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Sequence Number:	01-17-21
Rule ID(s):	9454-9455
File Date:	1/22/2021
Effective Date:	4/22/2021

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:	Air Pollution Control Board
Division:	Air Pollution Control
Contact Person:	Mark A. Reynolds
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN
Zip:	37243
Phone:	(615) 532-0559
Email:	mark.a.reynolds@tn.gov

Revision Type (check all that apply):

X Amendment
____ New
____ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	**Chapter Title**
1200-03-09	Construction and Operating Permits
Rule Number	**Rule Title**
1200-03-09-.01	Construction Permits

Chapter Number	**Chapter Title**
1200-03-21	General Alternate Emission Standards
Rule Number	**Rule Title**
1200-03-21-.01	General Alternate Emission Standard

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to https://sos.tn.gov/products/division-publications/rulemaking-guidelines.

Chapter 1200-03-09
Construction and Operating Permits

Amendments

Subparagraph (f) of paragraph (1) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

(f) In the issuance of construction permits for new air contaminant sources, or modifications, source impact analysis shall demonstrate that allowable emission increases would not cause or contribute to air pollution in violation of any ambient air quality standard in Chapter 1200-03-03, of any national ambient air quality standard, or any applicable maximum allowable increase as defined in paragraph (4) of this rule. As required, all estimates of ambient concentrations shall be based on applicable air quality models and databases acceptable to the Technical Secretary and meeting the requirements specified in 40 CFR Part 51 Appendix W. The provisions of 40 CFR Part 51 Appendix W are hereby adopted by reference as published in the July 1, 2019 edition of the Code of Federal Regulations (CFR). Where an air quality impact model specified in 40 CFR Part 51 Appendix W is inappropriate, the Technical Secretary may approve use of a modified model or substituted model on a case-by-case basis after consultation with and upon written approval from the EPA Administrator.

Authority: T.C.A. §§ 68-201-101 et seq. 4-5-201 et seq.

Subparagraph (k) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

(k) Air Quality Models.

As required under this paragraph, all estimates of ambient concentrations shall be based on applicable air quality models and databases acceptable to the Technical Secretary and meeting the requirements specified in 40 CFR Part 51 Appendix W. The provisions of 40 CFR Part 51 Appendix W are hereby adopted by reference as published in the July 1, 2019 edition of the Code of Federal Regulations (CFR), Where an air quality impact model specified in 40 CFR Part 51 Appendix W is inappropriate, the Technical Secretary may approve use of a modified model or substituted model after consultation with the EPA Administrator. The use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with subparagraph (l) of this paragraph.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Amendments

Subparagraph (c) of paragraph (2) of Rule 1200-03-21-.01 General Alternate Emission Standard is amended by deleting it in its entirety and substituting instead the following:

(c) The air contaminant source shall verify through modeling, consistent with the requirements specified in 40 CFR Part 51 Appendix W, that this alternate emission standard will yield equivalent or improved air quality for the pollutant involved. The provisions of 40 CFR Part 51 Appendix W are hereby adopted by reference as published in the July 1, 2019 edition of the Code of Federal Regulations (CFR). For volatile organic compound emissions, modeling for ozone impacts may be required. Air quality need not improve or stay the same at every location affected by the alternate emission standard, but on balance, the air quality of the affected area must not be adversely affected. This will be demonstrated by modeling all included emission points at the proposed alternative levels and at the allowable emission level for sources subject to emissions standards in Chapter 1200-3-19 for the pollutant involved. The lower of either the allowable emission under other chapters in Division 1200-3 or actual emissions shall be used in all other modeling. In addition, the source shall demonstrate that the use of the alternate emission standard will not interfere with the attainment or maintenance of any ambient air quality standard nor violate any applicable ambient air quality standard nor violate any applicable ambient air increment.

