assessment in a timely manner is a reporting violation.
2. Failure to notify the Department following an *E. coli*-positive sample as required by part (8)(b)1 of this rule in a timely manner is a reporting violation.
3. Failure to submit certification of completion of Department-approved start-up procedure by a seasonal system is a reporting violation.

(11) Reporting and recordkeeping.

(a) Reporting.

1. *E. coli*.
 - (i) A system must notify the Department by the end of the day when the system learns of an *E. coli* MCL violation, unless the system learns of the violation after the Department office is closed and the Department does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the Department before the end of the next business day, and notify the public in accordance with Rule 0400-45-01-.19 (Notification of Customers).

(ii) A system must notify the Department by the end of the day when the system is notified of an *E. coli*-positive routine sample, unless the system is notified of the result after the Department office is closed and the Department does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the Department before the end of the next business day.

2. A system that has violated the treatment technique for coliforms in paragraph (9) of this rule must report the violation to the Department no later than the end of the next business day after it learns of the violation, and notify the public in accordance with Rule 0400-45-01-.19 (Notification of Customers).
3. A system required to conduct an assessment under the provisions of paragraph (9) of this rule must submit the assessment report within 30 days. The system must notify the Department in accordance with subparagraph (9)(c) of this rule when each scheduled corrective action is completed for corrections not completed by the time of submission of the assessment form.
4. A system that has failed to comply with a coliform monitoring requirement must report the monitoring violation to the Department within 10 days after the system discovers the violation, and notify the public in accordance with Rule 0400-45-01-.19 (Notification of Customers).
5. A seasonal system must certify, prior to serving water to the public that it has complied with the Department-approved start-up procedure.

(b) Recordkeeping.

1. The system must maintain any assessment form, regardless of who conducts the assessment, and documentation of corrective actions completed as a result of those assessments, or other available summary documentation of the sanitary defects and corrective actions taken under paragraph (9) of this rule for Department review. This record must be maintained by the system for a period not less than five years after completion of the assessment or corrective action.
2. The system must maintain a record of any repeat sample taken that meets Department criteria for an extension of the 24-hour period for collecting repeat samples as provided for under part (8)(a)1 of this rule.

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:

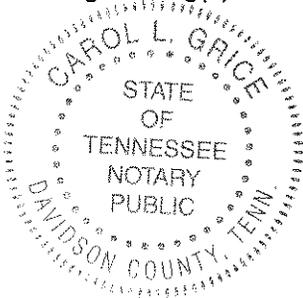
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Gary G. Bible (Oil and Gas Industry)	X				
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)	X				
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)	X				
Jill E. Davis (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 03/17/2015, 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: 10/22/14

Rulemaking Hearing(s) Conducted on: (add more dates). 12/17/14



Date: March 17, 2015

Signature: *James W. Cameron III*

Name of Officer: James W. Cameron III

Title of Officer: Chairman

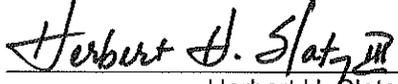
Subscribed and sworn to before me on: March 17, 2015

Notary Public Signature: *Carol L. Grice*

My commission expires on: June 21, 2016

- Rules of the Board of Water Quality, Oil and Gas
- Rule 0400-45-01-.04 Definitions
- 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-.19 Notification of Customers
- Rule 0400-45-01-.31 Filtration and Disinfection
- Rule 0400-45-01-.32 Fees for Public Water Systems
- Rule 0400-45-01-.33 Control of Lead and Copper
- Rule 0400-45-01-.34 Drinking Water Source Protection
- Rule 0400-45-01-.35 Consumer Confidence Reports
- Rule 0400-45-01-.36 Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors
- Rule 0400-45-01-.37 Stage 2 Initial Distribution System Evaluation for Disinfection Byproducts
- Rule 0400-45-01-.40 Ground Water Rule
- 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

 11/20/2015

 Date

Department of State Use Only

Filed with the Department of State on: 11-24-15

Effective on: 2-22-16



 Tre Hargett
 Secretary of State

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G.O.C. STAFF RULE ABSTRACT

COMMISSION: Private Investigation and Polygraph Commission

SUBJECT: Finger Printing

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 62-26-205, 62-26-208, and 62-26-303

EFFECTIVE DATES: February 2, 2016 through June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These proposed rules amend the requirements for the submissions of fingerprints that are required as a part of the application process for licensees. Currently, the commission rules allow applicants to submit physical fingerprint cards for processing. This amendment would only allow electronic fingerprints to be submitted, and those would no longer be submitted to the commission. Instead, they would be submitted either directly to the TBI or to an approved vendor to provide to the TBI. This change was made necessary due to the TBI recently stating that it will no longer accept physical fingerprint cards from the commission.

Economic Impact Statement

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:

This rule would affect the 52 licensed Polygraph Examiners in the State of Tennessee.

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

This amendment could create a cost to travel to a location to obtain an electronic fingerprint. However, some licensees may be able to provide fingerprints to an electronic fingerprinting vendor electronically without the need to travel to a location.

3. A statement of the probable effect on impacted small businesses and consumers:

Small businesses would potentially decrease their costs in processing fingerprints by \$12 but would have to do such through a private designated vendor. These rules will have no effect on consumers.

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:

The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses.

5. A comparison of the proposed rule with any federal or state counterparts:

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

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:

An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications.

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)

There is no expected impact on local government by the promulgation of this amendment.

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Sequence Number: 11-3-15
 Rule ID(s): 0066
 File Date: 11-4-15
 Effective Date: 2-2-16

Proposed Rule(s)

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Private Investigation and Polygraph Commission
Division:	Division of Regulatory Boards Department of Commerce and Insurance
Contact Person:	Anthony M. Glandorf
Address:	Davy Crockett Tower 500 James Robertson Pkwy Nashville, Tennessee
Zip:	37243
Phone:	615-741-3072
Email:	Anthony.glandorf@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
1175-01	Private Investigation and Polygraph Commission
Rule Number	Rule Title
1175-01-.03	Finger Printing

Chapter 1175-01
Private Investigation and Polygraph Commission
Amendments

1175-01-.03 Finger Printing is amended by deleting paragraph (1) in its entirety and substituting in its place, the following so that that rule as amended shall read:

- (1) An applicant required to submit fingerprints with his or her application for the purpose of allowing the commission to forward the fingerprints to the Tennessee Bureau of Investigation (TBI) and Federal Bureau of Investigation (FBI) as required by T.C.A. §§ 62-26-205 and 62-26-208 shall make arrangements for the processing of his or her fingerprints with the company contracted by the State to provide electronic fingerprinting services directly and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI. The commission shall notify every applicant in writing of the name, address and telephone number of any company contracted by the State to provide such a service. All private investigator and investigations company applicants shall comply with the following requirements regarding payment for the fingerprinting service:
 - (a) The commission may authorize the submission of three (3) sets of classifiable physical fingerprint cards in lieu of electronic fingerprints, as required above, at the expense of the applicant and rolled by a qualified person acceptable to the commission, for good cause.
 - (b) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant.
 - (c) In the event the State no longer contracts with any company to provide an electronic fingerprinting service, then the applicant shall submit three (3) classifiable TBI and FBI fingerprint cards with his or her application and shall pay the commission all processing fees established by the TBI and FBI.
 - (d) Applicants shall in all cases be responsible for paying application fees as established by the commission regardless of the manner of fingerprinting the applicant used.
- (2) In the event that an applicant furnishes unclassifiable fingerprints or fingerprints that are unclassifiable in nature to the commission, or the Tennessee Bureau of Investigation (TBI) or Federal Bureau of Investigation (FBI), the commission may refuse to issue the requested license. For the purposes of this rule, "unclassifiable fingerprints" means that the electronic scan or the print of the person's fingerprints cannot be read, and therefore cannot be used to identify the person. Should an applicant's fingerprints be rejected by the TBI or FBI, the applicant shall pay any fees assessed by the TBI or FBI for resubmission.
- (3) In the event that the fingerprint card submitted by an applicant is rejected or otherwise unable to be processed by the Tennessee Bureau of Investigation (TBI) and/or the Federal Bureau of Investigation (FBI), the applicant shall submit a new fingerprint card together with any additional fee(s) charged by the TBI and/or FBI for processing the new fingerprint card.

Authority: T.C.A. §§ 62-26-205, 62-26-208, and 62-26-303.

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Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

Proposed Rule(s) REDLINE

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Private Investigation and Polygraph Commission
Division:	Division of Regulatory Boards Department of Commerce and Insurance
Contact Person:	Anthony M. Glandorf
Address:	Davy Crockett Tower 500 James Robertson Pkwy Nashville, Tennessee
Zip:	37243
Phone:	615-741-3072
Email:	Anthony.glandorf@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
1175-01	Private Investigation and Polygraph Commission
Rule Number	Rule Title
1175-01-.03	Finger Printing

Chapter 1175-01
Private Investigation and Polygraph Commission
Amendments

1175-01-.03 Finger Printing is amended by deleting paragraph (1) in its entirety and substituting in its place, the following so that that rule as amended shall read:

- (1) ~~An applicant required to submit shall furnish the commission with three (3) sets of classifiable fingerprints with his or her application for the purpose of allowing the commission to forward the fingerprints to the Tennessee Bureau of Investigation (TBI) and Federal Bureau of Investigation (FBI) as required by T.C.A. §§ 62-26-205 and 62-26-208 shall make arrangements for the processing of his or her fingerprints with the company contracted by the State to provide electronic fingerprinting services directly and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI. An applicant shall be deemed to have furnished the commission with three (3) sets of classifiable fingerprints if he or she causes a private company contracted by the State to electronically transmit the applicant's classifiable prints directly to the TBI and FBI and to forward a classifiable hard copy of the applicant's fingerprints to the commission on standard TBI/FBI applicant cards. The commission shall notify every applicant in writing of the name, address and telephone number of any company contracted by the State to provide such a service. All private investigator and investigations company applicants shall comply with the following requirements regarding payment for the fingerprinting service:~~
- ~~(a) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant;~~
 - ~~(b) If the applicant chooses to request that the commission process the fingerprint cards, then the applicant shall submit with his or her application three (3) sets of classifiable fingerprints on cards provided by the commission for processing through the TBI and FBI. The applicant shall pay to the commission all processing fees established by the TBI and FBI.~~
 - ~~(c) If the applicant chooses to use the services of a company that has contracted with the state to provide electronic fingerprinting service, then the applicant shall make the arrangements for the processing of his or her fingerprints with the company directly and shall be responsible for payment of any fees associated with processing of fingerprints to the respective agency.~~
 - (a) The commission may authorize the submission of three (3) sets of classifiable physical fingerprint cards in lieu of electronic fingerprints, as required above, at the expense of the applicant and rolled by a qualified person acceptable to the commission, for good cause.
 - (b) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant.
 - ~~(d)~~ (c) In the event the State no longer contracts with any company to provide an electronic fingerprinting service, then the applicant shall submit three (3) classifiable TBI and FBI fingerprint cards with his or her application and shall pay the commission all processing fees established by the TBI and FBI.
 - ~~(e)~~ (d) Applicants shall in all cases be responsible for paying application fees as established by the commission regardless of the manner of fingerprinting the applicant used.
- (2) In the event that an applicant furnishes unclassifiable fingerprints or fingerprints that are unclassifiable in nature to the commission, or the Tennessee Bureau of Investigation (TBI) or

Federal Bureau of Investigation (FBI), the commission may refuse to issue the requested license. For the purposes of this rule, "unclassifiable fingerprints" means that the electronic scan or the print of the person's fingerprints cannot be read, and therefore cannot be used to identify the person. Should an applicant's fingerprints be rejected by the TBI or FBI, the applicant shall pay any fees assessed by the TBI or FBI for resubmission.

- (3) In the event that the fingerprint card submitted by an applicant is rejected or otherwise unable to be processed by the Tennessee Bureau of Investigation (TBI) and/or the Federal Bureau of Investigation (FBI), the applicant shall submit a new fingerprint card together with any additional fee(s) charged by the TBI and/or FBI for processing the new fingerprint card.

Authority: T.C.A. §§ 62-26-205, 62-26-208, and 62-26-303.

* 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)
David Brown, Jr.	x				
Larry T. Flair, Sr.	x				
David W. Horton				x	
William Rick Jones	x				
Minnie Ann Lane	x				
Jerry Richards, Jr.	x				
Dr. Paul A. Ritch	x				
Alan G. Rosseau	x				
Walt Valentine	x				

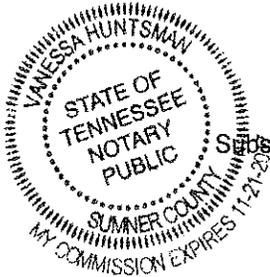
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Private Investigation and Polygraph Commission on May 15, 2015, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence 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: 8/20/2015

Signature: [Handwritten Signature]

Name of Officer: Anthony M. Glandorf

Title of Officer: Chief Counsel



Subscribed and sworn to before me on: 08/20/2015

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

10-27-15
Date

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Filed with the Department of State on: 11-4-15

Effective on: 2-2-16

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Examiners in Psychology

SUBJECT: Examination Fees/Continuing Education

STATUTORY AUTHORITY: None

EFFECTIVE DATES: February 16, 2016 to June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT:

The amendment to rule 1180-01-.03(1)(d) reduces the Ethics and Jurisprudence Examination fee from \$200.00 to \$100.00.

The amendment to rule 1180-01-.03(1)(e) reduces the Ethics and Jurisprudence Re-examination fee from \$100.00 to \$50.00.

The amendment to rule 1180-01-.03(1)(h) reduces the License Renewal (biennial) fee from \$275.00 to \$225.00.

The amendment to rule 1180-01-.03(1)(i) reduces the Certificate Renewal (biennial) fee from \$150.00 to \$75.00.

The amendment to rule 1180-01-.03(1)(k) deletes the Endorsement Verification fee in its entirety.

The amendment to rule 1180-01-.03(1)(e) deletes all parts under subparagraph (e).

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 public comments, either written or oral.

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.

- (1) **The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish flexible compliance and/or reporting requirements for small businesses.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Examiners in Psychology

Rulemaking hearing date: 06/11/2015

- 1. 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, and/or directly benefit from the proposed rule:**

These proposed rule amendments will affect all Psychologists, Senior Psychological Examiners, Psychological Examiners, and all Certified Psychological Assistants. Currently there are one thousand three hundred and sixty-seven (1,367) such licensees.

- 2. 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:**

These proposed rule amendments will not affect reporting or recordkeeping and do not involve administrative costs.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The Board does not anticipate that there will be any adverse impacts to small businesses as small businesses could benefit from the fee reduction. These proposed rule amendments should not have any impact on consumers.

- 4. 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 business:**

There are no less burdensome, less intrusive or less costly methods of achieving the purpose and/or objectives of the proposed rule amendments. On the contrary, these rule amendments could have a positive impact on business.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: None.

State: Many boards, currently operating at a surplus, are reducing some licensure fees.

- 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.**

These proposed rule amendments do not provide exemptions for small businesses.

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 proposed rule amendments should not have a financial impact on local governments.

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Sequence Number: 11-09-15
 Rule ID(s): 6069
 File Date: 11/18/15
 Effective Date: 2/16/16

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:	Board of Examiners in Psychology
Division:	
Contact Person:	Paetria Morgan
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Paetria.Morgan@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
1180-01	General Rules Governing the Practice of Psychologists, Senior Psychological Examiners, Psychological Examiners, and Certified Psychological Assistants
Rule Number	Rule Title
1180-01-.03	Fees
1180-01-.08	Continuing Education

GENERAL RULES GOVERNING THE PRACTICE OF PSYCHOLOGISTS,
SENIOR PSYCHOLOGICAL EXAMINERS, PSYCHOLOGICAL EXAMINERS,
AND CERTIFIED PSYCHOLOGICAL ASSISTANTS

CHAPTER 1180-01

(Rule 1180-01-.02, continued)

- (4) Prior to the engagement of the practice of psychology in Tennessee, a person must hold a current Tennessee license, certificate, temporary license, temporary certificate, or provisional license issued pursuant to Chapter 1180-2, Chapter 1180-3, or Chapter 1180-4.
- (5) Use of Titles
 - (a) Any person who possesses a valid, unsuspended and unrevoked psychologist license issued by the Board has the right to use the title "Psychologist" and to practice psychology, as defined in T.C.A. § 63-11-203.
 - (b) Any person who possesses a valid, unsuspended and unrevoked psychological examiner or senior psychological examiner license issued by the Board has the right to use the titles "Psychological Examiner" or "Senior Psychological Examiner," as applicable, and to practice psychology, as defined in T.C.A. § 63-11-202.
 - (c) Any person who possesses a valid, unsuspended and unrevoked psychological assistant certification issued by the Board has the right to use the title "Certified Psychological Assistant" and to practice psychology under supervision as defined in Rule 1180-4-.01.
 - (d) Violation of this rule regarding use of titles shall constitute unprofessional conduct and subject the licensee or certificate holder to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-11-104, 63-11-201, 63-11-202, 63-11-203, 63-11-205, 63-11-206, 63-11-207, 63-11-208, and 63-11-215. **Administrative History:** Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Amendment filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective November 1, 2002. Amendment filed July 27, 2006; effective October 10, 2006.

1180-01-.03 FEES.

