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312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: sos.information@state.tn.us

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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
<b>Contact Person:</b>	Lacey Hardin
<b>Address:</b>	9 <sup>th</sup> Floor L&C Annex 401 Church Street Nashville, Tennessee
<b>Zip:</b>	37243-1531
<b>Phone:</b>	(615) 532-0554
<b>Email:</b>	Lacey.Hardin@state.tn.us

**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-.03	General Provisions

(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

Subpart (i) of part 2 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding items IX and X so that, as amended, the subpart shall read:

- (i) A physical change or change in the method of operation shall not include:
  - (I) Routine maintenance, repair, or replacement;
  - (II) Use of an alternative fuel or raw material by reason of any order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to an applicable federal statute;
  - (III) Use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act;
  - (IV) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste as determined by the Tennessee Division of Solid Waste Management.
  - (V) Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under a legally enforceable permit condition which was established after January 6, 1975, or under regulations of this Division 1200-3, or under regulations approved by the Environmental Protection Agency pursuant to 40 CFR 51.160-51.166;
  - (VI) An increase in the hours of operation or in the production rate, unless such change would be prohibited under a legally enforceable permit condition which was established after January 6, 1975, or under regulations of this Division 1200-3.
  - (VII) Any change in ownership at a stationary source.
  - (VIII) Reserved.
  - (IX) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
    - I. The State Implementation Plan for the State in which the project is located, and
    - II. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

- (X) The installation or operation of a permanent clean coal technology demonstration project that constitutes re-powering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

Subpart (i) of part 3 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding the word "either" between the words "for" and "volatile" and by adding the words "or nitrogen oxides" between the words "compounds" and "shall" so that, as amended, the subpart shall read:

- (i) A source that is major for either volatile organic compounds or nitrogen oxides shall be considered major for ozone.

Subpart (ii) of part 3 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding the word "either" between the words "for" and "volatile" and by adding the words "or nitrogen oxides" between the words "compounds" and "shall" so that, as amended, the subpart shall read:

- (ii) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for either volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

Item (V) of subpart (i) of part 24 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding the word "either" between the words "of" and "volatile" and by adding the words "or nitrogen oxides" behind the word "compounds" so that, as amended, the item shall read:

- (V) Ozone: 40 tpy of either volatile organic compounds or nitrogen oxides.

Subpart (i) of part 47 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding the words "and nitrogen oxides" between the words "compounds" and "are" so that, as amended, the subpart shall read:

- (i) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds and nitrogen oxides are precursors for ozone);

Subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding four new parts "55, 56, 57, and 58" as follows:

- 55. "Clean coal technology" means any technology, including technologies applied at the pre-combustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.
- 56. "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.
- 57. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and

maintain the national ambient air quality standards during and after the project is terminated.

58. "Re-powering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Re-powering shall also include any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the U.S. Department of Energy. The Technical Secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

Item (V) of subpart (i) of part 6 of subparagraph (d) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by replacing the word "deminimis" with the words "de minimis" between the words "no" and "air" and adding the words "or nitrogen oxides" between the words "compounds" and "subject" so that, as amended, the item shall read:

- (V) Ozone - no de minimis air quality level has been established. However, any net increase of 100 tons per year or more of either volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

Item (I) of subpart (iv) of part 1 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 new item shall read:

- (I) Any stationary source of air contaminants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Clean Air Act, according to sub-items I through VI of this item.
- I. 50 tons per year of either volatile organic compounds or nitrogen oxides in any serious ozone non-attainment area.
  - II. 50 tons per year of either volatile organic compounds or nitrogen oxides in an area within an ozone transport region, except for any severe or extreme ozone non-attainment area.
  - III. 25 tons per year of either volatile organic compounds or nitrogen oxides in any severe ozone non-attainment area.
  - IV. 10 tons per year of either volatile organic compounds or nitrogen oxides in any extreme ozone non-attainment area.
  - V. 50 tons per year of carbon monoxide in any serious non-attainment area for carbon monoxide, where

stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator of the U.S. EPA).

- VI. 70 tons per year of PM-10 in any serious non-attainment area for PM-10; or

Item (II) of subpart (iv) of part 1 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by removing the "s" from the word "items" between the word "under" and before the numerical "(iv)" so that, as amended, the item shall read:

- (II) Any physical change that would occur at a stationary source not qualifying under item (iv)(I) as a major stationary source, if the change would constitute a major stationary source by itself.