Authority: T.C.A. §§ 68-201-101 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. Ronné Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Dr. Chunrong Jia Environmental Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests	X				
Ken Moore Working in Municipal Government	X				
Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control	X				
Mike Haverstick Working in management in Private Manufacturing	X				
Amy Spann, PE Registered Professional Engineer				X	
Greer Tidwell, Jr. Conservation Interest				X	
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 11/12/2020 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: 08/20/2020

Rulemaking Hearing(s) Conducted on: (add more dates). 11/03/2020

Date: November 17, 2020

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): Chapters 1200-03-09 and 1200-03-21

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

1/22/2021

Date

Department of State Use Only

Filed with the Department of State on: 1/22/2021

Effective on: 4/22/2021

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED

2021 JAN 22 PM 3:44

SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

There were no public comments received during the comment period.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(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.

It is estimated that less than 10 small businesses per year would be subject to the proposed rule. In general, major sources of air pollution emissions are the only facilities that are required to conduct modeling. Major sources are usually larger businesses and not smaller businesses. The proposed rule amendment does not create a new requirement to conduct modeling. The current rule already requires that modeling be conducted in certain circumstances. The proposed rule amendment simply updates the reference to the latest version of 40 CFR Part 51 Appendix W, which is the guideline on air quality models.

(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.

Modeling requires highly technical scientific knowledge and skill and is usually performed by an engineer or scientist with a bachelor's or graduate degree. A modeling analysis for a source costs a few thousand dollars. However, these rules do not create any new requirements and will not result in any new costs, as modeling is already required under the current rule.

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

Modeling requires highly technical scientific knowledge and skill and is usually performed by an engineer or scientist with a bachelor's or graduate degree. A modeling analysis for a source costs a few thousand dollars. However, these rules are not anticipated to have a significant impact on small businesses and consumers. As stated above, these rules are only applicable to major sources of air pollution emissions, which are not typically small businesses. In addition, modeling is required under the current rules and these rules only update references to federal regulations setting out the guidelines for modeling.

(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 is no less burdensome, less intrusive, or less costly alternative. The U.S. Environmental Protection Agency requires that modeling be conducted for certain air pollution sources. Modeling ensures that the sources will not have an adverse effect on air pollution in the area.

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

The proposed rule adopts 40 CFR Part 51 Appendix W by reference.

(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.

There is no exemption available for small businesses from the requirement to conduct modeling. The U.S. Environmental Protection Agency requires that modeling be conducted for certain air pollution sources so exemption for small businesses is not possible.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly.)

The Board anticipates that these amendments will not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Air Pollution Control Board is incorporating by reference into Chapters 1200-03-09 and 1200-03-21 the current version of 40 CFR Part 51 Appendix W, which is the federal guideline on air quality models. The U.S. Environmental Protection Agency (EPA) is requiring this amendment as part of the approval process for the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). The EPA identified that current Chapters 1200-03-09 and 1200-03-21 reference an outdated version of 40 CFR Part 51 Appendix W. The EPA will not fully approve Tennessee's Ozone iSIP until the state rule is amended.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The U.S. Environmental Protection Agency (EPA) is requiring Chapters 1200-03-09 and 1200-03-21 to be amended as part of the approval process for the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). The iSIP is required by the Clean Air Act Section 110(a)(1) and (2).

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

In general, major sources of air pollution emissions will be most directly affected by this rule. The Board is not aware if these sources are for or against the adoption of the rule.

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

The Board is not aware of any.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There will be no increase or decrease in state and local government revenue resulting from the promulgation of this rule.

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

Mark A. Reynolds
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
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mark.a.reynolds@tn.gov

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

Horace Tipton
Legislative Liaison
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-5339
Horace.Tipton@tn.gov

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

(1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The Air Pollution Control Board is incorporating by reference into Chapters 1200-03-09 and 1200-03-21 the current version of 40 CFR Part 51 Appendix W, which is the federal guideline on air quality models. The U.S. Environmental Protection Agency (EPA) is requiring this amendment as part of the approval process for the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). The EPA identified that current Chapters 1200-03-09 and 1200-03-21 reference an outdated version of 40 CFR Part 51 Appendix W. The EPA will not fully approve Tennessee's Ozone iSIP until the state rule is amended.