(1) Fee Schedule:	Amount
(a) Application	\$175.00
(b) Temporary License	\$100.00
(c) Provisional License	\$125.00
(d) Ethics and Jurisprudence Examination	\$200.00
<u>(d) Ethics and Jurisprudence Examination</u>	<u>\$100.00</u>
(e) Ethics and Jurisprudence Re-Examination	\$100.00
<u>(e) Ethics and Jurisprudence Re-Examination</u>	<u>\$50.00</u>
(f) License	\$200.00
(g) Certificate	\$150.00

GENERAL RULES GOVERNING THE PRACTICE OF PSYCHOLOGISTS,
 SENIOR PSYCHOLOGICAL EXAMINERS, PSYCHOLOGICAL EXAMINERS,
 AND CERTIFIED PSYCHOLOGICAL ASSISTANTS

CHAPTER 1180-01

(Rule 1180-01-.03, continued)

(h) License Renewal (biennial)	\$275.00
(h) License Renewal (biennial)	\$225.00
(i) Certificate Renewal (biennial)	\$150.00
(i) Certificate Renewal (biennial)	\$75.00
(j) Late Renewal	\$100.00
(k) Endorsement Verification	\$ 25.00
(k)(l) State Regulatory (biennial)	\$ 10.00
(l)(m) Replacement License or Certificate	\$ 25.00

(2) The fees set by the Board for obtaining and maintaining licensure or certification are defined as follows:

- (a) Application Fee - A fee to be paid by all applicants for licensure or certification including those seeking licensure by reciprocity.
- (b) Endorsement/Verification Fee - A non-refundable fee to be paid for each certificate of fitness, endorsement or verification of an individual's record for any purpose.
- (c) Late Renewal Fee - A non-refundable fee to be paid when an individual fails to timely renew a license or a certificate.
- (d) License or Certificate Fee - A fee to be paid at the time of application prior to the issuance of the "artistically designed" initial license or certificate.
- (e) License or Certificate Renewal Fee - A non-refundable fee to be paid biennially by all licensees or certificate holders to maintain the license or certificate. This fee also applies to individuals who reactivate a license or certificate that has been retired.
- (f) Ethics and Jurisprudence Examination Fee - A non-refundable fee to be paid when applying for initial licensure.
- (g) Ethics and Jurisprudence Re-Examination Fee - A non-refundable fee to be paid each time an applicant retakes the Board's Ethics and Jurisprudence Examination.
- (h) Provisional License Fee - A fee to be paid by all individuals who are requesting a provisional license at the time of application.
- (i) Replacement License or Certificate Fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed license or certificate.
- (j) State Regulatory Fee - A fee to be paid by all individuals at the time of application and with all renewal applications.
- (k) Temporary License Fee - A fee to be paid by all individuals at the time of application who are requesting a temporary license.

(Rule 1180-01-.03, continued)

- (3) Fees may be paid in the following manner:
 - (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Board's Administrative Office and made payable to the Board of Examiners in Psychology.
 - (b) Fees may be paid by Division-approved credit cards or other Division-approved electronic methods.
- (4) Fees may be refunded upon withdrawal of an application or excused absence from an examination. Requests for refunds must be made in writing to the Board administrator and accompanied by a copy of the cancelled check or other documentation of payment. The application and state regulatory fees shall not be refunded.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, and 63-11-209. **Administrative History:** Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Amendment filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective November 1, 2002. Amendment filed November 9, 2005; effective January 23, 2006. However, Stay of Effective Date filed by the Board of Examiners in Psychology on January 20, 2006; new effective date March 23, 2006. Amendment filed March 23, 2007; effective June 6, 2007.

1180-01-.04 APPLICATION REVIEW, APPROVAL, DENIAL AND INTERVIEWS.

- (1) Any applicant for licensure or certification shall request an application packet from the Board's administrative office.
- (2) Review of all submitted applications to determine application file completeness may be delegated to the Board's designee, provided that approval of all applications is made and ratified by the Board.
- (3) For applicants applying to sit for the written examination, a deficiency letter will be mailed to the applicant if the application is incomplete when received in the Board's administrative office. The requested information must be received in the Board's administrative office on or before the sixtieth (60th) day prior to the written examination. All other applicants must complete their application files within sixty (60) days of receipt of the deficiency notice.
 - (a) Deficiency notification shall be sent certified mail, return receipt requested, from the board's administrative office.
 - (b) If the requested information is not received on or before the sixtieth (60th) day prior to the written examination or within sixty (60) days of receipt of the deficiency notice, the application file shall become inactive and the applicant so notified. No further Board action will take place until the application is completed pursuant to the rules governing the application process. The Board may, at its discretion, keep a file open past this deadline if special circumstances warrant.
- (4) After review and upon approval by the Board of the completed application and supporting credentials, the applicant shall be allowed to sit for the written examination. For all other applicants, the completed application and supporting documentation will be reviewed in a timely manner at regularly scheduled Board meetings following completion of the application.

GENERAL RULES GOVERNING THE PRACTICE OF PSYCHOLOGISTS,
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CHAPTER 1180-01

(Rule 1180-01-.06, continued)

- (5) Violations – Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-11-215 (b) (1), and/or (2).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-11-104, 63-11-201, 63-11-202, 63-11-203, 63-11-213, and 63-11-215. **Administrative History:** Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Repeal and new rule filed March 21, 2005; effective June 4, 2005. Amendments filed April 4, 2014; effective July 3, 2014.

1180-01-.07 RETIREMENT AND REACTIVATION OF LICENSE OR CERTIFICATE.

- (1) A person who holds a current license or certificate and does not intend to practice as a Licensed Psychologist, Senior Psychological Examiner, Psychological Examiner, or Certified Psychological Assistant may apply to convert an active license or certificate to retired status. An individual who holds a retired license or certificate is not required to pay the renewal fee.
- (2) A licensee may apply for retired status by filing a completed affidavit of retirement form and any required documentation with the Board's administrative office.
- (3) A person whose license has been retired and who has not practiced for up to two (2) years, or a person whose Tennessee license has been retired and who has been licensed in good standing and in continuous practice in another state, may re-enter active status provided there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Board administrative office a written request for licensure reactivation, the license renewal fee, the state regulatory fee and the late renewal fee.
- (4) A person whose license has been retired and who has not practiced for two years up to five (5) years may re-enter active status provided there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Board administrative office a written request for licensure reactivation, the license renewal fee, the state regulatory fee, the late renewal fee, and proof of successful completion of forty (40) hours of continuing education as provided in rule 1180-01-.08.
- (5) A person whose license or certificate has been retired and who has not practiced for over five (5) years may re-enter active status provided there are no criminal or practice act violations which would prohibit initial licensure or certification, by submitting to the Board administrative office a written request for licensure or certification reactivation, the license or certificate renewal fee, the state regulatory fee, the late renewal fee, proof of successful completion of forty (40) hours of continuing education as provided in rule 1180-01-.08, and by passing the jurisprudence and ethics examination if required, paying the jurisprudence and ethics examination exam fee as provided in rule 1180-01-.03, and obtaining six (6) months of supervision.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-111, 63-11-104, 63-11-201, 63-11-206, 63-11-207, 63-11-208, 63-11-209, 63-11-210, and 63-11-218. **Administrative History:** Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Amendment filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective November 1, 2002. Amendment filed November 9, 2005; effective January 23, 2006. However, Stay of Effective Date filed by the Board of Examiners in Psychology on January 20, 2006; new effective date March 23, 2006.

1180-01-.08 CONTINUING EDUCATION.

GENERAL RULES GOVERNING THE PRACTICE OF PSYCHOLOGISTS,
SENIOR PSYCHOLOGICAL EXAMINERS, PSYCHOLOGICAL EXAMINERS,
AND CERTIFIED PSYCHOLOGICAL ASSISTANTS

CHAPTER 1180-01

Rule 1180-01-.08, continued)

(1) Hours required for Psychologists, Senior Psychological Examiners, and Psychological Examiners:

- (a) Certified Psychological Assistants are required to pursue continuing education activities as directed by the supervising psychologist, as provided in Rule 1180-4-.01 (4) (f).
- (b) Psychologists, Senior Psychological Examiners, and Psychological Examiners are required to obtain forty (40) hours of continuing education (CE) credit every two (2) years. This CE is to be acquired in the two (2) calendar years (January 1 - December 31) prior to the licensure renewal year.
- (c) Nine (9) CE hours of the forty (40) hours required in subparagraph (b) must be received from a Type I CE program as provided by this rule. All continuing education hours obtained via the internet must be from a Type I CE program.
- (d) Nine (9) CE hours of the forty (40) hours required in subparagraph (b) must be received from Type I or Type II CE programs as provided by this rule.
- (e) Twenty-two (22) CE hours of the forty (40) hours required in subparagraph (b) must be received from Type I, II, or III programs as provided by this rule.

~~1. Tennessee Code Annotated, Title 63, Chapter 11; and~~

~~2. Official Compilation, Rules and Regulations of the State of Tennessee, Chapters 1180-01, 1180-2, 1180-3, and 1180-4; and~~

~~3. The version of the "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.), and approved by the A.P.A.'s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.~~

- (f) Three (3) CE hours shall pertain to cultural diversity as specifically noted in the title, description of objectives, or curriculum of the presentation, symposium, workshop, seminar, course or activity. Cultural diversity includes aspects of identity stemming from age, disability, gender, race/ethnicity, religious/spiritual orientation, sexual orientation, socioeconomic status, and other cultural dimensions. The topic of the presentation, symposium, workshop, seminar, course or activity need not be on cultural diversity, but one of the objectives or descriptions of the topics covered, shall clearly indicate attention to cultural diversity. These hours shall be Type I or Type II.
- (g) Three (3) CE hours of Type I or Type II shall pertain to:
 - 1. Tennessee Code Annotated, Title 63, Chapter 11; and
 - 2. Official Compilation, Rules and Regulations of the State of Tennessee, Chapters 1180-01, 1180-02, 1180-03 and 1180-04; and
 - 3. The current version of the "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.).
- (h) Experiences unacceptable as continuing education include, but are not limited to, administrative activities, psychotherapy, personal growth or enrichment.

Rule 1180-01-.08, continued)

(2) Type I continuing education

- (a) Type I continuing education is offered by APA-approved providers of educational programs.
- (b) Type I CE learning activities and related skills and knowledge are postdoctoral in nature.
- (c) Type I CE includes formal learning objectives and evaluation of learning activities.
- (d) Type I CE is primarily psychological in nature or is relevant to the science and practice of psychology.
- (e) Type I CE offerings must have a pre-assigned number of CE credit hours and provide documentation indicating the course was APA-approved.
- (f) Type I CE may be fulfilled via internet. No more than twenty (20) hours shall be obtained from an internet source.

(3) Type II continuing education

- (a) Type II CE is primarily psychological in nature or is relevant to the science and practice of psychology.
- (b) Type II CE offerings must provide documentation of attendance and must have a pre-assigned number of CE credit hours under the auspices of any of the following:
 - 1. A regional psychological association
 - 2. A state psychological association
 - 3. Any recognized and relevant credentialing national, regional or state professional body
 - 4. An institution housing an APA-approved internship program.
 - 5. A nationally recognized accredited college or university with a health-related professional training program.
 - 6. Graduate courses in an APA-approved graduate psychology program. (To be assigned fifteen [15] Type II CE units per semester hour)
 - 7. Passing the ABPP exam. (To be assigned twenty [20] hours of Type II CE credit)

(4) Type III continuing education

- (a) Type III CE consists of learning experiences that are less structured than Type I or Type II CE and provide information that is primarily psychological in nature or is relevant to the science and practice of psychology.
- (b) Type III CE may consist of
 - 1. clinical peer consultation groups; or

Rule 1180-01-.08, continued)

2. research presentations and convention workshops that incorporate multiple, brief presentations with many different learning objectives that are less amenable to a single evaluation; or
3. clinical supervision provided to students, interns, and post-doctoral fellows in accredited programs on a basis that is voluntary, uncompensated, and external to that program. A maximum of ten (10) CE hours per two (2) calendar years (January 1 - December 31) is allowed.

(c) Sources of Type III continuing education

1. Meetings - Registration and attendance at meetings of recognized professional psychology organizations (local, state, regional, national or international). Acceptable documentation will consist of a copy of the licensee's registration receipt from the meeting. One (1) clock hour equals one (1) CE hour.
2. Teaching and presentations.
 - (i) Psychology presentations at relevant professional meetings. Acceptable documentation will consist of a copy of the program or agenda and the number of clock hours. A maximum of three (3) CE hours per presentation is allowed.
 - (ii) Preparation and delivery of guest lectures to academic or public groups. Acceptable documentation will consist of a copy of a printed agenda, program or class syllabus. A maximum of one (1) CE hour per lecture is allowed.
 - (iii) Developing and teaching an academic psychology course in an institution accredited by a regional accrediting association. For the initial development of the course and its teaching, one semester length three (3) credit hour course equals twenty-two (22) CE hours; one quarter length three (3) credit hour course equals twenty-two (22) CE hours. Acceptable documentation will consist of a letter from the department head or dean of the institution stating that the licensee taught the course for the first time and the number of credits, units or hours assigned for the course.
3. Publications
 - (i) Writing or editing a published book, or writing a book chapter or a refereed journal article shall be assigned twenty-two (22) hours of Type III CE credit. Acceptable documentation will consist of a personal log detailing the published materials.
 - (ii) Developing for teaching purposes a videotape or interactive computer program shall be assigned twenty-two (22) hours of Type III CE credit. Acceptable documentation will consist of a personal log detailing the videotape or computer program.
 - (iii) Being the principal editor of a journal or serving on the editorial board of a journal article shall be assigned twenty-two (22) hours of Type III CE credit. Acceptable documentation will consist of a personal log detailing the published materials.

GENERAL RULES GOVERNING THE PRACTICE OF PSYCHOLOGISTS,
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CHAPTER 1180-01

Rule 1180-01-.08, continued)

- (iv) Serving as a reviewer of a journal article shall be assigned one (1) hour of Type III CE credit per manuscript. Acceptable documentation will consist of a personal log detailing the published materials.
 - 4. Workshops, seminars or courses - Relevant non-accredited psychology workshops, seminars or courses shall be assigned a maximum of ten (10) hours of Type III CE credit per year. Acceptable documentation will consist of certificates of attendance or registration receipts.
 - 5. Serving as a member of the Board shall be assigned a maximum of ten (10) hours of Type III CE credit per year.
 - 6. Serving as a member of an oral examining committee for the Board shall be assigned one (1) hour of Type III CE credit per exam.
- (5) Continuing education courses may be presented in the traditional lecture and classroom formats or, with successful completion of a written post experience examination to evaluate material retention, in Multi-Media formats.
- (a) Multi-Media courses may include courses utilizing:
 - 1. The Internet
 - 2. Closed circuit television
 - 3. Satellite broadcasts
 - 4. Correspondence courses
 - 5. Videotapes
 - 6. CD-ROM
 - 7. DVD
 - 8. Teleconferencing
 - 9. Videoconferencing
 - 10. Distance learning
 - (b) Licensees with disabilities or other hardships severely restricting travel away from home may petition the Board in writing to request exceptions to the manner in which they accumulate CE credits.
- (6) Documentation. Each licensee shall maintain documentation of CE hours for five (5) years and should prepare a summary report with documentation yearly. Documentation of completed CE hours must be produced for inspection and verification if requested in writing by the Board. The Board shall not maintain CE files.
- (7) Violations.
- (a) Any licensee who falsely certifies attendance and completion of the required CE hours may be subject to disciplinary action pursuant to T.C.A. § 63-11-215.

Rule 1180-01-.08, continued)

- (b) Any licensee who fails to obtain the required CE hours may be subject to disciplinary action pursuant to T.C.A. § 63-11-215.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-11-104, 63-11-201, 63-11-206, and 63-11-218. **Administrative History:** Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective November 1, 2002. Amendment filed March 21, 2005; effective June 4, 2005. Amendment filed November 9, 2005; effective January 23, 2006. Amendments filed April 4, 2014; effective July 3, 2014.

1180-01-.09 PROFESSIONAL ETHICS.

- (1) The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its ethical standards the specific "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.). The version adopted by the Board was approved by the A.P.A.'s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.
- (2) In the case of a conflict the state law, rules or position statements shall govern. Violation of the Board's ethical standards shall be grounds for disciplinary action pursuant to T.C.A. § 63-11-215 (b) (1).
- (3) A copy of the A.P.A. "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" may be obtained from the Order Department of the A.P.A. at 750 First Street, NE, Washington, DC 20002-4242 or by phone at (202) 336-5510, or on the Internet at <http://www.apa.org/ethics>.
- (4) Applicability of the Ethical Standards. The activity of a licensee or certificate holder subject to the Ethical Standards may be reviewed only if the activity is part of his or her work-related functions or the activity is psychological in nature. Personal activities having no connection to or effect on psychological roles are not subject to the Ethical Standards.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-201, 63-11-204, 63-11-206, 63-11-207, 63-11-208, 63-11-213, 63-11-214, and 63-11-215. **Administrative History:** Original rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective November 1, 2002. Amendment filed May 29, 2003; effective August 12, 2003.

1180-01-.10 DISCIPLINARY GROUNDS, ACTIONS, CIVIL PENALTIES, SETTLEMENTS, AND SCREENING PANELS.

