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# Notice of Rulemaking Hearing

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

<b>Agency/Board/Commission:</b>	Environment & Conservation
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	Travis Blake
<b>Address:</b>	9 <sup>th</sup> Floor, L&C Annex 401 Church Street Nashville, TN 37243-1531
<b>Phone:</b>	(615) 532-0617
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	12 <sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville TN 37243
<b>Phone:</b>	(866) 253-5827 (toll free) or (615) 532-0200. Hearing impaired callers may use the Tennessee Relay Service ((800) 848-0298).
<b>Email:</b>	<a href="mailto:beverly.evans@tn.gov">beverly.evans@tn.gov</a>

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	9 <sup>th</sup> Floor, L&C Annex		
Address 2:	401 Church Street		
City:	Nashville, TN		
Zip:	37243-1531		
Hearing Date :	05/24/12		
Hearing Time:	9:30 AM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

There will be a public hearing before 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, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendments. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et seq. and will take place in the 9<sup>th</sup> Floor conference room, L&C Annex, located at 401 Church Street, Nashville, Tennessee 37243 at 9:30 AM on the 24<sup>th</sup> day of May, 2012.

Written comments will be included in the hearing records if received by the close of business on May 24, 2012, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9<sup>th</sup> Floor, L&C Annex, 401 Church Street, Nashville, TN 37243-1531. Additionally, comments may be submitted via attachments through electronic mail until the close of business on May 24, 2012. Comments may be submitted via e-mail to [Air.Pollution.Control@tn.gov](mailto:Air.Pollution.Control@tn.gov).

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than 10 days prior to May 24, 2012, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 12<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville TN 37243, (866) 253-5827. Hearing impaired callers may use the Tennessee Relay Service ((800) 848-0298).

If you have any questions about the origination of these rule changes, you may contact Travis Blake at (615) 532-0617. For complete copies of the text of the notice, please contact Travis Blake, Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243.

#### FIRST ITEM:

Chapter 1200-03-27 Nitrogen Oxides is being amended by adding Rule 1200-03-27-12 NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines. This new rule is necessary to meet the Environmental Protection Agency (EPA) requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR §51.121 (findings and requirements for submission of State Implementation Plan revisions relating to emissions of oxides of nitrogen). This new rule will require the owner/operators of affected stationary boilers and combustion turbines to comply with ozone season NO<sub>x</sub> emission limitations by limiting emissions from these sources. This new rule will replace Rules 1200-03-27-.06 and 1200-03-27-.11.

Interested parties may submit comments on any provision of the proposed rule. Tennessee is specifically soliciting public comments on the following provisions:

- (1) Item (6)(c)2(i)(I) of the proposed Rule 1200-03-27-12 allows the Responsible Official of a new affected unit to request allowances for a control period in an amount not exceeding an emission rate of 0.15 lb/MMBtu. Tennessee requests comment on whether this value should be increased to 0.20 lb/MMBtu. A maximum allowance allocation based on 0.20 lb/MMBtu would harmonize the requirements of the proposed rule with the requirements of 40 CFR 60 Subpart Db, while a maximum allowance allocation based on 0.15 lb/MMBtu would match the requirements of previous NO<sub>x</sub> trading programs.
- (2) Paragraph (11) of the proposed Rule 1200-03-27-12 requires affected units to comply with the monitoring requirements of 40 CFR 75 Subpart H and allows the Responsible Official of an affected unit to petition the Technical Secretary and the Administrator for alternative requirements. Tennessee requests comment on other monitoring alternatives that may be approvable pursuant to 40 CFR §51.121.
- (3) Tennessee requests comment on whether trading of NO<sub>x</sub> allowances should be allowed and on specific emission trading provisions that may be approvable pursuant to 40 CFR §51.121.

Proposed Rule 1200-03-27-12 specifies that NO<sub>x</sub> allocations for existing affected units will be established in the State Implementation Plan. Tennessee is submitting the proposed NO<sub>x</sub> allocations for public review and comment. These proposed allocations would be used by affected sources to comply with Rule 1200-03-27-12.

#### SECOND ITEM:

Chapter 1200-03-14 Control of Sulfur Dioxide Emissions is being amended by deleting Rule 1200-03-14-.04 CAIR SO<sub>2</sub> Annual Trading Program. This rule was added to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts AAA through III. EPA will cease to administer this program upon final implementation of the Transport Rule (Federal Register, August 8, 2011, 48208).