(2) A determination that the action is the least-cost method for achieving the stated purpose.

There is no other method to update the references to 40 CFR Part 51 Appendix W in the rules that has a lesser cost. Modeling is required by the EPA for certain major air pollution sources and the EPA is requiring that these changes be made as part of the approval process for the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS).

(3) A comparison of the cost-benefit relation of the action to nonaction.

The proposed rule amendment does not create a new requirement to conduct modeling and is required for the approval of the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). The current rule already requires that modeling be conducted in certain circumstances. The proposed rule amendment simply updates the reference to the latest version of 40 CFR Part 51 Appendix W, which is the guideline on air quality models. The EPA will not fully approve Tennessee's Ozone iSIP until the state rule is amended. There is no benefit to nonaction, which is not an option due to the requirements of federal law.

(4) A determination that the action represents the most efficient allocation of public and private resources.

This rulemaking represents the most efficient allocation of public and private resources. Modeling is necessary to project how a new or modified air pollution source will impact the air quality of the area surrounding it. Modeling ensures that the sources will not have an adverse effect on air pollution in the area. Without the modeling analysis, sources could be modified or built that would jeopardize the attainment status of an area of the state. Modeling is the most efficient method of determining a source's future impact on an area.

(5) A determination of the effect of the action on competition.

This action will have no effect on competition.

(6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

This action will have no effect on the cost of living in any geographical area.

(7) A determination of the effect of the action on employment in the geographical area in which the action

would occur.

This action will have no effect on employment in any geographical area.

(8) The source of revenue to be used for the action.

The cost of modeling an air pollution source will continue to be paid for by the company that owns the source.

(9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

This action will have little to no economic impact. Major sources of air pollution emissions will continue to pay for the cost of modeling. State personnel will continue to review the modeling analyses.

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Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Air Pollution Control Board
Division:	Air Pollution Control
Contact Person:	Mark A. Reynolds
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN
Zip:	37243
Phone:	(615) 532-0559
Email:	mark.a.reynolds@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	**Chapter Title**
1200-03-09	Construction and Operating Permits
Rule Number	**Rule Title**
1200-03-09-.01	Construction Permits

Chapter Number	**Chapter Title**
1200-03-21	General Alternate Emission Standards
Rule Number	**Rule Title**
1200-03-21-.01	General Alternate Emission Standard

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to https://sos.tn.gov/products/division-publications/rulemaking-guidelines.

Chapter 1200-03-09
Construction and Operating Permits

Amendments

Subparagraph (f) of paragraph (1) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

(f) In the issuance of construction permits for new air contaminant sources, or modifications, source impact analysis shall demonstrate that allowable emission increases would not cause or contribute to air pollution in violation of any ambient air quality standard in Chapter 1200-03-03, of any national ambient air quality standard, or any applicable maximum allowable increase as defined in paragraph (4) of this rule. As required, all estimates of ambient concentrations shall be based on applicable air quality models~~,~~ and ~~data bases~~ databases acceptable to the Technical Secretary~~,~~ and meeting the requirements ~~in the EPA publication No. 450/2-78-027R, "Guidelines on Air Quality Models (revised)" (1986), Supplement A (1987), and Supplement C (1995) which are incorporated by reference~~ specified in 40 CFR Part 51 Appendix W. The provisions of 40 CFR Part 51 Appendix W are hereby adopted by reference as published in the July 1, 2019 edition of the Code of Federal Regulations (CFR). Where an air quality impact model specified in 40 CFR Part 51 Appendix W is inappropriate, the Technical Secretary may approve use of a modified model or ~~another~~ substituted model on a case-by-case basis after consultation with and upon written approval from the EPA Administrator.

Authority: T.C.A. §§ 68-201-101 et seq. 4-5-201 et seq.

Subparagraph (k) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

(k) Air Quality Models.