- (1) Grounds and authority for disciplinary actions. The Board shall have the power to deny an application for a license or certificate to any applicant. The Board shall have the authority to suspend or revoke a license or certificate, reprimand or otherwise discipline by a monetary fine any licensee or certificate holder. Formal disciplinary proceedings before the Board shall comply with the Administrative Procedures Act, T.C.A. §§ 4-5-301, et. seq. The grounds upon which the Board shall exercise such power include, but are not limited to, the following:
 - (a) Unprofessional, dishonorable, or unethical conduct;
 - (b) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of the Psychology Act or any lawful or

* 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)
Pamela M. Auble	X				
George Bercaw	X				
Timothy A. Urbin	X				
J Trevor Milliron	X				
Cindy Boshears				X	
Mark Loftis	X				
Janice Pazar	X				
David C. Mathis	X				
Rebecca Joslin	X				
Annette Little	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Examiners in Psychology (board/commission/ other authority) on 06/11/2015 (mm/dd/yyyy), 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: 03/13/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 06/11/15 (mm/dd/yy)

Date: October 27, 2015

Signature: Paetria Morgan

Name of Officer: Paetria Morgan

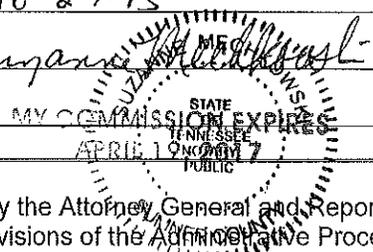
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 10-27-15

Notary Public Signature: Suzanne M. [Signature]

My commission expires on: APRIL 19 2017



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

Herbert H. Slatery III
Attorney General and Reporter

11-10-15

Date

Department of State Use Only

Filed with the Department of State on: 11/18/15

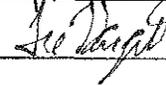
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SECRETARY OF STATE
PUBLICATIONS

Effective on:

2/16/16



Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Respiratory Care

DIVISION:

SUBJECT: Fee Decrease for Licensees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 9-4-5117, 63-27-104, and 63-27-105

EFFECTIVE DATES: February 18, 2015, through June 30, 2016

FISCAL IMPACT: The promulgation of these rules may result in a decrease in state or local government revenues.

STAFF RULE ABSTRACT: Rule 1330-01-.06 Fees: This rule amendment would decrease the renewal fee for Respiratory Therapists from one hundred twenty dollars (\$120) to one hundred dollars (\$100).

Rule 1330-01-.06 Fees: This rule amendment would also decrease the total application fee for Respiratory Therapists from two hundred dollars (\$200) to one hundred fifty dollars (\$150), by decreasing the application fee from one hundred twenty dollars (\$120) to seventy dollars (\$70.00).

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 public comments, either written or oral.

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.

- (1) **The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish flexible compliance and/or reporting requirements for small businesses.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Respiratory Care

Rulemaking hearing date: 05/28/2015

- 1. 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, and/or directly benefit from the proposed rule:**

Respiratory Therapists and those that employ them, such as hospitals, will be affected. These groups will benefit from the fee reductions.

- 2. 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:**

These proposed rule amendments will not affect reporting or recordkeeping and do not involve administrative costs.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The Board does not anticipate that there will be any adverse impacts to small businesses as small businesses could benefit from the fee reduction. These proposed rule amendments should not have any impact on consumers.

- 4. 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 business:**

There are no less burdensome, less intrusive, or less costly methods of achieving the purpose and/or objectives of the proposed rule amendments. On the contrary, these rule amendments could have a positive impact on business.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: None.

State: Many boards, currently operating at a surplus, are reducing some licensure fees.

- 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.**

These proposed rule amendments do not provide exemptions for small businesses.

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 proposed rule amendments should not have a financial impact on local governments.

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 11-08-15
 Rule ID(s): 6068
 File Date: 11/18/15
 Effective Date: 2/16/16

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:	Board of Respiratory Care
Division:	
Contact Person:	Mary Katherine Bratton, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Mary.Bratton@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
1330-01	General Rules and Regulations Governing Respiratory Care Practitioners
Rule Number	Rule Title
1330-01-.06	Fees

**RULES
OF
THE TENNESSEE BOARD OF RESPIRATORY CARE
DIVISION OF HEALTH RELATED BOARDS**

**CHAPTER 1330-01
GENERAL RULES AND REGULATIONS GOVERNING
RESPIRATORY CARE PRACTITIONERS**

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1330-01-.14	Temporary License		

1330-01-.01 DEFINITIONS. As used in these rules, the following terms and acronyms shall have the following meaning ascribed to them:

- (1) ABG - Arterial Blood Gas.
- (2) ABG Endorsement - Endorsed by the Board to perform analysis of blood and other materials.
- (3) Applicant - Any individual seeking licensure by the Board who has submitted an official application and paid the application fee.
- (4) Board - The Tennessee Board of Respiratory Care.
- (5) Board Consultant - Any individual authorized by the Board to do the following acts:
 - (a) To conduct a review of the qualifications of an applicant for a license or temporary license to practice respiratory care in Tennessee, to make an initial determination as to whether the applicant has met all the requirements to practice respiratory care in Tennessee, and to issue temporary authorizations to practice in accordance with T.C.A. § 63-27-116; and
 - (b) To decide the following:
 1. What, if any, investigation should be instituted upon complaints received by the Division;
 2. What, if any, disciplinary actions should be instituted upon investigations conducted by the Division;
 3. What, if any, terms of settlements should be offered in formal disciplinary matters based upon investigations conducted by the Division. A proposed settlement will not become final unless it is subsequently ratified by the board.

(Rule 1330-01-.01, continued)

- (6) Board Designee - Any individual authorized by the Board to conduct a review of the qualifications of an applicant for a license or temporary license to practice respiratory care in Tennessee, to make an initial determination as to whether the applicant has met all the requirements to practice respiratory care in Tennessee, and to issue temporary authorizations to practice in accordance with T.C.A. § 63-1-142.
- (7) Board Office - The office of the Unit Director assigned to the Board located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
- (8) C.A.A.H.E.P. - The Commission on Accreditation of Allied Health Education Programs.
- (9) Certificate - Document issued by the Board to an applicant who has completed the certification process. The certificate takes the form of an artistically designed certificate as well as other versions bearing an expiration date.
- (10) Co.A.R.C. - The Committee on Accreditation for Respiratory Care.
- (11) Department - Tennessee Department of Health.
- (12) Division - The Division of Health Related Boards, in the Department of Health, responsible for all administrative, fiscal, inspectional, clerical and secretarial functions of the health related boards enumerated in T.C.A. § 68-1-101.
- (13) Fee - Money, gifts, services, or anything of value offered or received as compensation in return for rendering services; also, the required fees set forth in rule 1330-01-.06.
- (14) He/she Him/her - When used in the text of these rules represents both the feminine and masculine genders.
- (15) HRB - Health Related Boards.
- (16) In Good Standing - The status of a license or permit which is current in the payment of all fees, administrative requirements and which is not subject to disciplinary action.
- (17) J.C.A.H.O. - The Joint Committee on Accreditation of Health Care Organizations.
- (18) License - Document issued by the Board to an applicant who has completed the process for licensure, or temporary licensure, or licensure by endorsement. The license takes the form of an artistically designed license as well as other versions bearing an expiration date.
- (19) Licensee - Any person who has been lawfully issued a license, temporary license or a license by endorsement pursuant to T.C.A. § 63-27-116 (c) to practice.
- (20) Life Support Systems - A term synonymous with "life support equipment" which, for purposes of the licensure exemption allowed for licensed practical nurses, means any and all of the following:
 - (a) Any type of mechanical ventilator.
 - (b) Continuous Positive Airway Pressure or Bi-Positive Airway Pressure devices.
 - (c) Cardiopulmonary monitors.
 - (d) All oxygen delivery devices except nasal cannula.

(Rule 1330-01-.01, continued)

- (21) Maintain - For purposes of the licensure exemption allowed for licensed practical nurses, means the setting up, attaching to or replacement of devices onto a life support system, and includes initiation of, replacement of and/or maintenance on any type of life support system.
- (22) Manage - For purposes of the licensure exemption allowed for licensed practical nurses means the making of adjustments to the controls or settings of any life support system.
- (23) NBRC - National Board for Respiratory Care.
- (24) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (25) Practice of Respiratory Care - Shall have the same meaning as set forth in T.C.A. § 63-27-102 (4).
- (26) Respiratory Care Practitioner - Shall have the same meaning as set forth in T.C.A. § 63-27-102 (7).
- (27) Successfully Completed A Respiratory Care Educational Program - Having completed the required course work, received passing grades and met other administrative requirements of a respiratory care educational program. "Respiratory care educational program" is defined in T.C.A. § 63-27-105 and is applicable to registered and certified respiratory therapists pursuant to T.C.A. § 63-27-105.
- (28) Use of Title or Description - To hold oneself out to the public as having a particular status by means signs, mailboxes, address plates, stationary, announcements, business cards, or other means of professional identification.
- (29) Written Evidence - Includes, but is not limited to, written verification from supervisors or other colleagues familiar with the applicant's work.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-1-107 (d), 63-1-115, 63-1-132, 63-1-142, 63-27-102, 63-27-104, 63-27-105, 63-27-113, and 63-27-116. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed September 26, 2001; effective December 10, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.

1330-01-.02 SCOPE OF PRACTICE.

- (1) The scope of practice for registered respiratory therapist, certified respiratory therapist or assistant is defined in T.C.A. § 63-27-102 (3) and (4), and T.C.A. §§ 63-27-106, 107 and 108.
- (2) Use of Titles
 - (a) Only a certified respiratory therapist who is a member of the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the titles and/or acronyms "Certified Respiratory Therapist (CRT)" or "Certified Respiratory Therapy Technician (CRTT)" as defined in T.C.A. § 63-27-102.
 - (b) Only a registered respiratory therapist who is a member of the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the title and/or acronym "Registered Respiratory Therapist (RRT)" as defined in T.C.A. § 63-27-102.

(Rule 1330-01-.02, continued)

- (c) Any person who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to practice as a respiratory care practitioner as defined in T.C.A. § 63-27-102.
- (d) Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every advertisement he or she publishes. Failure to do so may constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the practitioner to disciplinary action pursuant to T.C.A. § 63-27-112 (a) (2) and (9).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-27-102, 63-27-104, 63-27-106, 63-27-107, 63-27-108, 63-27-111, and 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed February 22, 2010; effective May 23, 2010.

1330-01-.03 DELIVERY OF RESPIRATORY EQUIPMENT TO A PATIENT'S PLACE OF RESIDENCE.

- (1) When respiratory equipment is delivered and installed in a patient's place of residence, the following acts constitute the practice of respiratory care because they are a part of the administration of medical gasses:
 - (a) Initial patient assessment;
 - (b) Attachment of the respiratory equipment to the patient;
 - (c) Ongoing assessment of the patient's response to the administration of the medical gas;
 - (d) Initial and ongoing instruction and education of the patient (and of the patient's family or other caregiver, where relevant) with respect to the role of the respiratory equipment in managing the patient's disease or condition; and
 - (e) Recommendation to the physician of needed modifications in the physician's order.
- (2) When respiratory equipment is delivered and installed in a patient's place of residence, the following acts do not constitute the practice of respiratory care:
 - (a) Delivery of respiratory equipment and supplies (initial and replacement) to the patient's place of residence;
 - (b) Assembly of respiratory equipment in the patient's place of residence;
 - (c) Explanation to the patient of the proper operation and maintenance of the following respiratory equipment:
 - 1. Cylinders used with low-flow (set at less than 6.00 liters per minute) nasal cannula;
 - 2. Pressure regulators/Flow controllers used with low-flow (set at less than 6.00 liters per minute) nasal cannula;
 - 3. Home liquid oxygen systems used with low-flow (set at less than 6.00 liters per minute) nasal cannula;
 - 4. Oxygen concentrators used with low-flow (set at less than 6.00 liters per minute) nasal cannula;

(Rule 1330-01-.03, continued)

5. Oxygen analyzers;
 6. Humidifiers; and
 7. Small volume medication nebulizers with air compressors.
- (d) Initial inspection and assessment of the environment in which the respiratory equipment is to be used;
- (e) Exchange of empty medical gas cylinders;
- (f) Refilling of liquid oxygen containers; and
- (g) Servicing (including repair and maintenance) of respiratory equipment.
- (3) With respect to the following respiratory equipment when delivered and installed in a patient's place of residence, all acts except delivery, repair and maintenance constitute the practice of respiratory care:
- (a) Continuous Positive Airway Pressure Devices;
 - (b) Bi-Level Positive Airway Pressure Devices;
 - (c) Ventilators;
 - (d) Apnea monitors;
 - (e) High-flow (6.00 liters per minute or higher) nasal cannula;
 - (f) All other oxygen delivery devices; and
 - (g) All other respiratory equipment not listed in subparagraph (2) (c).
- (4) With respect to a small volume medication nebulizer with air compressor which is delivered to a patient's place of residence, the placement of medication in a small volume medication nebulizer with air compressor and the instruction of a patient about the medication constitutes the practice of respiratory care.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-105, 63-27-110, and 63-27-117.

Administrative History: Original rule filed June 16, 2006; effective August 30, 2006.

1330-01-.04 RESERVED.

1330-01-.05 QUALIFICATIONS AND PROCEDURES FOR LICENSURE. To become licensed as a respiratory care practitioner in Tennessee, a person must comply with the following procedures and requirements:

- (1) All applicants for all levels of licensure must comply with the following:
 - (a) A current application packet shall be requested from the Board office.
 - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form and submit it along with all documentation and fees required by the form and this rule to the Board office.

(Rule 1330-01-.05, continued)

- (c) Applications for licensure will be accepted throughout the year. All supporting documents requested in these instructions must be received in the Board office within sixty (60) days of receipt of the application or the file will be closed.
- (d) An applicant shall pay, at the time of application, the non-refundable application fee, state regulatory fee and if applicable reciprocity or testing fee as provided in rule 1330-01-.06.
- (e) An applicant shall submit with his application a "passport" style photograph taken within the preceding twelve (12) months.
- (f) An applicant shall attest on his application that he has attained at least eighteen (18) years of age.
- (g) An applicant shall disclose the circumstances surrounding any of the following:
 - 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 - 2. The denial of licensure or certification application by any other state or the discipline of licensure in any state.
 - 3. Loss or restriction of licensure or certification in this or in any other state.
 - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common, or case law.
 - 5. To the extent known by the applicant, the circumstance involved in any pending investigation of licensure or certification by any state.
- (h) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (i) If an applicant holds or has ever held a license or certification to practice respiratory care or any other profession in any other state, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure or certification) from each such licensing board which indicates the applicant holds or held an active license or certification and whether it is in good standing presently or was in good standing at the time it became inactive.
- (j) When necessary, all required documents shall be translated into English and such translation and original document certified as to authenticity by the issuing source. Both versions must be submitted.
- (k) The application form is not acceptable if any portion of it or any other documents required to be submitted by this rule or the application itself have been executed and dated prior to one year before filing with the Board.
- (l) All applications shall be sworn to and signed by the applicant and notarized. All documents submitted for qualification of licensure become the property of the State of Tennessee and will not be returned.

(Rule 1330-01-.05, continued)

(2) In addition to the requirements of paragraph (1) of this rule, the following requirements must be met according to the level of licensure sought:

(a) Registered respiratory therapists:

1. The applicant shall submit proof of completion of academic and clinical preparation in a respiratory care program approved by C.A.A.H.E.P. in collaboration with Co.A.R.C. or their successor organizations.
2. The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis.
3. The applicant shall request verification of passage of the advanced level practitioner exam be submitted directly to the Board office from NBRC.

(b) Certified respiratory therapists:

1. The applicant shall submit proof of completion of academic and clinical preparation in a respiratory care program approved by C.A.A.H.E.P. in collaboration with Co.A.R.C. or their successor organizations.
2. The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis.
3. The applicant shall submit proof of completion of academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization recognized by the Board. "Academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization by the Board" shall mean successful completion of a respiratory care educational program as that term is defined in T.C.A. § 63-27-105 and Rule 1330-01-.01.

The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis.

4. The applicant shall request verification of passage of the entry-level practitioner exam provided by the NBRC be submitted directly to the Board office from the NBRC.

(3) Respiratory care practitioners by endorsement - The Board may issue a license by endorsement to an applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are deemed by the Board to be equivalent to those required in Tennessee. Endorsement applicants must:

(a) Complete the Board approved application; and

(Rule 1330-01-.05, continued)

- (b) Provide proof of possessing a current license, in good standing, from another state.
 - (c) If ABG endorsement is desired, refer to rule 1330-01-.22 on ABG endorsement.
 - (d) Graduates of educational programs not accredited by the American Medical Association Committee on Allied Health Education and Accreditation may be determined to have equivalent educational attainment upon submitting the following:
 - 1. Official copy of grades and curriculum, translated into English. Such translation and original document must be certified as to authenticity by the issuing source.
 - 2. Any education credentials obtained in such program evaluated by either a professional credentialing agency or an institution of higher education (college or university). The results of such evaluation must be submitted directly to the Board's administrative office from the evaluator on the evaluator's official letterhead and contain an original signature.
 - 3. If the applicant is not a United States citizen:
 - (i) Documentation of legal entry into the United States {certified photocopy of visa, naturalization papers or passport}.
 - (ii) Evidence of passing their English Competency Examination except for those applicants educated in countries in which English is the primary language or whose country of education is a member of the British Commonwealth. The test results must be forwarded directly to the Board office from the testing agency.
 - (I) One of the following examinations must have been passed:
 - I. Test of Spoken English
 - II. Test of English as a Foreign Language
 - III. Test of Written English or
 - IV. Michigan English Language Assessment Battery
 - (II) To obtain information regarding English competency examinations, requests must be directed to:
 - Test of English
P. O. Box 6155
Princeton, NJ 08541-6155
 - Or
 - Michigan English Language Assessment Battery
English Language Institute
Testing and Certification Division
3020 North University Building
The University of Michigan
Ann Arbor, MI 48109-1057
- (4) Application review and licensure decisions shall be governed by rule 1330-01-.07.