#### THIRD ITEM:

Chapter 1200-03-27 Nitrogen Oxides is being amended by deleting Rule 1200-03-27-.06 NO<sub>x</sub> Budget Trading Program for State Implementation Plans. This rule was added to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts A through I. EPA ceased to administer this program on January 1, 2009.

#### FOURTH ITEM:

Chapter 1200-03-27 Nitrogen Oxides is being amended by deleting Rule 1200-03-27.10 CAIR NO<sub>x</sub> Annual Trading Program. This rule was added to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts AA through II. EPA will cease to administer this program upon final implementation of the Transport Rule (Federal Register, August 8, 2011, 48208).

FIFTH ITEM:

Chapter 1200-03-27 Nitrogen Oxides is being amended by deleting Rule 1200-03-27.11 CAIR NO<sub>x</sub> Ozone Season Trading Program. This rule was added to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts AAAA through IIII. EPA will cease to administer this program upon final implementation of the Transport Rule (Federal Register, August 8, 2011, 48208).

SIXTH ITEM:

Chapter 1200-03-37 Clean Air Mercury Rule is being repealed. This rule was added to meet the EPA requirement for Tennessee to establish standards of performance for certain existing stationary sources pursuant to Section 111(d) of the Clean Air Act. These requirements were vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008.

Interested parties may submit comments on any of the proposed revisions. While the Division is proceeding with rulemaking on all of the actions listed above, final action on the first five items listed above may be delayed pending the outcome of petitions for review of U. S. EPA's "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; Final Rule" (Federal Register, August 8, 2011, 48208).

Revisions considered at this hearing may be adopted by the Tennessee Air Pollution Control Board under T.C.A. 68-201-105, the Board general authority to promulgate rules. Materials concerning the proposed actions will be available for public inspection during normal working hours starting on April 15, 2012, at the following locations:

Division of Air Pollution Control  
9th Floor, L & C Annex  
401 Church Street  
Nashville, TN 37243-1531

Division of Air Pollution Control  
Johnson City Environmental Field Office  
2305 Silverdale Road  
Johnson City, TN 37601-2162

Memphis Environmental Field  
Office  
8383 Wolf Lake Drive  
Bartlett, TN 38133-4119

Division of Air Pollution Control  
Chattanooga Environmental Field  
Office  
540 McCallie Avenue, Suite 550  
Chattanooga, TN 37402

Division of Air Pollution Control  
Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, TN 37921

Pollution Control Division  
Metropolitan Health Dept.  
311 23rd Avenue, North  
Nashville, TN 37203

Division of Air Pollution Control  
Columbia Environmental Field Office  
1421 Hampshire Pike  
Columbia, TN 38401

Division of Air Pollution Control  
Nashville Environmental Field Office  
711 R. S. Gass Boulevard  
Nashville, TN 37243

U.S. EPA, Region IV – APTMD  
c/o Ms. Beverly Banister, Chief  
12th Floor, Atlanta Federal  
Center  
61 Forsyth Street S.W.  
Atlanta, GA 30303

Division of Air Pollution Control  
Cookeville Environmental Field  
Office  
1221 South Willow Avenue  
Cookeville, TN 38506

Chattanooga-Hamilton County  
Air Pollution Control Bureau  
6125 Preservation Drive  
Chattanooga, TN 37416

Division of Air Pollution Control  
Jackson Environmental Field Office  
1625 Hollywood Drive  
Jackson, TN 38305

Knox County Dept. of Air Quality  
Management  
140 Dameron Avenue, Suite 242  
Knoxville, TN 37917

If you have any questions about these changes, you may contact Travis Blake at (615) 532-0617. For complete copies of the text of the notice, please contact Travis Blake, Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243.

All persons interested in the air quality of the State of Tennessee are urged to attend and will be afforded the opportunity to present testimony to the hearing officer regarding the proposed revisions to the State Implementation Plan. Any person desiring to present lengthy comments should be prepared at the hearing to offer a written statement to be incorporated into the record. Written statements not presented at the hearings will only be considered part of the records if received by 4:30 PM May 24, 2012, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee, 37243-1531.

