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Effective Date: 05/10/2009

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Air Pollution Control
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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.)**

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

(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>)

Chapter 1200-03-09  
Construction and Operating Permits

Amendments

Item (III) of subpart (i) of part 45 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present item a different item so that, as amended, the resulting item shall read:

- (III) For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:
- I. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.
  - II. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:
    - A. a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),
    - B. a coating with a lower VOC content than otherwise permitted in a coating operation,
    - C. a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and
    - D. alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.
  - III. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source or modification not being subject to major new source review.
  - IV. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the

Technical Secretary's approval will be made a part of the permit record.

Item (IV) of subpart (ii) of part 45 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present item a different item so that, as amended, the resulting item shall read:

- (IV) For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:
- I. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.
  - II. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:
    - A. a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),
    - B. a coating with a lower VOC content than otherwise permitted in a coating operation,
    - C. a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and
    - D. alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.
  - III. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source or modification not being subject to major new source review.
  - IV. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

Subitem III of item (I) of subpart (xlvii) of part 1 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subitem a different subitem as that, as

amended, the resulting subitem shall read:

- III. For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:
- A. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.
  - B. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:
    - (A) a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),
    - (B) a coating with a lower VOC content than otherwise permitted in a coating operation,
    - (C) a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and
    - (D) alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.
  - C. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source or modification not being subject to major new source review.
  - D. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

Subitem IV of item (II) of subpart (xlvii) of part 1 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subitem a different subitem so that, as amended, the resulting subitem shall read:

- IV. For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:
  - A. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.
  - B. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:
    - (A) a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),
    - (B) a coating with a lower VOC content than otherwise permitted in a coating operation,
    - (C) a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and
    - (D) alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.
  - C. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source or modification not being subject to major new source review.
  - D. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are

met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

Authority: T.C.A. § 68-201-105.

\* 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)
Richard A. Bolton	X				
Wilton Burnett, Jr.				X	
Tracy R. Carter	X				
Ngee-Sing Chong				X	
Mary English				X	
Sharon Goldsworthy	X				
Stephen Gossett	X				
Helen Hennon	X				
Richard Holland	X				
Robert D. Kirkpatrick				X	
Ron Page				X	
Greer Tidwell, Jr.	X				
Larry Waters	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 (board/commission/ other authority) on 04/12/2006 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/31/06

Notice published in the Tennessee Administrative Register on: 02/15/06

Rulemaking Hearing(s) Conducted on: (add more dates). 03/21/06



Date: Nov. 14, 2008

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: November 14, 2008

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 23, 2009

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.

*RE Cooper, Jr.*  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
2-24-09  
Date

**Department of State Use Only**

Filed with the Department of State on: 2/24/09

Effective on: 5/10/09

*Tre Hargett*  
Tre Hargett  
Secretary of State

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## **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 shall 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 verbal or written comments received at the public hearing or during the comment period.

## Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

- (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:

Because this proposed rule applies only to major sources of air pollution, it is unlikely that small businesses will be impacted. Should a small business be subject to this rule, the proposed change may in fact benefit the business.

- (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:

The required reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule will not be changed as a result of the proposed rule.

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

There will be little to no effect on impacted small businesses and consumers as a result of this proposed rule.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

Not applicable.

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

Rule 1200-03-09-.01 was modified February 14, 2006 in response to federal legislation. At the time the rule was adopted by the Air Pollution Control Board, the Department elected to be slightly more stringent than the federal regulations for these nearly identical portions of the rules 1200-03-09-.01(4)(b)45(i)(III), 1200-03-09-.01(4)(b)45(ii)(IV), 1200-03-09-.01(5)(b)1(xlvii)(I)III, and 1200-03-09-.01(5)(b)1(xlvii)(I)IV. This change allows companies to use a method of determining their baseline actual emissions that is closer to the federal rule (than the 02/14/06 state rule) if certain conditions are met.

- (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.

No exemptions from this rule can be granted.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

This change to the NSR regulations allows the Technical Secretary to authorize the use of multiple, pollutant specific 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if certain conditions are met by the company.

- (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;

There is no federal or state law or regulation mandating promulgations of these changes. However, these changes are being made at the request of the Pulp and Paper Industry to lessen the burden on permit applicants.

- (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;

These changes were made at the request of the Pulp and Paper Industry and there were no public comments received during the public comment period.

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

The Department is not aware of any.

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

None.

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

Lacey J. Hardin  
Division of Air Pollution Control  
9<sup>th</sup> Floor L & C Annex  
Nashville, Tennessee

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

Alan M. Leiserson  
Legal Services Director  
Tennessee Department of Environment and Conservation

- (H) Office address and telephone number 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  
20th Floor L & C Tower

Nashville, Tennessee 37243-1548  
(615-532-0131)

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

The Department is not aware of any.