(Rule 1330-01-.05, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-105, 63-27-106, 63-27-107, 63-27-108, 63-27-112, 63-27-113, 63-27-115, and 63-27-116. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed March 14, 2006; effective May 28, 2006.

1330-01-.06 FEES.

- (1) The fees are as follows:
 - (a) Total Application fee - A fee to be paid by all applicants seeking initial licensure, including those seeking licensure by reciprocity. This fee consists of the Application Fee and License Fee. In cases where an applicant is denied licensure or the application file is closed due to abandonment, only the portion representing the License Fee will be refundable.
 - (b) Endorsement/Verification fee - A non-refundable fee to be paid for each certification, endorsement or verification of an individual's record for any purpose.
 - (c) Late Renewal fee - A Division established non-refundable fee to be paid when an individual fails to timely renew a license.
 - (d) License Renewal fee - A non-refundable fee to be paid by all licensees. This fee also applies to individuals who reinstate a retired or lapsed license.
 - (e) Replacement license fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "initial" license.
 - (f) State Regulatory fee - A non-refundable fee to be paid by all individuals with all applications.
 - (g) Upgrade fee - A non-refundable fee to be paid by a respiratory assistant or a certified respiratory therapist when seeking to upgrade his/her authorization to practice respiratory care as provided in rule 1330-01-.21.
- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Board of Respiratory Care.

(3) Fee Schedule:	Amount
(a) Total Application Fee	
1. Application Fee	\$ 420 70.00
2. License Fee	<u>80.00</u>
Total Application Fee	\$ <u>200</u> 150.00
(b) Endorsement/Verification	15.00
(c) Late Renewal Fee	50.00

(Rule 1330-01-.06, continued)

(d) Renewal (biennial) Fee	420 <u>100.00</u>
(e) Replacement License	25.00
(f) State Regulatory (biennial)	10.00
(g) Upgrade Fee	20.00
(h) License Fee	80.00

- (4) The total application fee must be paid at the time of application.

Authority: T.C.A. §§ ~~4-3-1011~~, 4-5-202, 4-5-204, 9-4-5117 and 63-27-104, 63-27-105. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed July 13, 2012; effective October 11, 2012.

1330-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Application files are not considered completed until all information, including fees, have been received by the Division. Preliminary review of all applications to determine whether or not the application file is complete may be delegated to the Board's Unit Director.
- (2) Completed applications may be approved by a Board member, by the Board consultant, or by the Board designee for a temporary authorization pursuant to T.C.A. §§ 63-1-142 and 63-27-116.
- (3) If an application is incomplete when received in the Board office, and all other reasonable efforts to correct any deficiency have failed, a deficiency letter will be sent by certified mail to the applicant notifying him of the deficiency. This letter shall request specified additional material necessary to complete the application. The requested information must be received in the Board office on or before the sixtieth (60th) day after receipt of the notification.
 - (a) Such notification shall be sent certified mail return receipt requested from the Board office.
 - (b) If the requested information is not timely received, the application file shall be deemed abandoned and closed and the applicant notified. No further action will take place until a new application is received pursuant to the rules governing the application process, including another payment of all fees.
- (4) If a completed application has been denied by the Board the action shall become final and the following shall occur:
 - (a) A notification of the denial shall be sent by the Board office by certified mail, return receipt requested. Specific reasons for denial will be stated, such as incomplete or unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or administrative authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures

(Rule 1330-01-.07, continued)

Act (T.C.A. §§ 4-5-301, et seq.). The notification shall inform the applicant of the procedure necessary to accomplish that action.

- (c) An applicant has a right to a contested case hearing only if the licensure denial is based on subjective or discretionary criteria.
 - (d) An applicant may be granted a contested case hearing if licensure denial is based on an objective, clearly defined criteria only if, after review and attempted resolution by the Board's administrative staff, the licensure application cannot be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal. Such request must be made in writing to the Board within thirty (30) days of the receipt of the notice of denial from the Board.
- (5) If the Board finds it has erred in the issuance of a license, the Board will give written notice by certified mail of its intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to rule 1330-01-.07(4).
- (6) Applications submitted for one type of license, temporary license or permit cannot be converted after filing to an application for another type of license, temporary license or permit. If an applicant desires to convert, a new application with supporting documents and appropriate fees must be submitted.
- (7) The issuance or renewal of licensure to applicants who otherwise may be entitled to full licensure or renewal, may be withheld, denied, conditioned or restricted in any manner the Board deems necessary to protect the public in any of the following circumstances:
- (a) When any applicant's application indicates a problem in the areas of mental, physical, moral or educational criteria for licensure or renewal which the Board determines may create a potential threat to the public health, safety or welfare.
 - (b) When any applicant has violated any provision of T.C.A. §§ 63-27-101, et seq., or rules promulgated pursuant thereto.
 - (c) When any applicant fails to fully and timely comply with all licensure application and renewal requirements.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-301, 63-1-142, 63-27-104, 63-27-105, 63-27-109, 63-27-112, and 63-27-116. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.

1330-01-.08 RESERVED.

Authority: T.C.A. §§4-5-202, 4-5-204, and 63-27-104. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003.

1330-01-.09 RENEWAL OF LICENSE.

- (1) Renewal application

(Rule 1330-01-.09, continued)

- (a) The due date for license renewal is the last day of the month in which a birthdate falls pursuant to the Division's biennial birthdate renewal system. The due date is contained on the renewal document designated as the expiration date.
 - (b) Methods of Renewal
 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org
 2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
 - (c) To be eligible for renewal an individual must submit to the Division, on or before the expiration date, the following:
 1. A completed and signed renewal application form; and
 2. The renewal and state regulatory fees as provided in rule 1330-01-.06.
 - (d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed in accordance with rule 1200-10-01-.10.
 - (e) Anyone submitting a signed renewal form or letter which is found to be untrue may be subject to disciplinary action as provided in rule 1330-01-.15.
- (2) Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:
- (a) Obtaining and fully completing the Board's Reinstatement Application and submitting it along with payment of all past due registration/renewal fees to the Board office; and
 - (b) Paying the Late Renewal fee, pursuant to Rule 1330-01-.06; and
 - (c) Providing documentation of successfully completing continuing education requirements, pursuant to Rule 1330-01-.12.
- (3) After January 1, 2004, applicants currently licensed as registered respiratory therapists who have not obtained the credential "Registered Respiratory Therapist (RRT)" from the NBRC shall have their licenses renewed or reinstated as certified respiratory therapists.
- (4) Initial renewal issuance decisions pursuant to this rule may be made administratively by the Board consultant pursuant to T.C.A. § 63-27-116 or by the Board designee pursuant to T.C.A. § 63-1-142, subject to review and subsequent decision by the Board.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-27-104, 63-27-102, 63-27-104, 63-27-105, 63-27-109, 63-27-113, and 63-27-116. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.

1330-01-10 SUPERVISION.

- (1) Levels of Supervision
 - (a) The supervision required by T.C.A. §§ 63-27-106 and 63-27-107 for registered respiratory therapists and certified respiratory therapists requires that the individual responsible for supervision be available at least by electronic or telephonic communication at all times that the registered respiratory therapist or certified respiratory therapist is performing services.
 - (b) The supervision required by T.C.A. § 63-27-108 (b) for respiratory assistants requires that the individual responsible for supervision be on-site at all times at the facility or location where the respiratory assistant is performing services.
- (2) Conflict of Interest Supervision - Supervision cannot be provided by the individual's parents, spouse, former spouse, siblings, children, cousins, in-laws {present or former}, step-children, grandparents, grandchildren, aunts, uncles, employees, or anyone sharing the same household. Such supervision shall not be acceptable toward fulfillment of the supervision requirement.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-106, 63-27-107, and 63-27-108.
Administrative History: Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003.

1330-01-11 RETIREMENT AND REINSTATEMENT OF LICENSE.

- (1) A person who holds a current license and does not intend to practice as a "Respiratory Care Practitioner" may apply to convert an active license to retired status. An individual who holds a retired license will not be required to pay a renewal fee to maintain his license in retired status.
- (2) A person who holds an active license may apply for retired status in the following manner:
 - (a) Obtain, complete, and submit an Affidavit of Retirement form to the Board office; or
 - (b) Submit any other documentation which may be required to the Board office.
 - (c) The effective date of retirement will be the date the Affidavit of Retirement is received in the Board office.
- (3) After January 1, 2004, applicants currently licensed as registered respiratory therapists who have not obtained the credential "Registered Respiratory Therapist (RRT)" from the NBRC shall have their licenses reinstated as certified respiratory therapists.
- (4) An individual whose license has been retired may re-enter active status by doing the following:
 - (a) Obtain, complete, and submit a Reinstatement Application form to the Board office; and
 - (b) Pay the renewal fee and state regulatory fees as provided in rule 1330-01-.06.
 - (c) If reinstatement is requested prior to the expiration of one year from the date of retirement, the Board will require payment of the past due renewal and the late renewal fees.
 - (d) Provide verification of completion of continuing education requirements, as provided in rule 1330-01-.12.

(Rule 1330-1-.11, continued)

- (5) Reinstatement applications shall be treated as licensure applications and review decisions shall be governed by rule 1330-01-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-27-104, 63-27-105, 63-27-109, and 63-27-113.
Administrative History: Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.

1330-01-.12 CONTINUING EDUCATION.

- (1) Hours required.
 - (a) Each therapist and assistant licensed by the Board must complete ten (10) contact hours of continuing education every calendar year. All courses must be at least thirty (30) minutes in length.
 1. At least five (5) hours of the ten (10) hour requirement shall pertain to the clinical practice of respiratory care, or to education, or to research relating to the cardio-pulmonary system.
 2. Up to five (5) hours of the ten (10) hour requirement may pertain to the management of practicing respiratory care or may pertain to ethics and substance abuse.
 - (b) For new licensees, submitting proof of successful completion of the respiratory care program required by T.C.A. §§ 63-27-106 or 63-27-107 shall be considered proof of sufficient preparatory education to constitute continuing education contact hour requirements for the calendar year in which the program was completed.
- (2) Acceptable Continuing Education.
 - (a) The following organizations' or associations' and their local and state affiliates' continuing education activities, which pertain to the practice of respiratory care, shall be considered prior approved for fulfilling the contact hour requirements of this rule:
 1. All hospitals or institutions belonging to the Tennessee Hospital Association, or which are J.C.A.H.O. accredited.
 2. American Association for Respiratory Care and any of its chartered affiliates
 3. American Association of Critical Care Nurses
 4. American Association of Pediatric Physicians
 5. American Cancer Society
 6. American College of Chest Physicians
 7. American College of Emergency Physicians
 8. American College of Physicians
 9. American Heart Association

(Rule 1330-01-.12, continued)

10. American Lung Association
11. American Medical Association
12. American Nurses Association
13. American Nurses Credentialing Center's Commission on Accreditation
14. American Society of Anesthesiologists
15. American Society of Cardiovascular Professionals
16. American Thoracic Society
17. Association of Certified Registered Nurse Anesthetists
18. Committee on Accreditation for Respiratory Care
19. Society of Critical Care Medicine
20. Tennessee Association for Home Care
21. Tennessee Association of Cardiovascular and Pulmonary Rehabilitation
22. Tennessee Medical Association

(b) In lieu of obtaining continuing education contact hours from one of the organizations listed in (a), a licensee may obtain his or her continuing education contact hours in any of the following ways:

1. By taking and passing (with a grade point average of 2.0 or its equivalent, or better) a college or university course which focuses on the clinical practice of respiratory care and/or on education, management or research relating to the cardiopulmonary system. The licensee will receive continuing education contact hours equal to three (3) times the number of hours for which the course is accredited by the college or university.
2. By taking and passing advanced training courses (either the initial, renewal, or instructor courses) on advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or neonatal resuscitation programs (NRP). The licensee will receive ten (10) continuing education contact hours for one of these courses (unless the number of hours attended by the licensee is actually less than ten (10) hours).
3. By taking and passing a national re-credentialing examination (either of the advanced practitioner examinations for registered respiratory therapists or the certification examination for certified respiratory therapists). The licensee will receive twelve (12) continuing education contact hours for passing the examination.
4. By completing a self-study course, as provided in subparagraph (2) (c).

(c) Multi-Media Formats—Continuing education activities/courses may be presented in the traditional lecture and classroom formats or in multi-media formats.

1. Multi-media courses are courses utilizing:

(Rule 1330-01-.12, continued)

- (i) The Internet
 - (ii) Closed circuit television
 - (iii) Satellite broadcasts
 - (iv) Correspondence courses
 - (v) Videotapes
 - (vi) CD-ROM
 - (vii) DVD
 - (viii) Teleconferencing
 - (ix) Videoconferencing
 - (x) Distance learning
2. A maximum of five (5) credit hours may be granted for multi-media courses during each calendar year.
- (3) Continuing Education Program Approval Process
- (a) All entities offering education activities not granted prior approval by these rules must request and receive prior approval of their content by the Board in order to be considered valid for fulfilling any of the continuing education requirements as set forth in this act.
 - (b) Application for approval shall contain the topic, speaker credentials, a brief description of content or content objectives, the sponsoring institution or organization, the length in minutes of each presentation, and the number of credit hours requested. Activities/courses that are being offered in traditional classroom and lecture formats shall also include the date and the place of instruction.
 - (c) All applications must be submitted to the Board a minimum of forty-five (45) calendar days prior to the educational offering. The Board or Board Consultant shall review each application and shall rule on whether the offering(s) in whole or in part shall be accepted as valid for the purposes of the continuing education requirements of this act. The decision of the Board shall be final in all such matters.
- (4) Documentation
- (a) Each individual must retain independent proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of three (3) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process. Such documentation must be one (1) or more of the following:
 1. Certificates verifying the individual's attendance.
 2. Official transcript verifying credit hours earned.

(Rule 1330-01-.12, continued)

3. Written documentation of training that is kept by the respiratory care practitioner and meets the following criteria:
 - (i) Written or printed on official stationery of the organization which provided the continuing education;
 - (ii) The licensee's name;
 - (iii) The total number of continuing education hours;
 - (iv) The course title;
 - (v) The date of the continuing education; and
 - (vi) The licensee's signature and license number.
4. Certificates or letters verifying successful completion of a multi-media course.
 - (b) If, after request by the Board during its verification process, a person submits documentation for training that is not clearly identifiable as appropriate continuing education, the Board will request a written description of the training and how it applies to the practice of respiratory care. If the Board determines that the training cannot be considered appropriate continuing education, the individual will be given ninety (90) days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next renewal period.
- (5) Continuing education credit will not be allowed for the following:
 - (a) Regular work activities, administrative staff meetings, case staffing/reporting, etc.
 - (b) Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches.
 - (c) Independent unstructured or self-structured learning such as home study programs, except as authorized pursuant to subparagraph (2) (c).
 - (d) Training specifically related to policies and procedures of an agency (Examples - universal precautions, infection control, emergency or disaster preparedness, employee orientation, employee relations).
 - (e) College or university course(s), except as authorized pursuant to subparagraph (2)(b).
 - (f) Provider CPR courses of any type.
- (6) Continuing Education for Reinstatement of Retired, Revoked, or Expired License.
 - (a) Reinstatement of Retired License
 1. An individual whose license has been retired for one (1) year or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reinstatement. Those hours can not be counted toward future continuing education requirements.
 2. Any individual requesting reinstatement of a license which has been retired for more than one (1) year must submit, along with the reinstatement request, verification which indicates the attendance and completion of ten (10) contact

(Rule 1330-01-.12, continued)

- hours of continuing education for every calendar year for which the license has been retired, although under no circumstances shall the maximum number of contact hours required be more than twenty (20) hours. The continuing education hours must have been obtained during the period of retirement with the exception of the most recent calendar year requirement, which must have been completed within the twelve (12) months preceding reinstatement.
- (b) Reinstatement of Revoked License - Any individual requesting reinstatement of a license which has been revoked for non-compliance with the continuing education requirements of this rule must submit, along with the reinstatement request, verification which indicates the attendance and completion of ten (10) contact hours of continuing education for every calendar year for which the license has been revoked. The continuing education hours must have been obtained during the period of revocation with the exception of the most recent calendar year requirement, which must have been completed within the twelve (12) months preceding reinstatement.
 - (c) Reinstatement of Expired License - No person whose license has expired may be reinstated without submitting evidence of fulfillment of the continuing education requirements as outlined in this rule.
 - 1. Except for licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal ten (10) contact hours for every calendar year for which the license was expired, although under no circumstances shall the maximum number of contact hours required be more than sixty (60) hours, and must have been successfully completed before the date of reinstatement.
 - 2. For licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal ten (10) contact hours for every calendar year for which the license was expired, although under no circumstances shall the maximum number of contact hours required be more than forty (40) hours, and must have been begun and successfully completed before the date of reinstatement.
 - (d) Continuing education hours obtained as a prerequisite for reinstating a license may not be counted toward the calendar year requirement.
- (7) Violations - Any licensee who fails to successfully complete or who falsely certifies attendance and completion of the required hours of continuing education may be subject to disciplinary action.
- (a) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.
 - (b) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
 - (c) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraphs (7) (a) and (7) (b) above may be subject to disciplinary action.
 - (d) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

(Rule 1330-01-.12, continued)

(8) Waiver or Extension of Continuing Education

- (a) The Board may grant a waiver of the need to attend and complete the required hours of continuing education or the Board may grant an extension of the deadline to complete the required hours of continuing education if it can be shown that compliance was beyond the physical or mental capabilities of the person seeking the waiver.
- (b) Waivers or extension of the deadline will be considered only on an individual basis and may be requested by submitting the following items to the Board office:
 1. A written request for a waiver or deadline extension which specifies which requirements are sought to be waived or which deadline is sought to be extended and a written and signed explanation of the reason for the request; and
 2. Any documentation which supports the reason(s) for the waiver or deadline extension requested or which is subsequently requested by the Board.
- (c) A waiver or deadline extension approved by the Board is effective only for the renewal period for which the waiver is sought.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-27-104, 63-27-105, 63-27-106, 63-27-107, 63-27-109, 63-27-112, and 63-27-116. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendments filed March 17, 2005; effective May 31, 2005. Amendment filed February 22, 2010; effective May 23, 2010.