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1200-03-14	Control of Sulfur Dioxide Emissions
Rule Number	Rule Title
1200-03-14-.04	CAIR SO <sub>2</sub> Annual Trading Program

Chapter Number	Chapter Title
1200-03-27	Nitrogen Oxides
Rule Number	Rule Title
1200-03-27-.06	NO <sub>x</sub> Budget Trading Program for State Implementation Plans
1200-03-27-.10	CAIR NO <sub>x</sub> Annual Trading Program
1200-03-27-.11	CAIR NO <sub>x</sub> Ozone Season Trading Program
1200-03-27-.12	NO <sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines

Chapter Number	Chapter Title
1200-03-37	Clean Air Mercury Rule
Rule Number	Rule Title
1200-03-37-.01	Clean Air Mercury Rule (40 CFR 60)

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

#### Amendments

##### Chapter 1200-03-14 Control of Sulfur Dioxide Emissions

Chapter 1200-03-14 Control of Sulfur Dioxide Emissions is amended by deleting Rule 1200-03-14-.04 CAIR SO<sub>2</sub> Annual Trading Program so that as amended the rule shall read:

1200-03-14-.04 Reserved

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

##### Chapter 1200-03-27 Nitrogen Oxides

Chapter 1200-03-27 Nitrogen Oxides is amended by deleting Rule 1200-03-27-.06 NO<sub>x</sub> Budget Trading Program for State Implementation Plans so that as amended the rule shall read:

1200-03-27-.06 Reserved

Chapter 1200-03-27 Nitrogen Oxides is amended by deleting Rule 1200-03-27-.10 CAIR NO<sub>x</sub> Annual Trading Program so that as amended the rule shall read:

1200-03-27-.10 Reserved

Chapter 1200-03-27 Nitrogen Oxides is amended by deleting Rule 1200-03-27-.11 CAIR NO<sub>x</sub> Ozone Season Trading Program so that as amended the rule shall read:

1200-03-27-.11 Reserved

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

#### New Rule

##### Chapter 1200-03-27 Nitrogen Oxides

Chapter 1200-03-27 Nitrogen Oxides is amended by adding Rule 1200-03-27-.12 (NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines) so that as amended the rule shall read:

1200-03-27-.12 NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines

- (1) Definitions. The terms used in this rule shall have the meanings set forth in this paragraph as follows:
- (a) "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative
  - (b) "Affected facility" means the group of all affected units at a facility.
  - (c) "Affected unit" means any stationary boiler or stationary combustion turbine that meets the following requirements:
    - 1. The stationary boiler's or stationary combustion turbine's maximum design heat input is greater than 250 MMBtu/hr.
    - 2. The stationary boiler or stationary combustion turbine combusts, or will combust during any year, fossil fuel in the following amounts:

- (i) Alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or
  - (ii) Alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year.
- 3. Any unit subject to 40 CFR 97 Subpart BBBBB (Transport Rule NO<sub>x</sub> Ozone Season Trading Program) shall not be an affected unit.
- (d) "Allocate" or "allocation" means the determination by the Technical Secretary of the amount of allowances to be credited to an affected facility.
- (e) "Allowance" (or "NO<sub>x</sub> allowance") means a limited authorization issued by the Technical Secretary to emit one ton of nitrogen oxides during a control period of a specified calendar year or of any calendar year thereafter.
- (f) "Boiler" means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.
- (g) "Clean Air Act" or "CAA" means the Clean Air Act, 42 U.S.C. 7401, et seq.
- (h) "Combustion turbine" means:
  - 1. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and
  - 2. If the enclosed device under part 1 of this subparagraph is combined cycle, any associated duct burner, heat recovery steam generator and steam turbine.
- (i) "Commence operation" means the later of November 15, 1990 or the date the unit begins any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.
  - 1. For a unit that commences operation as defined in this subparagraph, and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.
  - 2. For a unit that commences operation as defined in this subparagraph, and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation.
- (j) "Compliance deadline" means, for a control period, midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day) immediately following the control period.
- (k) "Control period" or "ozone season" means the period beginning May 1 of a calendar year and ending on September 30 of the same year, inclusive.
- (l) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Technical Secretary by the Responsible Official in accordance with paragraph (11) of this rule.
- (m) "Excess emissions" means any ton of nitrogen oxides emitted by an affected facility during a control period that exceeds the total number of allowances allocated to an affected facility for a control period.