Subpart (v) of part 1 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by adding a new subitem IX to item (III), and by adding two new items (V) and (VI) so that, as amended the subpart shall read as follows:

- (v) Major modification:

- (I) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in:

- I. A significant emissions increase of a regulated NSR pollutant (as defined in subpart 1(xlix) of this subparagraph).
- II. A significant net emissions increase of that pollutant from the major stationary source.

- (II) Any significant emissions increase (as defined in subpart 1(xxxix) of this subparagraph) from any emissions units or net emissions increase (as defined in subpart 1(vi) of this subparagraph) at a major stationary source that is significant for volatile organic compounds and/or nitrogen oxides shall be considered significant for ozone.

- (III) A physical change or change in the method of operation shall not include:

- I. Routine maintenance, repair, and replacement;
- II. Use of an alternative fuel or raw material by reason of any order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the federal power act;
- III. Use of an alternative fuel by reason of an order or Rule under Section 125 of the Clean Air Act Amendments, August 7, 1977;
- IV. Use of an alternative fuel at a steam generating unit (burning equipment of 250 million BTU's per hour or larger) to the extent that the fuel is generated from municipal solid waste as determined by the Tennessee Division of Solid Waste Management.

- V. Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 12, 1976, unless such change would be prohibited under a legally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR Part 52.21 (July 1, 1993), or under regulations approved pursuant to 40 CFR Part 51 Subpart I or 51.166 (July 1, 1993), or the source is approved to use under any permit issued pursuant to this paragraph;
  - VI. An increase in the hours of operation or in the production rate, unless such change would be prohibited under a legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR Part 52.21 (July 1, 1993) or regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Part 51.166 (July 1, 1993).
  - VII. Any change in ownership at a stationary source.
  - VIII. Reserved.
  - IX. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
    - A. The State Implementation Plan for the State in which the project is located, and
    - B. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.
- (IV) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under part 10 of this subparagraph for a PAL for that pollutant. Instead, the definition at item 10(ii)(VIII) of this subparagraph shall apply.
- (V) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone non-attainment area that is subject to subpart 2, part D, title I of the Clean Air Act.
- (VI) Any physical change in, or change in the method of operation of, a major stationary source of nitrogen oxides that results in any increase in emissions of nitrogen oxides from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone non-attainment area that is subject to subpart 2, part D, title I of the Clean Air Act.

Subpart (x) of part 1 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by adding four new items "(II), (III), (IV) and (V)" as follows:

- (II) Notwithstanding the significant emissions rate for ozone in item (I) of this subpart, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of either volatile organic compounds or nitrogen oxides that would result from any physical change in, or change in the method of operation of, a major stationary source located in a serious or severe ozone non-attainment area that is subject to subpart 2, part D, title I of the Clean Air Act, if such emissions increase of either volatile organic compounds or nitrogen oxides exceeds 25 tons per year.
- (III) Reserved
- (IV) Notwithstanding the significant emissions rate for carbon monoxide under item (I) of this subpart, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious non-attainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the Administrator of the U.S. EPA has determined that stationary sources contribute significantly to carbon monoxide levels in that area.
- (V) Notwithstanding the significant emissions rates for ozone under items (I) and (II) of this subpart, any increase in actual emissions of either volatile organic compounds or nitrogen oxides from any emissions unit at a major stationary source of either volatile organic compounds or nitrogen oxides located in an extreme ozone non-attainment area that is subject to subpart 2, part D, title I of the Clean Air Act shall be considered a significant net emissions increase.

Item (I) of subpart (xxxiii) of part 1 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by removing the "and" after the semicolon in subitem I, by removing the period at the end of subitem II and replacing with "; and", and by adding a new subitem "III" so as, as amended the item shall read as follows:

- (I) Notwithstanding subpart (xxxiii) of this part, NO<sub>x</sub> shall not be considered an ozone precursor when:
  - I. Additional NO<sub>x</sub> emissions reductions would not be expected to decrease ozone;
  - II. The Administrator of EPA determines, for certain classes or categories of sources (when the Administrator approves the Tennessee State Implementation Plan or Plan revision), that net air quality benefits would be greater in the absence of further nitrogen oxides reductions from sources concerned; and
  - III. The Administrator of the U.S. EPA has granted a NO<sub>x</sub> waiver applying the standards set forth under section 182(f) of the Clean Air Act and the waiver continues to apply.