1330-01-.13 RESERVED.

Authority: T.C.A. §§4-5-202, 4-5-204, and 63-27-104. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003.

1330-01-.14 TEMPORARY LICENSE.

- (1) (a) Filed with the Board office all the documentation required by rule 1330-01-.05, except proof of examination passage. A temporary license can be issued not to exceed a cumulative period of twelve (12) months.
 1. An applicant for temporary license as a registered respiratory therapist shall submit proof of successful completion of a program accredited by the American Medical Association Committee on Allied Health Education and Accreditation (CAHEA) in collaboration with the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or their successor organizations
 2. An applicant for temporary license as a certified respiratory therapist shall submit proof of successful completion of academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization recognized by the Board pursuant to Rule 1330-01-.05(2)(b)1.

"Academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization recognized by the Board" means successful completion of a program accredited by the American Medical Association Committee on Allied Health Education and Accreditation (CAHEA) in

(Rule 1330-01-.14, continued)

collaboration with the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or their successor organizations.

- (b) Applications for temporary licenses may be used for purposes of applying for full licensure. Those applications shall be held open for a period of one (1) year from the date of issuance while awaiting notification of the results of the NBRC examination. If notification of successful completion of the examination is not received in the Board office directly from the NBRC before the expiration of that year, the application will be considered abandoned pursuant to 1330-01-.07.

- (2) A temporary license will always become invalid at the time a permanent license is issued.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-27-104, and 63-27-116. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.

1330-01-.15 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.

- (1) The Board may take any disciplinary action described in paragraph (2) when a licensee has been found guilty of committing any act or offense provided in T.C.A. § 63-27-112 (a), or has violated any of the provisions of Tennessee Code Annotated, Title 63, Chapter 1 or Chapter 27 or the rules promulgated pursuant thereto.
- (2) Actions - Upon a finding by the Board that a respiratory care practitioner has violated any provision of the Respiratory Care Practitioner Act or the rules promulgated pursuant thereto, the Board may impose any of the following actions separately or in any combination deemed appropriate to the offense.
 - (a) Denial of an application for licensure
 - (b) Advisory Censure - This is a written action issued to the respiratory care practitioner for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (c) Formal reprimand - This is a written action issued to a respiratory care practitioner for one time and less severe violation(s). It is a formal disciplinary action.
 - (d) Probation - This is a formal disciplinary action which places a respiratory care practitioner on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
 - (e) Licensure Suspension - This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the re-entry of the individual into the practice under the licensure previously issued.
 - (f) Licensure Revocation For Cause - This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. The Board, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time which it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Board's revocation order.

(Rule 1330-01-.15, continued)

- (g) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
 - 1. During any period of probation, suspension; or
 - 2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or
 - 3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or
 - 4. As a stand-alone requirement(s) in any disciplinary order.
 - (h) Civil penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph (5) of this rule.
 - (i) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee or certificate holder petitions, pursuant to paragraph (3) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.
- (3) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed or uncertified practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
- (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
 - 1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
 - 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
 - 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license or certificate previously revoked.
 - (b) Procedures
 - 1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
 - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires

(Rule 1330-01-.15, continued)

testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order of Compliance
Board of Respiratory Care

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or

(Rule 1330-01-15, continued)

2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a license or certificate previously revoked.

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the ____ day of _____, 20____.

Petitioner's Signature

- (4) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed or uncertified practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.
 - (a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.
 - (b) Procedures
 1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
 - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered

(Rule 1330-01-.15, continued)

in making an initial determination on, or a final order in response to, the petition.

2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order Modification
Board of Respiratory Care

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

(Rule 1330-01-.15, continued)

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the ____ day of _____, 20____.

Petitioner's Signature

(5) Civil Penalties - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.

(a) Schedule of Civil Penalties

1. A Type A civil penalty may be imposed whenever the Board finds the person who is required to be licensed by the Board is guilty of a willful and knowing violation of the Respiratory Care Practitioner Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this section, a type A penalty shall include, but not be limited to, a person who willfully and knowingly is or was practicing as a respiratory care practitioner without a license from the Board.
2. A Type B civil penalty may be imposed whenever the Board finds the person required to be licensed by the Board is guilty of a violation of the Respiratory Care Practitioner Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public.
3. A Type C civil penalty may be imposed whenever the Board finds the person required to be licensed, permitted, or authorized by the Board is guilty of a violation of the Respiratory Care Practitioner Act or regulations promulgated pursuant thereto, which are neither directly detrimental to the clients or public, nor directly impact their care, but have only an indirect relationship to client care or the public.

(b) Amount of Civil Penalties

1. Type A civil penalties shall be assessed in the amount of not less than \$500 and not more than \$1,000.
2. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(c) Procedures for Assessing Civil Penalties

(Rule 1330-01-.15, continued)

1. The Division may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess type and amount of civil penalty which was not recommended by the Division.
3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and
 - (v) The interest of the public.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

Authority: T.C.A. §§4-5-105, 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-27-104, 63-27-111, and 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed February 13, 2002; April 29, 2002. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed August 9, 2004; effective October 23, 2004. Amendment filed February 22, 2010; effective May 23, 2010.

1330-01-.16 LICENSE.

- (1) Issuance - Upon the Board determining that an applicant has successfully met all statutory and regulatory requirements, the Board shall direct the Division to issue the applicant a license in the classification for which he is qualified to practice.
- (2) Display of License - Every person licensed by the Board shall have on file a copy of his license in his office and, whenever required, exhibit such license to the Board or its authorized representatives.
- (3) Replacement License, or Renewal Document- A person's whose license, certificate, or renewal document has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Board office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the required fee pursuant to rule 1330-01-.06. The damaged license, if available, must accompany the affidavit.

(Rule 1330-01-.16, continued)

- (4) Verification of License - Requests for verification or endorsement of a license must be made in writing to the Board office and accompanied by the fee required by rule 1330-01-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-109, 63-1-106, and 63-27-104. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000.

1330-01-.17 CHANGE OF NAME AND/OR ADDRESS. The name and address contained in the applicant's license application shall be the name and address of the licensee where all correspondence and renewal forms from the Board shall be sent.

- (1) Change of Name - An individual licensed by the Board shall notify the Board in writing within thirty (30) days of a name change and will provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's profession, board, social security and license numbers.
- (2) Change of Address - Each person holding a license who has had a change of address or place of employment, shall file in writing with the Board his current address, giving both old and new addresses. Such requests shall be received in the Board office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, board, social security and license numbers.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-108, 63-27-104, 63-27-105, and 63-27-106. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003.

1330-01-.18 MANDATORY RELEASE OF PATIENT RECORDS. - Patient records release shall be governed by Tennessee Code Annotated, Title 63, Chapter 2.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-27-104, 63-2-101, and 63-2-102. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000.

1330-01-.19 BOARD OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, ADVISORY RULINGS, SUBPOENAS, AND SCREENING PANELS.

- (1) The Board, shall elect annually from its members the following officers:
 - (a) Chairman - who shall preside at all Board meetings, and appoint committees.
 - (b) Secretary - who in the absence of the chairperson shall preside at Board meetings and who, along with the Board's Unit Director, shall be responsible for correspondence from the Board and execution of all official documents requiring the seal of the Board to be affixed.
- (2) The Board shall select consultants who, along with each individual member of the Board, may serve as consultants to the Division and who are vested with the authority to do the following acts:
 - (a) Review complaints and recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.
 - (b) Recommend whether and what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently reviewed, evaluated and ratified by the full Board before it becomes effective.

(Rule 1330-01-.19, continued)

- (c) Review and approve all types of applications for issuance of a temporary authorization pursuant T.C.A. § 63-27-116 (d), subject to subsequent ratification by the Board before full licensure, renewal or reinstatement can issue.
 - (d) Undertake any other matter authorized by a majority vote of the Board.
- (3) Records and Complaints
- (a) All requests, applications, notices, other communications and correspondence shall be directed to the Board office. Any requests or inquiries requiring a Board decision or official Board action, except documents relating to disciplinary actions or hearing requests, must be received fourteen (14) days prior to a scheduled Board meeting. Requests or inquiries not timely received will be retained in the Board office and presented at the next Board meeting.
 - (b) All records of the Board, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Board office during normal business hours.
 - (c) Copies of public records shall be provided to any person upon payment of a fee.
 - (d) All complaints should be directed to the Division's Investigations Section.
- (4) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-01-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.
- (5) Advisory Rulings - Any person who is affected by any matter within the jurisdiction of the Board and who holds a license issued pursuant to Chapter 27 of Title 63 of the Tennessee Code Annotated, may submit a written request for an advisory ruling subject to the limitations imposed by T.C.A. § 63-27-104 (b). The procedures for obtaining and issuance of advisory rulings are as follows:
- (a) The licensee shall submit the request to the Board Administrative Office on the form contained in subparagraph (5)(e) providing all the necessary information; and
 - (b) The request, upon receipt, shall be referred to the Board's administrative staff for research, review and submission of a proposed ruling to the Board for its consideration at the next meeting after the draft ruling has been approved by the Board's consultant and advisory attorney; and
 - (c) The Board shall review the proposed ruling and either make whatever revisions or substitutions it deems necessary for issuance or refer it back to the administrative staff for further research and drafting recommended by the Board; and
 - (d) Upon adoption by the Board the ruling shall be transmitted to the requesting licensee. The ruling shall have only such affect as is set forth in T.C.A. § 63-27-104 (b).
 - (e) Any request for an advisory ruling shall be made on the following form, a copy of which may be obtained from the Board's Administrative Office:

Board of Respiratory Care
Request for Advisory Ruling

(Rule 1330-01-.19, continued)

Date: _____
Licensee's Name: _____
Licensee's Address: _____

License Number: _____

1. The specific question or issue for which the ruling is requested:

2. The facts that gave rise to the specific question or issue:

3. The specific statutes and/or rules which are applicable to the question or issue:

Licensee's Signature _____

Mail or Deliver to: Unit Director
Tennessee Board of Respiratory Care
227 French Landing, Suite 300
Heritage Place, MetroCenter
Nashville, TN 37243

(6) Subpoenas

- (a) Purpose - Although this rule applies to persons and entities other than respiratory care practitioners, it is the Board's intent as to respiratory care practitioners that they be free to comprehensively treat and document treatment of their patients without fear that the treatment or its documentation will be unduly subjected to scrutiny outside the profession. Consequently, balancing that intent against the interest of the public and patients to be protected against substandard care and activities requires that persons seeking to subpoena such information and/or materials must comply with the substance and procedures of these rules.

It is the intent of the Board that the subpoena power outlined herein shall be strictly construed. Such power shall not be used by the Division or Board investigators to seek other incriminating evidence against respiratory care practitioners when the Division or Board does not have a complaint or basis to pursue such an investigation. Thus, unless the Division or its investigators have previously considered, discovered, or otherwise received a complaint from either the public or a governmental entity, no subpoena as contemplated herein shall issue.

- (b) Definitions - As used in this chapter of rules the following words shall have the meanings ascribed to them:
 1. Probable Cause

(Rule 1330-01-.19, continued)

- (i) For Investigative Subpoenas - Shall mean that probable cause, as defined by case law at the time of request for subpoena issuance is made, exists that a violation of the Respiratory Care Practitioner Act or rules promulgated pursuant thereto has occurred or is occurring and that it is more probable than not that the person(s), or item(s) to be subpoenaed possess or contain evidence which is more probable than not relevant to the conduct constituting the violation.
- (ii) The utilization of the probable cause evidentiary burden in proceedings pursuant to this rule shall not in any way, nor should it be construed in any way to establish a more restrictive burden of proof than the existing preponderance of the evidence in any civil disciplinary action which may involve the person(s) or items that are the subject of the subpoena.

2. Presiding Officer - For investigative subpoenas shall mean the Board chair.

(c) Procedures

1. Investigative Subpoenas

- (i) Investigative Subpoenas are available only for issuance to the authorized representatives of the Tennessee Department of Health, its investigators and its legal staff.
- (ii) An applicant for such a subpoena must either orally or in writing notify the Board's Unit Director of the intention to seek issuance of a subpoena. That notification must include the following:
 - (I) The time frame in which issuance is required so the matter can be timely scheduled; and
 - (II) A particular description of the material or documents sought, which must relate directly to an ongoing investigation or contested case, and shall, in the instance of documentary materials, be limited to the records of the patient or patients whose complaint, complaints, or records are being considered by the Division or Board, although in no event shall such subpoena be broadly drafted to provide investigative access to medical records of other patients who are not referenced in a complaint received from an individual or governmental entity, or who have not otherwise sought relief, review, or Board consideration of a respiratory care practitioner's conduct, act, or omission; and
 - (III) Whether the proceedings for the issuance is to be conducted by physical appearance or electronic means; and
 - (IV) The name and address of the person for whom the subpoena is being sought or who has possession of the item(s) being subpoenaed.
- (iii) The Board's Unit Director shall cause to have the following done:
 - (I) In as timely a manner as possible arrange for the Board chair to preside and determine if the subpoena should be issued; and
 - (II) Establish a date, time and place for the proceedings to be conducted and notify the applicant and the court reporter; and

(Rule 1330-01-.19, continued)

- (III) Maintain a complete record of the proceedings including an audio tape in such a manner as to:
 - I. Preserve a verbatim record of the proceeding; and
 - II. Prevent the presiding officer from being allowed to participate in any manner in any disciplinary action of any kind, formal or informal, which may result which involves either the person or the documents or records for which the subpoena was issued.
- (iv) The Proceedings
 - (I) The applicant shall do the following:
 - I. Provide for the attendance of all persons whose testimony is to be relied upon to establish probable cause; and
 - II. Produce and make part of the record copies of all documents to be utilized to establish probable cause; and
 - III. Obtain, complete and provide to the presiding officer a subpoena which specifies the following:
 - A. The name and address of the person for whom the subpoena is being sought or who has possession of the item(s) being subpoenaed; and
 - B. The location of the materials, documents or reports for which production pursuant to the subpoena is sought, if that location is known; and
 - C. A brief, particular description, of any materials, documents or items to be produced pursuant to the subpoena; and
 - D. The date, time and place for compliance with the subpoena.
 - IV. Provide the presiding officer testimony and/or documentary evidence which in good faith the applicant believes is sufficient to establish that probable cause exists for issuance of the subpoena as well as sufficient proof that all other reasonably available alternative means of securing the materials, documents or items have been unsuccessful.
 - (II) The presiding officer shall do the following:
 - I. Commence the proceedings and swear all necessary witnesses; and
 - II. Hear and maintain the confidentiality of the evidence, if any, presented at the proceedings; and

(Rule 1330-01-.19, continued)

- III. Control the manner and extent of inquiry during the proceedings and be allowed to question any witness who testifies; and
 - IV. Determine, based solely on the evidence presented in the proceedings, whether probable cause exists and, if so, issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry; and
 - V. Sign the subpoena as ordered to be issued; and
 - VI. Not participate in any way in any other proceeding whether formal or informal which involves the matters, items or person(s) which are the subject of the subpoena. This does not preclude the presiding officer from presiding at further proceedings for issuance of subpoenas in the matter.
2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case being heard with an Administrative Law Judge from the Secretary of State's office presiding, the procedure in part 1330-01-.19(6)(c)1. shall not apply and all such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.
- (d) Subpoena Forms
1. All subpoena shall be issued on forms approved by the Board chair.
 2. The subpoena forms may be obtained by contacting the Board's Administrative Office.
- (e) Subpoena Service - Any method of service of subpoenas authorized by the Tennessee Rules of Civil Procedure or the rules of the Tennessee Department of State, Administrative Procedures Division may be utilized to serve subpoenas pursuant to this rule.
- (7) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-01-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.
 - (8) Reconsiderations and Stays - The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-115, 63-1-132, 63-1-142, 63-27-103, 63-27-104, and 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed March 16, 2007; effective May 30, 2007. Amendment filed February 22, 2010; effective May 23, 2010.

1330-01-.20 ADVERTISING. The following acts or omissions in the context of advertisements by any licensee shall subject the licensee to disciplinary action pursuant to T.C.A. § 63-27-112.

(Rule 1330-01-.20, continued)

- (1) Claims that convey the message that one licensee is better than another when superiority cannot be substantiated.
- (2) Misleading use of an unearned or non-health degree.
- (3) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (4) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
- (5) Use of any personal testimonial attesting to a quality of competency offered by a licensee that is not reasonably verifiable.
- (6) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (7) Communication of personal identifiable facts, data, or information about a patient without first obtaining the patient's consent.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-27-104, and 63-27-112. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed June 16, 2006; effective August 30, 2006.

1330-01-.21 UPGRADING CLASSIFICATION REQUIREMENTS.