- (n) "Existing affected unit" means any affected unit for which CAIR NO<sub>x</sub> Ozone Season Allowances were allocated by the Technical Secretary, pursuant to Rule 1200-03-27-.11, for the control period in 2010.
- (o) "Fossil-fuel-fired" means, with regard to an affected unit, combusting any amount of fossil fuel (coal, natural gas, petroleum, or any form of solid, liquid, or gaseous fuel derived from such material) in any calendar year.
- (p) "Heat input" means, with regard to a specified period of time, the product of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in pounds of fuel per unit of time), as measured and recorded in accordance with paragraph (11) of this rule. Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.
- (q) "Maximum design heat input" means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.
- (r) "Most stringent State or Federal NO<sub>x</sub> emissions limitation" means, with regard to a unit, the lowest NO<sub>x</sub> emissions limitation (in terms of lb/MMBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.
- (s) "New affected unit" means any unit that is not an existing affected unit.
- (t) "Operator" means any person who operates, controls, or supervises an affected unit or an affected source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.
- (u) "Owner" means any of the following persons:
  1. Any holder of any portion of the legal or equitable title in an affected facility or an affected unit;
  2. Any holder of a leasehold interest in an affected facility or an affected unit; or
- (v) "Receive" or "receipt of" means, when referring to the Technical Secretary or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the Technical Secretary or the Administrator in the regular course of business.
- (w) "Replacement", "replace", or "replaced" means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).
- (x) "Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."
- (y) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:
  1. In person;
  2. By United States Postal Service; or
  3. By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

- (z) "Technical Secretary" means the Technical Secretary of the Tennessee Air Pollution Control Board or a duly authorized representative.
  - (aa) "Ton" means 2,000 pounds. For the purpose of determining compliance with the ozone season NO<sub>x</sub> emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with paragraph (11) of this rule, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.
  - (bb) "Unit" means a stationary, fossil-fuel fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.
- (2) Measurements, abbreviations, and acronyms. Measurements, abbreviations, and acronyms used in this rule are defined as follows:
- Btu - British thermal unit
  - CO<sub>2</sub> - carbon dioxide
  - H<sub>2</sub>O - water
  - hr - hour
  - lb - pound
  - MMBtu - million Btu
  - NO<sub>x</sub> - nitrogen oxides
  - O<sub>2</sub> - oxygen
  - ppm - parts per million
  - scfh - standard cubic feet per hour
  - SO<sub>2</sub> - sulfur dioxide
- (3) Applicability. Except as otherwise exempted by this rule, the provisions of this rule shall apply to each affected unit and each affected facility.
- (4) Retired unit exemption.
- (a)
    1. Any affected unit that is permanently retired shall be exempt from this rule, except for the provisions of this paragraph and paragraphs (1), (2), (3), (6), subparagraph (7)(g), and paragraph (8) of this rule.
    2. The exemption under part 1 of this subparagraph shall become effective the day on which the affected unit is permanently retired. Within 30 days of the unit's permanent retirement, the Responsible Official shall submit a report to the Technical Secretary and shall submit a copy of the statement to the Administrator. The report shall state, in a format prescribed by the Technical Secretary, that the unit was permanently retired on a specific date and that the unit will comply with the requirements of subparagraph (b) of this paragraph. The report shall include a signed statement by the Responsible Official certifying the truth, accuracy, and completeness of the information provided in the report.
  - (b) Special provisions.
    1. An affected unit exempt under subparagraph (a) of this paragraph shall not emit any nitrogen oxides during a control period, starting on the date that the exemption takes effect.
    2. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under subparagraph (a) of this paragraph shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Technical Secretary or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.



3. Owners and operators shall comply with the requirements of this rule during all periods for which the exemption is not in effect.
  - (c) An exempt unit shall lose its exemption on the date on which the unit resumes operation.
  - (d) For the purpose of applying the monitoring, recordkeeping, and reporting requirements of paragraph (11) of this rule, a unit that loses its exemption under subparagraph (a) of this paragraph shall be treated as a unit that commences operation on the first date on which the unit resumes operation.
- (5) State emissions budget. The State emissions budget for allowance allocations of to affected units is 5,666 tons per control period for the control period in 2012 and thereafter.
- (6) Allowance allocations for affected units:
  - (a) For all existing affected units, the Technical Secretary will allocate allowances in the amounts specified in the State Implementation Plan.
  - (b) For new affected units, the heat input used for calculating NO<sub>x</sub> allowance allocations for each control period shall be:
    1. The heat input (in MMBtu) used for calculating NO<sub>x</sub> allowance allocations shall be the unit's heat input for the control period that is four years before the control period for which the NO<sub>x</sub> allocation is being calculated.
    2. A unit's control period heat input and a unit's total tons of NO<sub>x</sub> emissions during a control period will be determined in accordance with 40 CFR 75, to the extent the unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Technical Secretary for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.
  - (c) For each control period in 2012 and thereafter, the Technical Secretary will allocate allowances to new affected units in accordance with the following procedures:
    1. The Technical Secretary will establish a new unit set-aside for each control period. For each control period in 2012 and thereafter, the new unit set-aside is established as the State emission budget established in paragraph (5) of this rule minus the number of NO<sub>x</sub> allowances allocated in subparagraph (b) of this paragraph.
    2. The Responsible Official of a new affected unit may request NO<sub>x</sub> allowances from Technical Secretary starting with the later of the control period in 2012 or the first control period in which the affected unit commences operation, in a format specified by the Technical Secretary, as follows:
      - (i) The Responsible Official may request allowances for a control period in an amount not exceeding any of the following emission rates:
        - (I) 0.15 lb/MMBtu;
        - (II) The allowable NO<sub>x</sub> emission rate under any state or Federal construction or operating permit;
        - (III) The allowable NO<sub>x</sub> emission rate under any provision in Tennessee's state implementation plan.
        - (IV) The emission rates indicated in items (I) through (III) of this subpart shall be converted to tons by multiplying the emission rate by the heat input indicated in subparagraph (a) of this paragraph (or, for units with less than four years of heat input data, the unit's maximum design heat input), dividing by 2,000, and rounding to the nearest whole number as appropriate.