~~All estimates of ambient concentrations~~ As required under this paragraph, all estimates of ambient concentrations shall be based on ~~the~~ applicable air quality models~~, databases,~~ and databases acceptable to the Technical Secretary and ~~other~~ meeting the requirements specified in 40 CFR Part 51 Appendix W~~, which is incorporated by reference~~. The provisions of 40 CFR Part 51 Appendix W are hereby adopted by reference as published in the July 1, 2019 edition of the Code of Federal Regulations (CFR). Where an air quality impact model specified in 40 CFR Part 51 Appendix W is inappropriate, the ~~model may be~~ Technical Secretary may approve use of a modified model or ~~another~~ substituted model ~~substituted by the Technical Secretary~~ after consultation with the EPA Administrator. The use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with subparagraph (l) of this paragraph.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Amendments

Subparagraph (c) of paragraph (2) of Rule 1200-03-21-.01 General Alternate Emission Standard is amended by deleting it in its entirety and substituting instead the following:

(c) The air contaminant source shall verify through modeling, consistent with ~~Guideline on Air Quality Models (Revised), EPA-450/2-78-027R with 1988 revisions~~ the requirements specified in 40 CFR Part 51 Appendix W, that this alternate emission standard will yield equivalent or improved air quality for the pollutant involved. The provisions of 40 CFR Part 51 Appendix W are hereby adopted by reference as published in the July 1, 2019 edition of the Code of Federal Regulations (CFR). For volatile organic compound emissions, modeling for ozone impacts may be required. Air quality need not improve or stay the same at every location affected by the alternate emission standard, but on balance, the air quality of the affected area must not be adversely affected. This will be demonstrated by modeling all included emission points at the proposed alternative levels and at the allowable emission level for sources subject to emissions standards in Chapter 1200-3-19 for the pollutant involved. The lower of either the allowable emission under other chapters in Division 1200-3 or actual emissions shall be used in all other modeling. In addition, the source shall demonstrate that the use of the alternate emission standard will not interfere with the attainment or maintenance of any ambient air quality standard nor violate any applicable ambient air quality standard nor violate any applicable ambient air increment.

Authority: T.C.A. §§ 68-201-101 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. Ronné Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Dr. Chunrong Jia Environmental Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests	X				
Ken Moore Working in Municipal Government	X				
Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control	X				
Mike Haverstick Working in management in Private Manufacturing	X				
Amy Spann, PE Registered Professional Engineer				X	
Greer Tidwell, Jr. Conservation Interest				X	
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 11/12/2020 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: 08/20/2020

Rulemaking Hearing(s) Conducted on: (add more dates). 11/03/2020

Date: November 17, 2020

Signature:

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): Chapters 1200-03-09 and 1200-03-21

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

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on:

Effective on:

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

There were no public comments received during the comment period.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(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.

It is estimated that less than 10 small businesses per year would be subject to the proposed rule. In general, major sources of air pollution emissions are the only facilities that are required to conduct modeling. Major sources are usually larger businesses and not smaller businesses. The proposed rule amendment does not create a new requirement to conduct modeling. The current rule already requires that modeling be conducted in certain circumstances. The proposed rule amendment simply updates the reference to the latest version of 40 CFR Part 51 Appendix W, which is the guideline on air quality models.

(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.

Modeling requires highly technical scientific knowledge and skill and is usually performed by an engineer or scientist with a bachelor's or graduate degree. A modeling analysis for a source costs a few thousand dollars. However, these rules do not create any new requirements and will not result in any new costs, as modeling is already required under the current rule.

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

Modeling requires highly technical scientific knowledge and skill and is usually performed by an engineer or scientist with a bachelor's or graduate degree. A modeling analysis for a source costs a few thousand dollars. However, these rules are not anticipated to have a significant impact on small businesses and consumers. As stated above, these rules are only applicable to major sources of air pollution emissions, which are not typically small businesses. In addition, modeling is required under the current rules and these rules only update references to federal regulations setting out the guidelines for modeling.