- (1) A respiratory assistant may upgrade to certified respiratory therapist by doing the following:
 - (a) Complete and submit a notarized application, attach a "passport" style photograph taken within the preceding twelve (12) months, and pay the Upgrade and State Regulatory fees as provided in rule 1330-01-.06.
 - (b) Submit proof of completion of academic and clinical preparation in a respiratory care program approved by C.A.A.H.E.P. in collaboration with Co.A.R.C. or their successor organizations. The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis; and
 - (c) Have the NBRC submit to the Board office proof of successful completion of the entry level practitioner examination provided by the NBRC and/or proof of NBRC certification.
- (2) A respiratory assistant may upgrade to registered respiratory therapist by doing the following:
 - (a) Complete and submit a notarized application, attach a "passport" style photograph taken within the preceding twelve (12) months, and pay the Upgrade and State Regulatory fees as provided in rule 1330-01-.06.
 - (b) Submit proof of completion of academic and clinical preparation in a respiratory care program approved by C.A.A.H.E.P. in collaboration with Co.A.R.C. or their successor organizations. The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis; and

(Rule 1330-01-.21, continued)

- (c) Have the NBRC submit to the Board office proof of successful completion of the advanced level practitioner examination provided by the NBRC.
- (3) A certified respiratory therapist may upgrade to registered respiratory therapist by doing the following:
 - (a) Complete and submit a notarized application, attach a "passport" style photograph taken within the preceding twelve (12) months, and pay the Upgrade and State Regulatory fees as provided in rule 1330-01-.06.
 - (b) Submit proof of completion of academic and clinical preparation in a respiratory care program approved by C.A.A.H.E.P. in collaboration with Co.A.R.C. or their successor organizations. The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis; and
 - (c) Have the NBRC submit to the Board office proof of successful completion of the advanced level practitioner examination provided by the NBRC.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-105, 63-27-106, 63-27-107, 63-27-113, 63-27-115, and 63-27-116. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed December 5, 2003; effective February 18, 2004.

1330-01-.22 ABG ENDORSEMENT.

- (1) ABG endorsement includes the practice of specimen analysis of blood gases, pH and other associated parameters along with the needed equipment maintenance and quality assurance procedures. For purposes of this rule "associated parameters" includes, but is not limited to:
 - (a) measured parameters, such as:
 1. pCO₂;
 2. pO₂;
 3. O₂ saturation;
 4. carboxyhemoglobin;
 5. methemoglobin;
 6. hemoglobin; and
 7. fetal hemoglobin; and
 - (b) calculated parameters, such as:
 1. sodium bicarbonate;
 2. base excess;
 3. total CO₂; and

(Rule 1330-01-.22, continued)

4. O₂ saturation.
- (2) Obtaining ABG Endorsement
 - (a) Registered respiratory therapists and certified respiratory therapists can obtain ABG endorsement by submitting verification to the Board that he/she holds a current CRT or RRT credential issued by the NBRC; or
 - (b) An individual can obtain ABG endorsement by submitting verification to the Board of a current "Special Analyst-Blood Gas" license issued by the Tennessee Medical Laboratory Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-27-104, and 63-27-115. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed September 26, 2001; effective December 10, 2001. Repeal and new rule filed December 2, 2005; effective February 15, 2006. Amendment filed March 16, 2007; effective May 30, 2007.

1330-01-.23 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

- (1) Malpractice Reporting Requirements - The threshold amount below which malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the Health Care Consumer Right-To-Know-Act of 1998 shall be ten thousand dollars (\$10,000).
- (2) Criminal Conviction Reporting Requirements - For purposes of the Health Care Consumer Right-To-Know-Act of 1998 the following criminal convictions must be reported:
 - (a) Conviction of any felony; and
 - (b) Conviction or adjudication of guilt for any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:
 1. Sex.
 2. Alcohol or drugs.
 3. Physical injury or threat of injury to any person.
 4. Abuse or neglect of any minor, spouse or the elderly.
 5. Fraud or theft.
 - (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.

Authority: T.C.A. §§4-5-202, 4-5-204, 47-31-105, and 63-27-104. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000.

**1330-01-.24 ENDORSEMENT OF RESPIRATORY THERAPISTS TO PROVIDE
POLYSOMNOGRAPHIC SERVICES.**

- (1) In order for a licensee of this Board to practice polysomnography without obtaining licensure from the Polysomnographic Professional Standards Committee, the licensee must obtain an endorsement from this Board. In order to obtain an endorsement, a licensee shall provide this Board with the following:
 - (a) A completed and signed polysomnographic services endorsement form, as approved by this Board; and
 - (b) Proof of possessing a valid, active, and unrestricted license as a Registered Respiratory Therapist or Certified Respiratory Therapist, issued by this Board; and
 - (c) One of the following:
 1. Certification by the National Board of Registered Polysomnographic Technologists as a registered polysomnographic technologist; or
 2. Certification by the National Board of Respiratory Care as a sleep disorder specialist; or
 3. Proof of completion of the Sleep Center or Sleep Lab Competency Checklist, as approved by this Board, signed by both the director of the sleep lab and medical director from a current employing facility, verifying a minimum of one hundred (100) hours in a sleep lab or sleep center, and outlining competency relative to the following topics, which include, but are not limited to:
 - (i) Patient safety, rapport, preparation, education and confidentiality;
 - (ii) Setup, function, calibration, operation and maintenance of all relative equipment;
 - (iii) Monitoring, recording, and analysis of physiologic data as defined under T.C.A. § 63-31-101(9)(a)(i);
 - (iv) Appropriate corrective and emergency procedures as appropriate, according to lab/center policies; and
 - (v) Implementation of the applicable treatment procedures according to lab/center policy and procedure.

Authority: T.C.A. §§ 63-31-107 and 63-27-104. **Administrative History:** Emergency rule filed June 30, 2010; effective through December 27, 2010. Original rule filed September 24, 2010; effective December 23, 2010.

* 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)
Troy Hamm	X				
Anna M. Ambrose	X				
Lisa Caldwell	X				
Jeffrey McCartney, M.D.	X				
Winston A. Granville	X				
John Schario				X	
Delmar Mack, Ed.D	X				
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Respiratory Care (board/commission/ other authority) on 05/28/2015 (mm/dd/yyyy), 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: 01/20/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 05/28/15 (mm/dd/yy)

Date: 6/2/15

Signature: Mary Katherine Bratton

Name of Officer: Mary Katherine Bratton
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: _____

Notary Public Signature: Suzanne Mechkov

My commission expires on: _____

MY COMMISSION EXPIRES
APRIL 19, 2017

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
Herbert H. Slatery III
Attorney General and Reporter

11-10-15
Date

Department of State Use Only

Filed with the Department of State on: 11/18/15

Effective on: 2/16/16



Tre Hargett
Secretary of State

RECEIVED
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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Workers' Compensation

SUBJECT: Medical Treatment Guidelines

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 50-6-124(g)

EFFECTIVE DATES: February 28, 2016 through June 30, 2016

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The new rules provide the proper procedures for the workers' compensation medical treatment guidelines and drug formulary.

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.

PUBLIC COMMENTS AND RESPONSES

Comment: The definition of "Health Care Provider" in 0800-02-25-.02(7) should be expanded to include physician's assistants.

Response: The Bureau agrees with this comment. The rules have been amended to include physician's assistants.

Comment: The definition of "Health Care Provider" in 0800-02-25-.02(7) should be expanded to include optometric physicians.

Response: The Bureau agrees with this comment. The rules have been amended to include optometric physicians.

Comment: The Definition of "Health Care Provider" in 0800-02-25-.02(7) should be expanded to include podiatrists.

Response: The Bureau agrees with this comment. The rules have been amended to include podiatrists.

Comment: The Definition of "Health Care Provider" in 0800-02-25-.02(7) should be expanded to include occupational therapists.

Response: The Bureau agrees with this comment. The rules have been amended to include occupational therapists.

Comment: The Definition of "Health Care Provider" in 0800-02-25-.02(7) of "Chiropractor" in should be changed to "chiropractic physician".

Response: The Bureau agrees with this comment. The rules have been amended to make this change.

Comment: The statement in 0800-02-02-.03 that medical treatment provided in accordance with ODG guidelines is not subject to utilization review (UR) should be deleted, since it violates the relevant statutory authority and eliminates an employer's ability to challenge treatment that may not be reasonably required.

Response: The Bureau agrees that the language should be amended to mirror the statutory language in T.C.A. § 50-6-124(h).

Comment: The medical treatment guidelines should be a standard and not merely guidelines.

Response: The Bureau disagrees that the treatment guidelines should be a standard entitled to mandatory deference. T.C.A. § 50-6-124(g) refers to the establishment of "guidelines for the diagnosis and treatment of commonly occurring workers' compensation injuries." It is noted that each guideline in the ODG Guidelines contains a disclaimer that it is a standard.

Comment: Regarding the drug formulary in 0800-25-02-.04, there should be a high bar for overturning the "N" designation in the interest of patient safety. It is recommended that a more objective evidentiary standard than a treating physician's mere statement of justification from a medical perspective.

Response: The Bureau agrees with this comment and has amended the language in the rules accordingly. It is noted by the Bureau that the "N" designation does not mean "no" but means "needs prior approval."

Comment: Retrospective review of medications should be broadly permitted.

Response: The Bureau agrees with the comment in part. Allowing broad use of retrospective review of medications results in the shift of the burden of proof to pharmacists which is beyond their role as a provider of medications. Rule 0800-25-04(3)(h) is being amended to allow retrospective review in specified situations.

Comment: It is recommended that in order to ensure that decisions on medical necessity disputes regarding prescription medications are properly made and documented, the adoption of certain criteria from the Texas Administrative Code are recommended.

Response: The Bureau disagrees with this comment and believes that these concerns are already addressed in Chapter 0800-02-06 of the Bureau's General Rules of the Workers' Compensation Program – Utilization Review.

Comment: Restrictions on the use of topical medications is a concern, as these have been shown to reduce pain, improve function, and improve a patient's quality of life.

Response: The Bureau disagrees with this comment. The FDA has not approved the use of topicals, and research does not show effectiveness, but these may be appropriate in a case-by-case basis. It is noted that "N" does not mean "No" but means "Needs Prior Approval."

Comment: Changes in medication may adversely affect a patient's pain level and may jeopardize the effectiveness of their regime.

Response: The Bureau agrees in part with this comment, but it is noted that there is a legacy period of one year for transition regarding any changes in a patient's medications.

Comment: Regarding extended release medications, these are beneficial and allow providers to worry less about diversion, abuse, or aberrant behavior, and they have fewer side effects.

Response: The Bureau agrees in part with the comment and notes that an "N" designation does not mean "No" but instead means "Needs Prior Approval."

Comment: Prior authorizations are time consuming and cause unnecessary delays in treatment of patients and may result in fewer patients being seen and less face-to-face time between the provider and patient.

Response: The Bureau disagrees with this comment.

Comment: The definition of "Closed Formulary" at 0800-02-25-.04(4)(b)2 should be revised to leave no opportunity for inconsistent interpretation of the stance on compounds. The definition currently requires prior approval only for compounds containing drugs with a status of "N."

Response: The Bureau agrees with the comment and has amended this rule to delete the language in 0800-02-25-.04(b)2 following the word "compound."

Comment: Rule 0800-02-25-.04(3)(h) seems to require the employer to pay for an initial prescription regardless of whether it was dispensed without the required prior approval.

Response: The Bureau agrees with the comment and has made a change to Rule 0800-02-25-.04(3)(h) by deleting the prior subsection (h) and replacing it with the following language: "Once the prescription is filled, the employer is responsible for the payment of the initial prescription. Retrospective review of all subsequent refills of the same medication would be allowed."

Comment: No state pharmacy formulary should interfere with appropriate, clinically sound best practices used by PBMs and payers to manage ongoing pharmacy care and medications that are not on the restricted list. PBMs and payers should be able to supplement the formulary through use of their clinical tools and practices—prospectively and retrospectively – based upon claim-specific issues. Employers and their agents should be permitted to supplement the guidelines with more specific utilization and clinical controls. Rule 0800-02-25-.03(3) should be amended to reflect this.

Response: The Bureau disagrees with this comment. Making this change in the Rule would have the effect of adding more bureaucracy and would be counter-productive to the purpose of these rules.

Comment: Regarding Rule 0800-02-25-.04 (3) (e) and (f) of the proposed rules, given the late date of the

proposed rules and the associated timelines of the rule-making process, we would encourage the Bureau to consider delaying the effective date of the rules for both new and existing claims by 6 additional months to January 1, 2017 and July 1, 2018. This will allow ample time for administrative, technical and communications tasks to take place in an organized and collaborative manner prior to the rules taking effect.

Response: The Bureau agrees in part with this comment and the rule has been amended to allow six months (from the effective date of the rules).

Comment: The term "evidence-based medicine" in the drug formulary rules needs clarification.

Response: The Bureau agrees and has provided a definition for this term.

Comment: The term "initial prescription" in the drug formulary rules needs clarification.

Response: The Bureau agrees and has provided a definition for this term.

Comment: All medications should be appealable and not just Schedule II, III, and IV drugs.

Response: Under T.C.A §50-6-102(20) utilization review is limited to Schedule II, III, IV drugs.

Comment: The term "Utilization review" in Rule 0800-02-25-.02 (11) should be amended as follows: "Utilization review" means a system for prospective, retrospective, and/or concurrent review of the necessity and appropriateness in the allocation of health care resources and services, including medications, given or proposed to be given to an individual within this state."

Response: The Bureau agrees with the comment that the definition of the term "utilization review" should be amended, but the definition in these Rules mirrors the statutory language in T.C.A. § 50-6-102(20).

Comment: There is concern that in situations where there might be a conflict between ODG and the Tennessee Department of Health's guidelines, it is unclear which guideline should be relied upon.

Response: The Bureau disagrees with this comment. The Department of Health guidelines go beyond the minimal requirements of the ODG Guidelines. Dosage limits and physician qualifications, for example, which are addressed in the Department of Health Guidelines, are not addressed by ODG Guidelines.

Comment: Rule 0800-02-25-.03 (2) states that medical treatment that is in accordance with the ODG is not subject to utilization review; however, these rules provide no means for the employer to determine whether treatment is in accordance with the guidelines.

Response: The Bureau agrees with this comment in part. The Bureau's Utilization Review rules currently specify that the guideline must be cited by the utilization reviewer in situations where there is a denial of recommended treatment. The following language will be added to the above rule: Medical treatment provided by or at the direction of the authorized treating physician, or other provider, in accordance with the ODG Guidelines listed in section 1) above, is presumed to be reasonable and necessary and not subject to utilization review. Any utilization review of treatment must apply the ODG Guidelines listed in section 1) above, in determining whether treatment is medically necessary.

Comment: It is unclear when an employer may deny treatment as not medically necessary.

Response: The Bureau disagrees with this comment. The Bureau's Utilization Review Rules address medical necessity and reasonableness of recommended treatment.

Comment: The significance of Rule 0800-02-25-.03 (7) and (8) is unclear in light of section (1) of the Rule. It is recommended that sections (7) and (8) be removed.

Response: The Bureau agrees with this comment and those sections have been removed.

Comment: In Rule 0800-02-25-.04(3), there may be some confusion regarding initial prescriptions. Reference is made to "initial prescription" which is not defined in the Rules.

Response: The Bureau agrees with this comment. The Rules have been amended to include the definition of

"initial prescription."

Comment: The language in 0800-02-25-.04(3)(d) is confusing regarding "N" drugs substituted for "Y" drugs and with regard to those being filled without delay and being approved as appropriate for the nature of the injury.

Response: The Bureau agrees with this comment. Rule 0800-02-25-.04 has been revised and renumbered to avoid confusion.

Comment: The language in 0800-02-25-.04(3)(h) is confusing and should be either amended or deleted.

Response: *The Bureau agrees with the comment. This section has been deleted.*

Comment: There should be language included in 0800-25-02-.04(3) to allow for a voluntary agreement between the employer and health care provider to approve medications, since these agreements can be useful in ensuring access to medications.

Response: The Bureau agrees in part with the comment, but no changes were made to the Rule. These voluntary agreements are encouraged by the Bureau but are not enforceable by rule.

Comment: Rule 0800-02-25-.04(6) should be amended to clarify the procedure for a request for reconsideration.

Response: The Bureau agrees with the comment, and the Rule has been amended as suggested.

Comment: Rule 0800-02-25-.04(7) as written is confusing with regard to the appeal process.

Response: The Bureau agrees with the comment. The Rule has been amended to add a reference regarding appeals to Bureau's Utilization Review Rules.

Comment: First, the proposed formulary listing from Texas, despite having some good intentions, has major flaws in terms of providing adequate care to the majority of injured workers. The most noticeable flaw is the complete absence of any anti-psychotic medications. Second, adjuvants, also known as opiate sparing agents, are an integral component of managing pain in injured workers. If we are serious about reducing opiate use and abuse, then adjuvants, as well as injection modalities, need to be readily available for these patients. The current proposed formulary does include some antispasmodics, limited neuromodulators, and NSAID's, which is a positive. However, the neuromodulators are highly restricted, and there is a blanket restriction against transdermal products, such as NSAID and Lidocaine gel formulations. These agents are essential in those patients who cannot tolerate oral NSAID's or who cannot, for one reason or another, have targeted Lidocaine injections into pain sites, one of the most common interventional pain medicine modalities. Consideration should be made for allowing, or, if we are serious about reducing opiate use, encouraging use of these and other adjuvants in pain medicine care. Also, Harvard Medical Center has recently made major advances in Amino Acid Formulations, which allow augmentation of adjuvant agents such as NSAID's and neuromodulators by providing the exact amino acids needed for the body to make its own analgesic agents; these are medical foods, which are widely used in pain medicine, but are targeted as negatives and/or blatantly ignored in the current proposal. Agents such as these should be readily available to injured workers.