- (ii) The Technical Secretary will review each allowance allocation request and allocate NO<sub>x</sub> allowances for each control period as follows:
  - (I) The Technical Secretary will accept an allowance allocation request only if the request meets, or is adjusted by the Technical Secretary as necessary to meet, the requirements of subpart (i) of this part.
  - (II) On or after February 1 before the control period, the Technical Secretary will determine the sum of NO<sub>x</sub> allowances requested under item (I) of this subpart for the control period.
  - (III) If the amount of NO<sub>x</sub> allowances in the new unit set-aside for the control period is greater than or equal to the sum of NO<sub>x</sub> allowances requested, then the Technical Secretary will allocate the amount of NO<sub>x</sub> allowances requested to each new affected unit.
  - (IV) If the amount of NO<sub>x</sub> allowances in the new unit set-aside for the control period is less than the sum of NO<sub>x</sub> allowances requested, then the Technical Secretary will allocate to each new affected unit the amount of allowances requested, multiplied by the amount of allowances in the new unit set-aside for the control period, divided by the sum of NO<sub>x</sub> allowances requested, and rounded to the nearest whole allowance as appropriate.
  - (V) The Technical Secretary will notify each Responsible Official that submitted an allowance allocation request of the amount allowances (if any) allocated for the control period to the affected unit covered by the request.
  - (VI) After completion of the procedures specified in Items (I) through (V) of this subpart, the Technical Secretary will allocate NO<sub>x</sub> allowances remaining in the new unit set-aside to existing affected units, using the following formula and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate:

$$\text{Unit's share of NO}_x \text{ allowances} = (\text{Total NO}_x \text{ allowances remaining in new unit set-aside}) \times (\text{Unit's NO}_x \text{ allowance allocation}) \div (\text{State trading program budget excluding new unit set-aside})$$

- (c) Adjustment of allowance allocations for new and existing affected units. The Technical Secretary may, after appropriate notice and comment, adjust the allowance allocations for new and existing affected units as necessary to comply with applicable requirements promulgated by the Administrator or to provide additional allowances for new construction.

(7) NO<sub>x</sub> emission requirements.

- (a) As of the compliance deadline for a control period, the tons of total nitrogen oxides emissions for the control period from all affected units at the facility, as determined in accordance with paragraph (11) of this rule, shall not exceed the number of allowances allocated to the affected facility.

1. Allowances are available for a given control period only if the allowances were allocated for the same control period .
2. An affected facility shall be subject to the requirements of this rule for the control period starting on the later of May 1, 2012, or the deadline for meeting the unit's monitor certification requirements under subparagraph (11)(b) of this rule, and for each control period thereafter.

- (b) Recordkeeping and reporting requirements.