(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 is no less burdensome, less intrusive, or less costly alternative. The U.S. Environmental Protection Agency requires that modeling be conducted for certain air pollution sources. Modeling ensures that the sources will not have an adverse effect on air pollution in the area.

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

The proposed rule adopts 40 CFR Part 51 Appendix W by reference.

(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.

There is no exemption available for small businesses from the requirement to conduct modeling. The U.S. Environmental Protection Agency requires that modeling be conducted for certain air pollution sources so exemption for small businesses is not possible.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly.)

The Board anticipates that these amendments will not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Air Pollution Control Board is incorporating by reference into Chapters 1200-03-09 and 1200-03-21 the current version of 40 CFR Part 51 Appendix W, which is the federal guideline on air quality models. The U.S. Environmental Protection Agency (EPA) is requiring this amendment as part of the approval process for the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). The EPA identified that current Chapters 1200-03-09 and 1200-03-21 reference an outdated version of 40 CFR Part 51 Appendix W. The EPA will not fully approve Tennessee's Ozone iSIP until the state rule is amended.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The U.S. Environmental Protection Agency (EPA) is requiring Chapters 1200-03-09 and 1200-03-21 to be amended as part of the approval process for the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). The iSIP is required by the Clean Air Act Section 110(a)(1) and (2).

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

In general, major sources of air pollution emissions will be most directly affected by this rule. The Board is not aware if these sources are for or against the adoption of the rule.

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

The Board is not aware of any.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There will be no increase or decrease in state and local government revenue resulting from the promulgation of this rule.

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

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

Horace Tipton
Legislative Liaison
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

(1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The Air Pollution Control Board is incorporating by reference into Chapters 1200-03-09 and 1200-03-21 the current version of 40 CFR Part 51 Appendix W, which is the federal guideline on air quality models. The U.S. Environmental Protection Agency (EPA) is requiring this amendment as part of the approval process for the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). The EPA identified that current Chapters 1200-03-09 and 1200-03-21 reference an outdated version of 40 CFR Part 51 Appendix W. The EPA will not fully approve Tennessee's Ozone iSIP until the state rule is amended.

(2) A determination that the action is the least-cost method for achieving the stated purpose.

There is no other method to update the references to 40 CFR Part 51 Appendix W in the rules that has a lesser cost. Modeling is required by the EPA for certain major air pollution sources and the EPA is requiring that these changes be made as part of the approval process for the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS).

(3) A comparison of the cost-benefit relation of the action to nonaction.

The proposed rule amendment does not create a new requirement to conduct modeling and is required for the approval of the Infrastructure State Implementation Plan (iSIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). The current rule already requires that modeling be conducted in certain circumstances. The proposed rule amendment simply updates the reference to the latest version of 40 CFR Part 51 Appendix W, which is the guideline on air quality models. The EPA will not fully approve Tennessee's Ozone iSIP until the state rule is amended. There is no benefit to nonaction, which is not an option due to the requirements of federal law.

(4) A determination that the action represents the most efficient allocation of public and private resources.

This rulemaking represents the most efficient allocation of public and private resources. Modeling is necessary to project how a new or modified air pollution source will impact the air quality of the area surrounding it. Modeling ensures that the sources will not have an adverse effect on air pollution in the area. Without the modeling analysis, sources could be modified or built that would jeopardize the attainment status of an area of the state. Modeling is the most efficient method of determining a source's future impact on an area.

(5) A determination of the effect of the action on competition.

This action will have no effect on competition.

(6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

This action will have no effect on the cost of living in any geographical area.

(7) A determination of the effect of the action on employment in the geographical area in which the action

would occur.

This action will have no effect on employment in any geographical area.

(8) The source of revenue to be used for the action.

The cost of modeling an air pollution source will continue to be paid for by the company that owns the source.

(9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

This action will have little to no economic impact. Major sources of air pollution emissions will continue to pay for the cost of modeling. State personnel will continue to review the modeling analyses.