Also, many chronic pain patients have significant gastrointestinal dysfunction due to long term use of oral NSAID's. Their only option for anti-inflammatory pharmacotherapy for arthritic injury sequelae is the use of transdermal NSAID's and similar formulations. The discouragement of such transdermal products by the proposed formulary is, in fact, an encouragement of more and more use of opiates. In other words, if we are serious about reducing opiate use and abuse, the only option is to make available reasonable alternatives to opiates and agents which spare opiate dosing; this includes various adjuvants and transdermal formulations. We simply can't have it both ways. We in Tennessee either stand against excessive opiate use, and provide options to it, or we can simply have pain medicine care in Tennessee to involve pill mills where opiates are handed out like candy.

Another issue with the Texas formulary is that it makes the very naïve assumption that a given drug is only used for one specific condition. Neurontin for example is listed as an anti-epileptic drug, but has multiple uses in pain medicine, rehab medicine, psychiatry and neuropsychiatry; in point of fact, it is used for neuropathic pain components, mood regulation, bipolar disorder, and anxiety disorders, to name a few. Multiple uses of a given pharmacologic agent must be overtly articulated, particularly when we are dealing with the situation where decisions are being made by adjusters with literally no medical training. We need to consider ALL uses of the

medications in the formulary and not just limit them to one specific use; Note that the vast majority of drugs are used, based on ongoing research, on both an on label and off label basis in the US, and this is not only common, but an entirely acceptable practice per all of the major professional organizations. Finally, while on the subject of the role of adjusters, there are serious problems in the current system, which are worsened by the proposed guidelines. It is a fact that adjusters, who control the current system of access to medical care in worker's compensation, have no medical training whatsoever.

Response: The Bureau agrees in part with the comment. The ODG Drug Formulary Appendix only includes the classes of drugs for which there is a requirement for prior authorization, distinguishing some medications in the class that do not require prior authorization ("Y"). Other classes such as anti-emetics and constipation agents are all assumed to be "Y" if appropriate for the diagnosis. An example would be Miralax or other agents for opioid induced constipation. The observation regarding concomitant mental illness in the injured population (whether workers' compensation or not) is valid. Documentation is all that should be required to get these other necessary medications including pain adjuvants for the patients. It will be the job of the Bureau to monitor any delay caused by inappropriate denials or Utilization Review. Topicals, neuromodulators, and "off-label" applications simply require prior approval. The Bureau will be looking at the documentation to support their use. Interventional pain treatments are a difficult area as their use should be part of a consistent long term plan of care in coordination with alternative and supportive treatment modalities such as cognitive behavioral therapy and physical activity. The Bureau agrees with expanding these options. The Bureau has been offering training to adjuster to address these concerns. Any ultimate Utilization Review denial of treatment must come from a Tennessee licensed physician in good standing who is board certified in your same or similar specialty.

Comment: If approved, the drug formulary will cause profound and distinct changes in how we will be able to treat our patients in Tennessee. There is concern about changing patients' medications, when there is no indication to do so. Topical medications have been shown to reduce pain, improve function and improve patients' quality of life. There are minimal, if any, drug-drug interactions; the systemic absorption is minimal in most cases, thus preserving the integrity and function of the hepatic and renal system. Changing a patient's medication, when they have been stable for an extended period can cause their pain levels to elevate and thus cause their entire regime to be in jeopardy of being inefficacious. Other medication changes causing concern include Extended Release medications. These medications are used to create a better treatment plan for the patients, to maintain consistency in their control of their symptoms. Extended Release medications allow providers to worry less about diversion, abuse or aberrant behavior due to abuse deterrent technology that appears in most ER medications today. In addition, Extended Release medications, such as Gralise (name brand ER Neurontin) have far fewer side effects and is the ONLY form of Neurontin that is indicated for the patient to be on while operating a vehicle. Also, when there are numerous, unnecessary Prior Authorizations to complete, our nursing staff will have increased costs in work hours logged, they will be inundated with paperwork and will have less face to face time with patients that are in need. Providers will be forced to change medications, will have longer wait times, will have longer appointment times and will have to bill at a higher rate to compensate for the counseling and explanations that will need to be discussed with each and every patient. These medication changes will compromise both the efficiency of our daily work load, the efficacy of the patient's current medication regime and will force us to potentially put patients at risk in trying new/different medications. These changes could also compromise the patients' ability to return to work, their functionality at work, their productivity and their Quality of Life.

Response: The Bureau appreciates and considers all comments. The application of the ODG Formulary would not differ from the other formularies that you already deal with, BCBS and TennCare. In practice, by writing "substitution allowed", you avoid the prior authorization calls. Please note that the ODG Drug Formulary Appendix only includes the classes of drugs for which there is a requirement for prior authorization, distinguishing some medications in the class that do not require prior authorization ("Y"). Other classes such as anti-emetics and constipation agents are all assumed to be "Y" if appropriate for the diagnosis. An example would be Miralax or other agents for opioid induced constipation. Documentation of the necessity of topicals, pain adjuvants, abuse deterrent formulations and long acting medications is important in limiting inappropriate denials or Utilization Review. It will be the job of the Bureau to monitor this. There will be a one year phase-in period for your stable long term patients (on the same dosage and formulation) to change medications, but there is also an expedited appeal if there is significant documented medical risk to the patient of any change. During that one year, there will be no penalty or denial of prescriptions. Notification is planned to the pharmacist, patient, and prescriber.

Comment: There is concern about the limited choices that will be available for long-acting narcotics, particularly with the Butrans patch not available. It is safer than the alternatives on the formulary and is less likely to be abused or diverted than the long-acting narcotic medications on the formulary. There should also be topical choices and those medications approved for narcotic-induced constipation.

Response: Alternative treatments, adjuvant pain medications, Butrans patch, abuse deterrent formulations, longer acting medications, and topicals are all available but require prior approval. This would not be any different than the present system. Documentation is the important key and it is the Bureau's job to monitor any delays or denials caused by inappropriate Utilization Review. Please note that the ODG Drug Formulary Appendix only includes the classes of drugs for which there is a requirement for prior approval, distinguishing some medications in the class that do not require prior approval ("Y"). Other classes such as anti-emetics and constipation agents are all assumed to be "Y" if appropriate for the diagnosis. An example would be Miralax or other agents for opioid induced constipation.

Comment: The Bureau should clarify what the approval process entails. With respect to the proposed language in Rule 008-02-25.04(3), the Bureau should reject suggestions by stakeholders seeking to limit the seven day window to only the first seven days following an injury, as such proposals are in direct contravention of the Bureau's intent to secure appropriate and timely access to medication. Also, the Bureau should delay the effective date of the rules for both new and legacy claims by an additional 6 months to January 1, 2017 and July 1, 2018 to allow for additional stakeholder education and a smooth transition.

Response: The Bureau disagrees with the comment.

Comment: It would not be good to include nonnarcotic alternatives such as Voltaren gel on the list (currently requires a prior approval). Often this is a good alternative to systemic anti-inflammatories and particularly good with initial treatment with a flare of underlying osteoarthritis after injury to the specific joint. Nucynta, short and long acting forms often appears to be better tolerated from a GI standpoint than other typical narcotics and I have seen good results with this without having much issue with misuse. It has a dual mode of action helping pain from both typical opioid reaction and by inhibiting Norepinephrine reuptake. This has often been very beneficial on improving function and pain. This medication should definitely be included. Another medication that is beneficial with chronic pain and is actually a scheduled 3 narcotic is the Butrans patch. It is less likely to be abused/misused as it is in the patch form. It is a schedule 3 narcotic with less risk of dependency/abuse. I noticed there is no class of medications on the list for constipation associated with narcotic use and question if this will be covered or will require a prior authorization. This is a well-documented side effect of narcotic use. There also appears to be no options on the list for potential nausea associated with pain medications such as Zofran. Again, nausea is a well-documented side effect of narcotic use. It would be reasonable to expect unintended consequences due to a lack of adequate coverage for both of these known side effects of current treatment regimens.

Response: The Bureau is in full agreement with including alternative treatment to opioids with a minimum of delay. The status of topicals as well as pain adjuvants would require prior approval but it will be the job of the Bureau to monitor any delays caused by inappropriate denial or Utilization Review. Documentation of the effectiveness and necessity of these will be important. Nucynta is included but does require prior approval if it is appropriate for the diagnosis and other medications have not been successful. The Bureau has identified Butrans patch and Duragesic as problematic and has contacted ODG to review these. Please be aware, however, that these are not appropriate for first line treatment, for some diagnoses, and should have adequate documentation by diagnosis, alternatives and duration of the pain to justify their use. Please note that the ODG Drug Formulary Appendix only includes the classes of drugs for which there is a requirement for prior approval, distinguishing some medications in the class that do not require prior approval ("Y"). Other classes such as anti-emetics and constipation agents are all assumed to be "Y" if appropriate for the diagnosis. An example would be Miralax or other agents for opioid induced constipation.

Comment:

Comment: It appears that proposed subsection 0800-02-25-.04(3) is intended to apply to all prescriptions, not just the "initial prescriptions" referred to in the opening sentence of that subsection. The language or paragraph structure should be revised to clarify that point.

Response: The Bureau agrees with the comment and has made the recommended clarification.

Comment: The Rules should exclude all compounded medications, as appears to be the intent of subsection 0800-02-25-.04(3). While compounds are appropriate and necessary in limited situations, their use should be closely scrutinized each and every time they are prescribed, since safety and efficacy of these drugs has been called into question by many experts, and since their cost typically far exceeds that of other available medications. As drafted, the definition of "Closed Formulary" at 0800-02-25-.04(4)(b)2 excludes only compounds that contain

an N-status drug. We ask that the definition be revised to exclude all compounds. The words "and topical applications" be deleted from section 0800-02-25-.04(3)(c).

Response: The Bureau disagrees with the comment.

Comment: With respect to retrospective review, which appears to be prohibited by subsection 0800-02-25-.04(3)(h), we ask that the language be revised to clarify that, in the event that preauthorization has not been properly obtained for an N-status drug as required by the proposed rule, retrospective review and denial are permitted. As drafted, the proposed rule prohibits all retrospective review, regardless of whether preauthorization was obtained.

Response: The Bureau agrees in part with the comment, and subsection (h) has been deleted.

Comment: Regarding the Bureau's plan to implement the formulary in two phases, we appreciate the Bureau's attention to this important concern, since, due to therapy transition needs, the two-phase approach is the only way to bring legacy claimants into the closed formulary program. Related to this requirement, we urge the Bureau to undertake additional educational efforts during the period between the initial effective date (January 1, 2016) and the date on which all prescriptions are subject to the closed formulary (January 1, 2017). We are hopeful that early awareness on the part of prescribing providers will lead to early adoption of the requirements, so that fewer injured workers will need to be weaned from non-formulary drugs.

Response: The Bureau disagrees with extending the implementation for an additional six-month period, but has amended the Rule to allow for the two-phase implementation to occur six months and one year from the effective date of the Rules, respectively.

Comment: Definitions of terms that are not used elsewhere in the rule be deleted from subsection 0800-02-25-.04(4), or, alternatively, that such defined terms be used elsewhere in the rule. As an example, "Statement of Medical Necessity" is a defined term, but since the term is not used elsewhere in the rule, it is not clear when a Statement of Medical Necessity is called for.

Response: The Bureau agrees with the comment and has deleted the definition of "Statement of Medical Necessity."

Comment: The definition of "Health Care Provider" should include pharmacist/pharmacy.

Response: The Bureau agrees with the comment and we have made the requested change.

Comment: The Bureau should use the definition of "utilization review" as defined in Rule 0800-02-06 of the Bureau's Utilization Rules.

Response: The Bureau agrees that the definition should be amended, and the definition was amended to mirror the statutory definition in T.C.A. § 50-6-102(20).

Comment: The Rules appear to adopt the current edition of ODG guidelines, but are silent as to how future updates to ODG will be handled.

Response: The Bureau agrees with the comment and has amended the reference.

Comment: The Rule concerning the filling of prescriptions for the first seven days will help maintain appropriate access to pharmacy care for recently-injured workers, but there should be a limit of reimbursement in the amount of \$250.00 to eliminate concerns that the 7-day window will be abused.

Response: The Bureau agrees in part with the comment and has amended the Rule. The Bureau disagrees, however, with the \$250.00 limitation.

Comment: The effective date of subsequent updates to ODG Guidelines and the Drug Formulary should be added to the Rules.

Response: The Bureau agrees with the comment and has added this language to the Rules.

Comment: Rule 0800-02-25-.04(3) should be amended to clarify that when drugs are included in the formulary,

they still are also medically necessary and appropriate for the injury.

Response: The Bureau agrees in part with the comment and the Rule has been amended.

Comment: The effective date of the formulary and the date when new claims will be subject to the formulary should be the same, and the language regarding legacy claims should be removed.

Response: The Bureau disagrees with the comment.

Comment: Rule 0800-02-25-.04(3)(h) should be amended or deleted regarding retrospective review.

Response: The Bureau agrees with the comment. Subsection (h) has been deleted.

Comment: The definition of "Brand name drug" should be deleted since it is not referred to in the language of the Rules.

Response: The Bureau agrees, and this definition has been deleted.

Comment: The definitions of "generically equivalent", "open formulary", and "statement of medical necessity" should be deleted.

Response: The Bureau agrees in part: "generically equivalent" and "statement of medical necessity" have been deleted. The definitions for open and closed formulary remain, as they specify different lists of drugs, one for FDA and one with those that are "N". This provides clarity even if not referenced later.

Comment: Rule 0800-02-25-.03(2) should be amended to add language clarifying the authority and process for the Administrator to adopt changes to the ODG Guidelines.

Response: The Bureau agrees in part and has amended the Rule accordingly.

Comment: Rule 0800-02-25-.03(4) should be amended to clarify the process for requests for authorization for a treatment.

Response: The Bureau agrees in part and has amended the Rule accordingly.

Comment: Rule 0800-02-25-.04(4)(b) should be amended to clarify the meaning of investigational and experimental drugs.

Response: The Bureau agrees. The Rule has been amended.

Comment: Will the Bureau have a form for providers to use for a request for expedited determination on its website.

Response: Yes.

Comment: Will notification of changes be available on the Bureau's website?

Response: Yes.

Comment: The Rules as drafted only address a medical appeal by a physician, not a claimant.

Response: We believe it appropriate only for a pharmacist or a medical provider to assess the need for a request for expedited determination.

Comment: This year we had a claimant's attorney file a Motion to Compel Medical Benefits in Chancery Court. The law at the time of the claim did not include the medical appeal process. My question is if future motions like this are filed with the county courts, can attorneys argue for dismissal based on the new medical appeal process or can they still rely on this argument?

Response: The formulary would apply to all claims one year after the effective date of these rules. If the injury occurred prior to July 1, 2014, the parties still retain the right to go the circuit court. The utilization review rules

and processes remain the same as provided in Rule 0800-02-06.

Comment: We recommend clarifying the medications that must be preauthorized before dispensing, particularly that prior approval for "N" drugs and all compounds including topical compounds.

Response: The Bureau agrees with the comment and has amended 0800-02-25-.04(3)(b).

Comment: There are questions regarding persisting pain syndromes and catastrophic injuries not subject to utilization review.

Response: The Bureau has dealt with these in our Pain Appendix, protecting them from the weaning requirements. Stable doses are one of the criteria. We have not seen any problems with utilization review of catastrophic injuries but the definition of persisting pain syndromes is a little vague. In general, they should be subject to UR since these are the ones we are trying to reduce the Morphine Milligram Equivalents (MME).

Comment: Regarding pain adjuvants, Neurontin is "Y" for epilepsy but not addressed as a pain adjuvant.

Response: The FDA has approved it for fibromyalgia, neuropathic pain and diabetic neuropathy. It is currently used "off label" for most chronic pain with success. It is subject to utilization review. The only time we see it appealed is in combination with three or four other meds such as long and short acting opioids, muscle relaxants, benzodiazepines, and sleeping pills. Pain adjuvants need utilization review since they will be used in combinations that could increase the likelihood of adverse effects including overdoses. There will be no changes to the proposed language. There is an unclear distinction in the definitions of chronic pain and neuropathic pain since one of the causes of chronic pain is neuropathic pain (pain caused by damage to nerves). Most definitions of chronic pain include a reference to a central aberrant state and certain brain chemical changes not specific to all neuropathic pain.

Comment: Rule 0800-02-25-.03(a) should be amended so that the Administrator can adopt changes to any part of the ODG Guidelines. This would clarify that what the Administrator adopts would also not be subject to utilization review.

Response: The Bureau agrees with the comment in part and the Rule 0800-02-25-.03(a) has been so amended.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rulemaking 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.

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 amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
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 is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.
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: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
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: Exempting small businesses could frustrate the small business owners' access to the services provided by the Bureau of Workers' Compensation and timely medical treatment for injured workers, which would be counter-productive.

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)

These proposed rules will have little, if any, impact on local governments.