Part 1 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by adding three new subparts "(lvii), (lviii) and (lix)" as follows:

- (lvii) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State Implementation Plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.
- (lviii) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.
- (lix) Clean coal technology demonstration project means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

Subitem II of item (I) of subpart (v) of part 2 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by replacing the word "a" with the word "an" between the words "of" and "air" so that, as amended, the subitem shall read:

- II. Emissions from such other area contribute to a violation of an air quality standard in the non-attainment area in which the proposed new or modified source would construct.

Item (III) of subpart (v) of part 2 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by adding the words "that are subject to subpart 2, part D, title I of the Clean Air Act," between the words "areas" and "the" so that, as amended, the new item shall read:

- (III) In meeting the requirements of item (v)(II) of this subpart for ozone non-attainment areas that are subject to subpart 2 of part D, title I of the Clean Air Act, the ratio of total actual emission reductions of Volatile Organic Compounds and/or Nitrogen Oxides to the net emissions increase of Volatile Organic Compounds and/or Nitrogen Oxides shall be as follows:
  - I. In any Marginal non-attainment area for ozone - at least 1.1 to 1;
  - II. In any Moderate non-attainment area for ozone - at least 1.15 to 1;
  - III. In any Serious non-attainment area for ozone - at least 1.2 to 1;
  - IV. In any Severe non-attainment area for ozone - at least 1.3 to 1;



- V. In any Extreme non-attainment area for ozone - at least 1.5 to 1.

Item (IV) of subpart (v) of part 2 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended adding the words "that is subject to subpart 2, part D, title I of the Clean Air Act" between the words "region" and "for" and substituting for the value "1.5" the value "1.15" between the words "least" and "to" so that, as amended, the item shall read:

- (IV) Within an ozone transport region that is subject to subpart 2 of part D, title I of the Clean Air Act, for any area designated for ozone attainment, unclassified, or Marginal non-attainment, the ratio of total actual emission reductions of Volatile Organic Compounds and/or Nitrogen Oxides to net emissions increase of Volatile Organic Compounds and/or Nitrogen Oxides shall be at least 1.15 to 1.

Item (V) 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 new item shall read:

- (V) I. Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in sections IA and B of this item.
- A. Such reductions are surplus, permanent, quantifiable, and federally enforceable.
- B. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, the Technical Secretary may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.
- II. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in section IB of this item may be generally credited only if:
- A. The shutdown or curtailment occurred on or after the date the construction permit application is filed; or
- B. The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of section IA of this item.

Subpart (v) of part 2 of subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by adding a new item "(XIV)" as follows:

- (XIV) Within an ozone non-attainment area that is subject to subpart 1, part D, title I of the Clean Air Act (but is not subject to subpart 2, part D, title I of the Act, including 8-hour ozone non-attainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of either volatile organic compound or nitrogen oxides to the emissions increase of either volatile organic compounds or nitrogen oxides shall be at least 1:1.

Subparagraph (b) of paragraph (5) of rule 1200-03-09-.01 Construction Permits is amended by adding a new part "12" as follows:

- 12. The requirements of this subparagraph applicable to major stationary sources and major modifications of PM<sub>10</sub> shall also apply to major stationary sources and major modifications of PM<sub>10</sub> precursors, except where the Administrator of the U.S. EPA determines that such sources do not contribute significantly to PM<sub>10</sub> levels that exceed the PM<sub>10</sub> ambient standards in the area.

Subpart (iii) of part 4 of subparagraph (b) of paragraph (8) of rule 1200-03-09-.01 Construction Permits is amended to correct a typographical error by substituting for the present subpart a different subpart so that, as amended, the new subpart shall read, with its associated items remaining unchanged:

- (iii) The source is a portable stationary source which has previously received a permit under this part; and

Authority: T.C.A. § 68-201-105.

Paragraph (1) of rule 1200-3-9-.03 General Provisions is amended by substituting for the word "data" the word "date" between the words "earlier" and "than" so that, as amended, the resulting paragraph shall read:

- (1) Irrespective of the provisions of the preceding paragraphs of this chapter, the owner or operator of any air contaminant source shall be responsible for complying with emission regulations as contained in other chapters of these regulations at the earliest practicable time and for this purpose the Board shall have the authority and responsibility to require compliance with these regulations at an earlier date than indicated where such earlier compliance may reasonably be accomplished.