1. The owners, operators, and Responsible Official of each affected facility and each affected unit shall comply with the recordkeeping and reporting requirements of this subparagraph.
  2. The emissions measurements recorded and reported in accordance with paragraph (11) of this rule shall be used to determine compliance of each affected facility with the requirements of this rule.
  3. Unless otherwise provided, the owners and operators of the affected facility shall maintain the following documents at the affected facility location for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Technical Secretary or the Administrator.
    - (i) All emissions monitoring information, in accordance with paragraph (11) of this rule, provided that to the extent that paragraph (11) of this rule provides for a 3-year period for recordkeeping, the 3-year period shall apply.
    - (ii) Copies of all reports, compliance certifications, and other submissions and all records made or required under this rule.
    - (iii) Copies of any other submission used to demonstrate compliance with this rule.
  4. For the control period beginning in 2012 and each control period thereafter, the Responsible Official of an affected facility shall submit the following report no later than the compliance deadline:
    - (i) Affected facility name and address;
    - (ii) Responsible Official name and title;
    - (iii) Total number of allowances allocated to the affected facility for the control period, including;
    - (iv) The following information for each affected unit;
      - (I) Total NO<sub>x</sub> emissions (in tons) for the control period; and
      - (II) Heat input for the control period.
    - (v) A signed statement by the Responsible Official certifying the truth, accuracy, and completeness of the information provided in the report.
- (d) Excess emissions requirements. If an affected facility emits nitrogen oxides during any control period in excess of the number of allowances allocated to the affected facility, then:
1. The Technical Secretary may deduct allowances from the affected facility's allocation for the following control period, in an amount up to 3 times the number of tons of the source's excess emissions;
  2. The affected facility shall pay any fine, penalty, or assessment, or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and
  3. Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this rule, the Clean Air Act, and applicable State law.
- (e) Liability.
1. Each affected facility and each affected unit shall meet the requirements of this rule.

2. Any provision of this rule that applies to an affected facility, an affected unit, or a Responsible Official shall also apply to the owners and operators of the affected facility and/or affected unit.
  3. Any person who knowingly violates any requirement or prohibition of this rule shall be subject to enforcement pursuant to applicable State or Federal law.
  4. Any person who knowingly makes a false material statement in any record, submission, or report required by this rule shall be subject to criminal enforcement pursuant to the applicable State or Federal law.
- (f) Effect on other authorities. No provision of this rule shall be construed as exempting or excluding the owners and operators and the Responsible Official of an affected facility or an affected unit from compliance with any other provision of the applicable, approved State Implementation Plan, a Federally enforceable permit, or the Clean Air Act.
- (g) An allowance does not constitute a property right.
- (8) Computation of time.
- (a) Unless otherwise stated, any time period scheduled under this rule to begin on the occurrence of an act or event shall begin on the day the act or event occurs.
  - (b) Unless otherwise stated, any time period scheduled under this rule to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.
  - (c) Unless otherwise stated, if the final day of any time period under this rule falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.
- (9) Technical Secretary's action on submissions.
- (a) The Technical Secretary may review and conduct independent audits concerning any submission under this rule and make appropriate adjustments of the information in the submissions.
  - (b) The Technical Secretary may deduct allowances from or transfer allowances to an affected facility based on the information in the submissions.
- (10) The Technical Secretary may, at his or her sole discretion and on his or her own motion, correct any error in the allocation of any affected facility. Within 10 business days of making such correction, the Technical Secretary will notify the Responsible Official for the affected facility.
- (11) Monitoring and Reporting
- (a) Except as otherwise allowed in subparagraph (b) of this paragraph, the owners and operators, and to the extent applicable, the Responsible Official, of an affected unit shall comply with the monitoring, recordkeeping, and reporting requirements provided in 40 CFR 75, Subpart H for each control period.
  - (b) Petitions. The Responsible Official of an affected unit may submit a petition to the Technical Secretary and the Administrator requesting approval of an alternative to any requirement of this paragraph. The application of any alternative to any requirement of this paragraph is granted only to the extent that the petition is approved in writing by both the Technical Secretary and the Administrator.

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

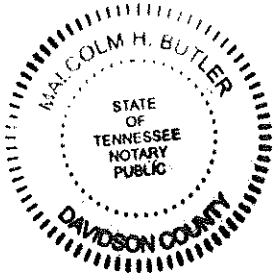
Repeal

Chapter 1200-03-37  
Clean Air Mercury Rule

Chapter 1200-03-37 Clean Air Mercury Rule is repealed.

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

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: March 9, 2012

Signature: *Barry R. Stephens*

Name of Officer: Barry R. Stephens, P. E.

Title of Officer: Director, Tennessee Air Pollution Control Division

Subscribed and sworn to before me on: March 9, 2012

Notary Public Signature: *Malcolm H. Butler*

My commission expires on: May 6, 2013

Department of State Use Only

Filed with the Department of State on: 03/12/2012

*Tre Hargett*

Tre Hargett  
Secretary of State

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