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Sequence Number: 11-14-15
 Rule ID(s): 6071
 File Date: 11-30-15
 Effective Date: 2-28-16

Rulemaking Hearing Rule(s) Filing Form

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive 1-B
Phone:	615-532-0179
Email:	troy.haley@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Troy Haley
Address:	220 French Landing Drive 1-B
Phone:	615-532-0179
Email:	troy.haley@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0800-02-25	Workers' Compensation Medical Treatment Guidelines
Rule Number	Rule Title
0800-02-25-.01	Purpose and Scope
0800-02-25-.02	Definitions
0800-02-25-.03	Treatment Guidelines
0800-02-25-.04	Drug Formulary

(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>)

New Rules
 Chapter 0800-02-25
 Workers' Compensation Medical Treatment Guidelines

- (1) Purpose: To provide guidelines for the diagnosis and treatment of commonly occurring workers' compensation injuries.
- (2) Scope: To include guidelines for diagnostic and treatment requests including pharmaceuticals and pain management.

Authority: T.C.A. § 50-6-124.

0800-02-25-.02 Definitions

- (1) "Act" means the applicable Workers' Compensation Law in effect.
- (2) "Administrator" means the chief administrative officer of the Tennessee Bureau of Workers' Compensation, or the Administrator's designee.
- (3) "Authorized Treating Physician" means the practitioner chosen from the panel required by T.C.A. § 50-6-204, or a practitioner who has received a referral from the original authorized treating physician if the employer has not provided an alternative referral within three business days. "Authorized Treating Physician" also means any practitioner specifically authorized by the employer.
- (4) "Bureau" means the Tennessee Bureau of Workers' Compensation attached for administrative purposes to the Tennessee Department of Labor and Workforce Development.
- (5) "Employee" means an employee as defined in T.C.A. § 50-6-102, but also includes the employee's representative or legal counsel.
- (6) "Employer" means an employer as defined in T.C.A. § 50-6-102, but also includes an employer's insurer, third party administrator, self-insured employers, self-insured pools and trusts, as well as the employer's representative or legal counsel, as applicable.
- (7) "Health care provider" includes, but is not limited to, the following: licensed individual chiropractic physician, dentist, physical therapist, physician, physician assistant, optometric physician, podiatrist, surgeon, occupational therapist, group of practitioners, hospital, free standing surgical outpatient facility, health maintenance organization, industrial or other clinic, occupational healthcare center, home health agency, visiting nursing association, laboratory, medical supply company, community mental health center, pharmacist/pharmacy, and any other facility or entity providing treatment or health care services for a work-related injury.
- (8) "Medical Director" means the Medical Director of the Tennessee Bureau of Workers' Compensation appointed by the Administrator pursuant to T.C.A. § 50-6-126, or the Medical Director's designee.
- (9) "Medically necessary" or "medical necessity" means healthcare services, including medications, that a physician (or other healthcare provider acting within their scope of practice), exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:
 - (a) In accordance with generally accepted standards of medical practice; and
 - (b) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease. Treatment primarily for the convenience of the patient, physician, or other healthcare provider does not constitute medical necessity.
- (10) "Treatment guideline" means the Institute of Medicine (2011) definition of a "clinical practice guideline": "statements that include recommendations intended to optimize patient care that are informed by a systematic review of the evidence and an assessment of the benefit and harms of alternative care options."
- (11) "Utilization review" means evaluation of the necessity, appropriateness, efficiency and quality of medical care services, including the prescribing of one (1) or more Schedule II, III, or IV controlled substances for pain management for a period of time exceeding ninety (90) days from the initial prescription of such

controlled substances, provided to an injured or disabled employee based on medically accepted standards and an objective evaluation of those services provided; provided, that "utilization review" does not include the establishment of approved payment levels, a review of medical charges or fees, or an initial evaluation of an injured or disabled employee by a physician specializing in pain management;

- (a) "Utilization review" does not include elective requests for clarification of coverage, referrals, consultations, second opinions from medical providers, or office visits.
- (b) "Utilization review" does not include analysis of or opinions regarding medical causation or compensability.

Authority: T.C.A. §§ 50-6-102, 50-6-122, 50-6-124, 50-6-126, 50-6-233, 56-6-703, and 56-61-102.

0800-02-25-.03 Treatment Guidelines

- (1) Effective January 1, 2016, the Tennessee Bureau of Workers' Compensation adopts the current edition, and any future published updates, of the Work Loss Data Institute ODG Guidelines as published by the Work Loss Data Institute, the Chronic Pain Guidelines of the State of Tennessee, Department of Health, and any other related appendices to the above-referenced guidelines adopted by the Administrator.
- (2) Medical treatment provided by or at the direction of the authorized treating physician, or other healthcare provider, in accordance with the ODG Guidelines, Chronic Pain Guidelines of the State of Tennessee, Department of Health, and any other related appendices to the Guidelines adopted by the Administrator in effect at the date the treatment is recommended, listed in section (1) above is presumed to be reasonable and necessary. Any utilization review of treatment must apply the ODG Guidelines listed in section (1) above, in determining whether treatment is medically necessary. Any treatment that explicitly follows the treatment guidelines adopted by the administrator or is reasonably derived therefrom, including allowances for specific adjustments to treatment, shall have a presumption of medical necessity for utilization review purposes. This presumption shall be rebuttable only by clear and convincing evidence that the treatment erroneously applies the guidelines or that the treatment presents an unwarranted risk to the injured worker.
- (3) It is recognized that each individual clinical situation and patient is unique. The guidelines are not a standard or a mandate. Exceptions to and the proper application of the guidelines require judgment. The *Utilization Review and prior approval/authorization procedures and timeframes remain in effect*. See Utilization Review Rule 0800-02-06. A mechanism for the timely appeal for these exceptional situations is set forth in Rule 0800-02-06-.07 Appeals.
- (4) The employer shall not deny treatment based solely on the determination that the treatment falls outside of the guideline if such denial is not supported by documented evidence-based medicine.
 - (a) If a provider makes a written request by fax or e-mail (and receives acknowledgement of receipt of the request) for authorization for a treatment at least 21 business days in advance of the anticipated date that treatment is to be delivered and has not been notified in writing or confirmed telephone call or confirmed fax at least 7 business days in advance of the date of the proposed treatment, it is presumed to be medically necessary, a covered service, and to be paid for by the employer.
 - (b) If a provider makes a verbal request for authorization, the burden of proof for showing that authorization was granted by the employer rests with the provider.
- (5) The employer shall not be responsible for charges for medical treatment that is not in accord with the guidelines unless:
 - (a) it was provided in a medical emergency,
 - (b) it was authorized by the employer,
 - (c) it was approved through the appeal process by the Bureau.

- (6) As new information becomes available, the Administrator may direct the Medical Director to publish or post on the Division's website, advisory or explanatory updates or bulletins to the guidelines. Print copies will be made available by request to the Medical Director. The Medical Advisory Committee may be consulted at the Administrator's discretion.
- (7) As of January 1, 2016, physicians and other providers dispensing drugs required to be reported in the Tennessee Controlled Substances Monitoring Database (CSMD) from their offices or clinics must report these medications in the Tennessee Controlled Substances Monitoring Database (CSMD) within one business day of the dispensing of those medications. These provisions are in accord with T.C.A. § 53-10-305, T.C.A. § 53-10-307 and T.C.A. § 53-10-310 as amended.

Authority: T.C.A. §§ 50-6-122, 50-6-124, 50-6-126, 50-6-233.

0800-02-25-.04 Drug Formulary

- (1) The purpose of the drug formulary is to facilitate the safe and appropriate use of medications for injured workers, and is a specific part of the Treatment Guidelines set forth in subsection .03 of this rule.
- (2) The Bureau adopts the ODG Drug Formulary as found in Drug Appendix A published and updated by the Work Loss Data Institute.
- (3) Prescriptions presented to a pharmacy from an authorized provider and appropriate for the prescribed injury within seven (7) days of an alleged or accepted workers' compensation claim may be filled for a maximum of seven (7) days, even if the prescribed medication is status "N." The employer is responsible for the payment.
- (4) The Formulary shall be made available by posting on the Bureau's website. Subsequent updates shall be effective on the first day of the month following posting of an update on the Bureau's website.
- (5) Drugs identified with the status "N" in the current edition of the ODG/Appendix A, and any other related appendices adopted by the Administrator in effect at the date the treatment is recommended, shall require prior approval. An "N" drug should not be approved unless its use in a particular case is supported by documentation of evidence-based medicine.
- (6) Compounded medications and topical applications are "N" and subject to prior approval. An "N" drug should not be approved unless its use in a particular case is supported by documentation of evidence-based medicine.
- (7) Prescriptions for "Y" drugs should be filled without delay if they are approved as appropriate for the nature of the injury being treated.
- (8) For compensation claims with a date of injury (DOI) on or after January 1, 2016, and for new medication prescriptions for dates of injury prior to January 1, 2016, the formulary applies to all drugs that are prescribed or dispensed for outpatient use on or after six-months following the effective date of these rules.
- (9) For refill prescriptions and medications being used for dates of injury (DOI) before January 1, 2016, the formulary applies to all drugs that are prescribed or dispensed for outpatient care one year from the effective date of these rules.
- (10) Retrospective review of medications will be allowed only for drugs that are not appropriate for the injured worker's diagnosis. Only the next refill prescribed by the authorized treating physician can be denied.
- (11) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (a) "Closed Formulary" means all available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, and applies to the categories listed below that require prior approval:
1. drugs identified with a status of "N" in the current edition of the Official Disability Guidelines Treatment in Workers' Compensation (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates;
 2. any compound or topical; and
 3. any investigational or experimental drug that has not yet been identified as a "Y" or "N" drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet accepted as the prevailing standard of care.
- (b) "Compounding", "compound" or "compounded" medication or preparation means the preparation, mixing, assembling, packaging, or labeling of a drug or device:
1. as the result of a practitioner's prescription drug order based on the practitioner-patient-pharmacist relationship in the course of professional practice;
 2. for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;
 3. in anticipation of a prescription drug order based on a routine, regularly observed prescribing pattern; or
 4. for or as an incident to research, teaching, or chemical analysis and not for selling or dispensing.
- (c) "Evidence-based medicine" (EBM) means an approach to medical practice intended to optimize decision-making by emphasizing the use of evidence from well-designed and well-conducted research, to include the integration with clinical expertise and patient values and an evolutionary progression of knowledge based on the basic and clinical sciences.
- (d) "Initial Prescription" means the beginning, starting, commencing or first written order for a medication. Changes in dosage, addition of or removal of previously prescribed medications either individually or in combination are not considered an initial prescription.
- (e) "Medical emergency" means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain that in the absence of immediate medical attention could reasonably be expected to result in:
1. Placing the patient's health or bodily functions in serious jeopardy; or
 2. Serious dysfunction of any body organ or part.
- (f) "Nonprescription drug" or "over-the-counter medication" means a non-narcotic drug that may be sold without a prescription and that is labeled and packaged in compliance with state or federal law.
- (g) "Open Formulary" means all available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, but does not include drugs that lack FDA approval, or non-drug items.
- (h) "Prescribing Doctor" means a physician or dentist who prescribes prescription drugs or over the counter medications in accordance with the physician's or dentist's license and state and federal laws and rules. For purposes of this chapter, prescribing doctor includes an advanced practice nurse or physician assistant to whom a physician has delegated the authority to

carry out or sign prescription drug orders, who prescribes prescription drugs or over the counter medication under the physician's supervision and in accordance with the health care practitioner's license and state and federal laws and rules.

- (i) "Prescription" means an order for a prescription or nonprescription drug to be dispensed, in accordance with the applicable federal definition and in T.C.A. Title 53 Chapter 10.
- (j) "Prescription drug" means:
 - 1. A substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;
 - 2. A drug that under federal law is required, before being dispensed or delivered, to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription;" "Rx only;" or another legend that complies with federal law; or
 - 3. A drug that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a prescribing doctor only.
- (k) "Substitution" means the dispensing of a drug or a brand of drug other than the drug or brand of drug ordered or prescribed.
- (l) "Topical" means a prescription substance or substances, not injected or ingested, that are used on the skin or other membranes, or are applied to exterior or exposed surfaces. This category includes "inhalers."

(12) The provider may appeal to the Bureau's Medical Director for an expedited decision, using a request for an expedited determination.

- (a) The purpose of this section is to provide a prescribing doctor or pharmacy the ability to obtain an expedited determination from the Bureau's Medical Director in instances where a denial of a previously prescribed and dispensed drug(s) for the workers' compensation injury poses an unreasonable risk of a medical emergency as defined in this title.
- (b) The request for an expedited determination from the Medical Director may be rejected at the sole discretion of the Medical Director if it does not contain the following information:
 - 1. Injured employee name;
 - 2. Date of birth of injured employee;
 - 3. The injured employee's Social Security Number.
 - 4. Tennessee Bureau of Workers' Compensation state file or claim number;
 - 5. Date of injury;
 - 6. Prescribing doctor's name;
 - 7. Prescribing doctor's DEA number;
 - 8. Name of drug and dosage;
 - 9. Requestor's name (pharmacy or prescribing doctor);
 - 10. Requestor's contact information;
 - 11. A statement that the prior approval request for a previously prescribed and dispensed drug(s), which is excluded from the Closed Formulary, has been denied by the insurance carrier, accompanied by the denial letter if available;

12. A statement that an independent review request or request for reconsideration has already been submitted to the insurance carrier or the insurance carrier's utilization review agent;
 13. A statement that the prior approval denial poses an unreasonable risk of a medical emergency and justification from a medical perspective such as withdrawal potential or other significant side effects or complications;
 14. A statement that the potential medical emergency has been documented in the prior approval process;
 15. A statement of justification from a medical perspective of the potential medical emergency such as withdrawal potential or other significant side effects or complications;
 16. A statement that the insurance carrier has been notified that a request for an expedited determination is being submitted to the Bureau; and
 17. The signature of the requestor and the following certification by the requestor for paragraphs 10 to 14 of this subsection, "I hereby certify under penalty of law that the previously listed conditions have been met."
- (c) A request for an expedited determination under this section shall be processed and approved by the Medical Director of the Bureau in accordance with this section. At the discretion of the Medical Director of the Bureau, an incomplete request or a request with incomplete information for an expedited determination under this section may be considered in accordance with this section.
- (d) The request for an expedited determination may be submitted on the designated form available on the Bureau of Workers' Compensation website. In the event the Bureau form is not available, the written request should contain the provisions of subsection (b) of this section.
- (e) The requestor shall provide a copy of the request to the insurance carrier, prescribing doctor, injured employee, and dispensing pharmacy, if known, on the date the request is submitted to the Bureau.
- (f) An expedited determination shall be effective retroactively to the date of the original prescription.
- (13) A request for reconsideration of a prior approval denial is not required prior to a request for an expedited determination under this section. If, within 15 business days from the initial prior approval denial, a request for reconsideration or an expedited determination request is not initiated within 15 business days by the provider to the employer, carrier or utilization review agent and an expedited determination request is not communicated by the provider to the Medical Director of the Bureau at that time, then the opportunity to request an expedited determination under this section does not apply. Additionally, where a health care provider has sought relief from a previous adverse determination by requesting reconsideration by the employer, carrier, or utilization review agent and also by requesting an expedited determination by the Medical Director, the determination of the Medical Director shall prevail over the reconsideration determination of the employer, carrier, or utilization review agent.
- (14) If pursuing an expedited determination after denial of a reconsideration request, a complete request shall be submitted within five business days of the notification of the reconsideration denial.
- (a) An appeal of the utilization review organization decision relating to the medical necessity and reasonableness of the drugs contained in the expedited determination shall be submitted in accordance with these rules.
 - (b) The Medical Director's determination shall continue in effect until the later of:

1. Final determination of a medical dispute regarding the medical necessity and reasonableness of the drug;
 2. Expiration of the period for a timely appeal; or
 3. Agreement of the parties.
- (c) Withdrawal of the request for an expedited determination by the requestor constitutes acceptance of the prior approval denial.
- (d) All parties shall comply with an expedited determination issued in accordance with this section and the insurance carrier shall reimburse the pharmacy or other payer for prescriptions dispensed in accordance with the determination of the Medical Director.
- (e) The insurance carrier shall notify the prescribing doctor, injured employee, and the dispensing pharmacy once reimbursement is no longer required because of the denial by the Medical Director of a request for an expedited determination.
- (f) A decision issued by a utilization review organization is not a Bureau decision.
- (g) A party may seek to reverse or modify the Medical Director's determination issued under this section if:
1. A final determination of medical necessity has been rendered; and
 2. The party requests a hearing in accordance with the procedures of the Court of Workers' Compensation Claims.
 3. The insurance carrier may dispute the request for expedited determination or the Medical Director's determination entered under this title by filing a written request for a hearing in accordance with the Court of Workers' Compensation Claims procedures.

Authority: T.C.A. § 50-6-124.

* 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)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Bureau of Workers' Compensation on November 23, 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 June 22, 2015.

Rulemaking Hearing Conducted on August 25, 2015.

Date: 11/23/15

Signature: Abbie Hudgens

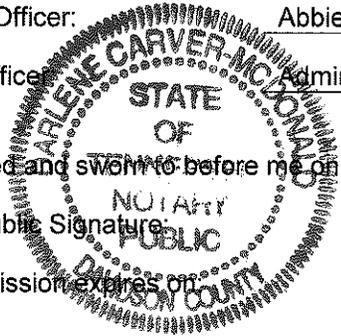
Name of Officer: Abbie Hudgens

Title of Office: Administrator, Division of Workers' Compensation

Subscribed and sworn to before me on: November 23, 2015

Notary Public Signature: Charlene Carver-McDonald

My commission expires on: May 8, 2017



All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
 Date 11/24/2015

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Filed with the Department of State on: 11-30-15

Effective on: 2-28-16

Tre Hargett
 Tre Hargett
 Secretary of State