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)
Michael Atchison	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				
Joe C. McKinnon	X				
Donald Mull	X				
Dale Swafford	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 07/11/2007 (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: 04/30/07

Notice published in the Tennessee Administrative Register on: 05/15/07

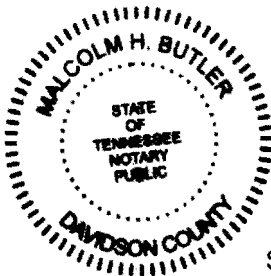
Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/07

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

*2-23-09*

Date

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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.

Comment: The commenter agreed with the amended rule changes being made by the Air Pollution Control Board.

Response: The Board agrees.

Comment: The commenter pointed out that the following federal rules were missing from the draft state rules:

40 CFR 51.165(a)(1)(iv)(A)(2) and (3)

40 CFR 51.165(a)(1)(v)(E)

40 CFR 51.165(a)(1)(x)(C)

Response: 40 CFR 51.165(a)(1)(iv)(A)(2): these provisions were inadvertently omitted and will be corrected in a future rulemaking. Based on Tennessee's currently designated non-attainment areas, the Board believes that the existing rules adequately address these provisions. For clarity and to address potential future non-attainment designations, the change will be made in a future rulemaking. 40 CFR 51.165(a)(1)(iv)(A)(3): the rule cite states that any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

40 CFR 51.165(a)(1)(v)(E): this provision is covered by Rule 1200-03-09-.01(5)(b)1(xxxiii), the definition of "ozone precursor," Rule 1200-03-09-.01(5)(b)1(xlix), the definition of "regulated NSR pollutant," and Rule 1200-03-09-.01(5)(b)1(v)(I) and (II), definition of "major modification." The latter item states that any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone. For clarification, "or nitrogen oxides" will be added in a future rulemaking.

40 CFR 51.165(a)(1)(x)(C): this provision is covered by Rule 1200-03-09-.01(5)(b)1(xxxiii), the definition of "ozone precursor," Rule 1200-03-09-.01(5)(b)1(xlix), the definition of "regulated NSR pollutant," and Rule 1200-03-09-.01(5)(b)1(v)(I) and (II), definition of "major modification." The latter item states that any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone. For clarification, "or nitrogen oxides" will be added in a future rulemaking.

Comment: The commenter stated that to avoid confusion, Rule 1200-03-09-.01(4)(b)24(i)(V) should say volatile organic compounds or nitrogen oxides, not volatile organic compounds and/or nitrogen oxides.

Response: The Board agrees and the change was made to the final rule.

Comment: The commenter pointed out a typographical error in that "part D" was left out of Rule 1200-03-09-.01(5)(b)2(v)(III) and (IV).

Response: The Board agrees and the change was made to the final rule.

### **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)

The foregoing amendments to Rule 1200-03-09-.01 and Rule 1200-03-09-.03 are to comply with § 110 and 172(c) of the federal Clean Air Act. These amendments relate to the New Source Review Program, which is a mandatory element of the required State Implementation Plan under the Clean Air Act, therefore, this rulemaking is 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;

Rule 1200-3-9-.01 Construction Permits contains the requirements for owners or operators of sources of air pollution to obtain a construction permit from the Division of Air Pollution Control before beginning construction or modification of the air contaminant source. Changes to this rule have been made in response to changes to the federal (USEPA) regulations governing the construction or modification of major sources of air pollution.

Rule 1200-3-9-.03 General Provisions contains the requirements for owners or operators of sources of air pollution be responsible for complying with emission regulations as contained in other rules of these regulations at the earliest practicable time and for this purpose the Air Pollution Control Board shall have the authority and responsibility to require compliance with these regulations at an earlier date than indicated where such earlier compliance may reasonably be accomplished. This modification also corrects a typographical error.

- (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 rulemaking is authorized by the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, § 68-201-105.

Changes to Rule 1200-3-9-.01 Construction Permits are mandated by 40 CFR Part 51.165(a)(2)(i) and (ii) and 40 CFR Part 51.166(a)(7)(iv).

The change to Rule 1200-3-9-.03 General Provisions was made to correct a typographical error.

- (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;

Owners and operators of major sources of air pollution are affected by changes to Rule 1200-3-9-.01 Construction Permits. The only comments received were favorable. The change to Rule 1200-3-9-.03 General Provisions was made to correct a typographical error.

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

The Tennessee Air Pollution Control 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;

The Tennessee Air Pollution Control Board is not aware of any.

- (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 Tennessee Air Pollution Control Board is not aware of any.