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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

Agency/Board/Commission:	Environment and Conservation
Division:	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
1200-03-09-.02	Operating 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

Part 11 of subparagraph (a) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by deleting the words "at a Clean Unit or" so that, as amended, the part shall read:

11. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a plantwide applicability limitation [PAL]) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in items (b)38(i)(I) through (III) of this paragraph for calculating projected actual emissions.

Item (VIII) of subpart (i) of part 2 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:

(VIII) Reserved.

Item (III) of subpart (iii) of part 4 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) Reserved.

Item (IV) of subpart (vi) of part 4 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) Reserved.

Part 35 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present part a different part so that, as amended, the resulting part shall read:

35. Reserved.

Part 39 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present part a different part so that, as amended, the resulting part shall read:

39. Reserved.

Subitem III of 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 subitem a different subitem so that, as amended, the resulting subitem shall read:

- III. Use of alternate 2-year baselines for the pollutants described in subitem II above would result in the construction of the new source or modification not being subject to major new source review.

Subpart (v) of part 4 of subparagraph (c) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subpart a different subpart so that, as amended, the resulting subpart

shall read:

(v) Reserved.

Subpart (vi) of part 4 of subparagraph (c) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subpart a different subpart so that, as amended, the resulting subpart shall read:

(vi) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparts (c)4.(iii) through (iv) of this paragraph as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in part (b)24. of this paragraph). For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in subpart (c)4.(iii) of this paragraph for the existing unit and determined using the method specified in subpart (c)4.(iv) of the paragraph for the new unit.

Part 6 of subparagraph (c) of paragraph (4) of rule 120-03-09-.01 Construction Permits is amended by substituting for the present part a different part so that, as amended, the resulting part shall read:

6. Reserved.

Subparagraph (p) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subparagraph a different subparagraph so that, as amended, the resulting subparagraph shall read:

(p) Reserved.

Subparagraph (q) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subparagraph a different subparagraph so that, as amended, the resulting subparagraph shall read:

(q) Reserved.

Subparagraph (r) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subparagraph a different subparagraph so that, as amended, the resulting subparagraph shall read:

(r) Reserved.

Subitem VIII of item (III) of subpart (v) 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:

VIII. Reserved.

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

III. Reserved.

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

V. Reserved.

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

(xxxvii) Reserved.

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

(xli) Reserved.

Section C of 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 section a different section so that, as amended, the resulting section shall read:

- C. Use of alternate 2-year baselines for the pollutants described in section B above would result in the construction of the new source or modification not being subject to major new source review.

Item (IX) of subpart (v) of part 2 of subparagraph (b) of paragraph (5) 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:

(IX) Reserved.

Item (X) of subpart (v) of part 2 of subparagraph (b) of paragraph (5) 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:

(X) Reserved.

Subpart (xvi) of part 2 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subpart a different subpart so that, as amended, the resulting subpart shall read:

(xvi) Reserved.

Subpart (xvii) of part 2 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subpart a different subpart so that, as amended, the resulting subpart shall read:

- (xvii) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparts 2.(xiv) through (xv) of this subparagraph as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in subpart 1.(x) of this subparagraph). For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in subpart 2.(xiv) of this subparagraph for the existing unit and using the method specified in subpart 2.(xv) of this subparagraph for the new unit.

Subpart (xix) of part 2 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present subpart a different subpart so that, as amended, the resulting subpart shall read:

(xix) Reserved.

Part 5 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present part a different part so that, as amended, the resulting part shall read:

5. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in subitems 1(xl)(I) through III of this subparagraph for calculating projected actual emissions.

Part 7 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present part a different part so that, as amended, the resulting part shall read:

7. Reserved.

Part 8 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present part a different part so that, as amended, the resulting part shall read:

8. Reserved

Part 9 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by substituting for the present part a different part so that, as amended, the resulting part shall read:

9. Reserved.

Authority: T.C.A. § 68-201-105.

Paragraph (1) of rule 1200-03-09-.02 Operating Permits is amended by substituting for the present paragraph a different paragraph so that, as amended, the resulting paragraph shall read:

- (1) Any person planning to operate an air contaminant source constructed or modified in accordance with a construction permit issued by the Technical Secretary in rule 1200-03-09-.01 of this chapter shall apply for and receive an operating permit from the Technical Secretary after initial start-up of this said air contaminant source. Ninety (90) days shall be allowed for this, provided paragraph (3) of this rule is complied with. This time period is extended from ninety (90) to one hundred twenty (120) days if stack sampling has been required as a condition on the construction permit, which is further extended to sixty (60) days after the stack sampling report is required on the construction if a certain time is specified, provided the stack sampling report is filed with the Division within sixty (60) days of initial start-up or the time specified on the construction permit as that paragraph (3) of this rule is complied with.

Part 6 of subparagraph (f) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by substituting for the word "Case" the word "Cause" in the introductory text so that, as amended, the part shall read, with the associated subparts remaining unchanged:

6. Reopening for Cause

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)
Wilton Burnett, Jr.	X				
Tracy R. Carter	X				
Ngee-Sing Chong	X				
Wayne T. Davis				X	
Mary English				X	
Stephen Gossett	X				
Helen Hennon	X				
Richard Holland	X				
Roxanne Coats McDonald				X	
Joe C. McKinnon	X				
Donald Mull	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 12/13/2006 (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: 09/28/06

Notice published in the Tennessee Administrative Register on: 10/13/06

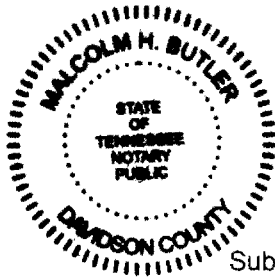
Rulemaking Hearing(s) Conducted on: (add more dates). 11/20/06

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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SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which 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 105th 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)

The foregoing amendments to Rule 1200-03-09-.01 are to comply with § 110 of the federal Clean Air Act in order for the State to maintain its status as a delegated state program. These amendments relate to the New Source Review Program required under the Clean Air Act, making this rule amendment federally mandated and exempt from the requirements of T.C.A. § 4-5-401 et seq.

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 regulations removes the portions of the New Source Review regulations dealing with Clean Units (CU) and Pollution Control Projects (PCP). These parts of the federal regulations were vacated by the D.C. Circuit Court June 24, 2005 and therefore cannot legally remain in Tennessee's regulations.

- (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;

This rule revision conforms the regulations to the decision by the U.S. Court of Appeals for the D.C. Circuit, *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005), vacating the PCP and CU provisions.

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

The vacature of the federal rules makes these amended state rules obsolete.

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

This rule revision conforms the regulations to the decision by the U.S. Court of Appeals for the D.C. Circuit, *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005), vacating the PCP and CU provisions.

- (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
9th 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
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(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.