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Sequence Number: 08-17-16
 Rule ID(s): 6283
 File Date: 8/18/16
 Effective Date: 11/16/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Paul LaRock
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN
Zip:	37243
Phone:	(615) 532-0617
Email:	paul.larock@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-03-20	Limits on Emissions Due to Malfunctions, Startups and Shutdowns
Rule Number	Rule Title
1200-03-20-.06	Report Required Upon the Issuance of a Notice of Violation

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1200-03-20
Limits on Emissions Due to Malfunctions, Startups and Shutdowns

Amendments

Paragraph (2) of Rule 1200-03-20-.06 Report Required Upon the Issuance of a Notice of Violation is amended by deleting it in its entirety and substituting instead the following:

- (2) The owner or operator of the violating air contaminant source shall submit within twenty (20) days after receipt of the notice of violation, the data required in paragraph (3) of this rule. If the data required in paragraph (3) of this rule has previously been available to the Technical Secretary or the Technical Secretary's representative prior to the issuance of the notice of violation no further action is required of the violating source. However, if the owner or operator of the source desires to submit additional information, then the additional information must be submitted within the twenty (20) day time period.

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

Paragraph (4) of Rule 1200-03-20-.06 Report Required Upon the Issuance of a Notice of Violation is amended by deleting it in its entirety and substituting instead the following:

- (4) Failure to submit the report required in paragraph (3) of this rule within the twenty (20) day period specified in paragraph (2) of this rule shall preclude the admissibility of the data for determination of potential enforcement actions.

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

Paragraph (6) of Rule 1200-03-20-.06 Report Required Upon the Issuance of a Notice of Violation is amended by deleting it in its entirety and substituting instead the following:

- (6) No emission during periods of malfunction, start-up, or shutdown that is in excess of the standards in Division 1200-03 or any permit issued thereto shall be allowed which can be proved to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter 1200-03-03 or the National Ambient Air Quality Standards.

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

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants	X				
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation				X	
Richard Holland Working for Industry with technical experience	X				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Chris Moore Working in management in Private Manufacturing	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Amy Spann Registered Professional Engineer	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 07/13/2016, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/29/16

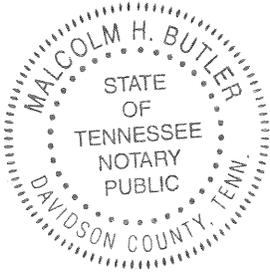
Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/16

Date: July 13, 2016

Signature: *Michelle W. Owenby*

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: July 13, 2016

Notary Public Signature: *Malcolm H. Butler*

My commission expires on: 1-11-2017

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
8/17/2016 Date

Department of State Use Only

Filed with the Department of State on: 8/18/16

Effective on: 11/16/16

Tre Hargett
Tre Hargett
Secretary of State

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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 can 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 federal Environmental Protection Agency (EPA) commented that language in paragraph (4) of Rule 1200-03-20-.06 specifying reporting requirements "for any contaminant source not having startup or shutdown levels as a permit condition" seems unnecessary and is unclear and recommends deletion of the statement.

Response: Following review of the statement in paragraph (4) of Rule 1200-03-20-.06 in the context of the entirety of Chapter 1200-03-.06 it was determined by the Air Pollution Control Board that the intent of the wording in question is more clearly conveyed by previous language within Rule 1200-03-20-.06. Therefore, in response to this comment, paragraph (4) of Rule 1200-03-20-.06 has been further revised to delete the statement in question as recommended by EPA.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The proposed rule amendments are in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015. The proposed amendments bring the State of Tennessee into compliance with federal SSM SIP Call requirements and are federally mandated as provided by Tenn. Code Ann. § 4-5-404.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department does not anticipate that these amended rules will have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These proposed amendments to Rule 1200-03-20-.06 clarify that, in accordance with current practice, a single state official (the Technical Secretary) cannot exclude EPA or third-party enforcement of National Air Quality Standards (NAAQS) through "excuse" of violations. This clarification is made by stating 1) that reported facts related to excess emissions resulting from a start-up, shutdown, or malfunction (SSM) event will be used by the Division of Air Pollution Control for the determination of potential enforcement actions and 2) that no emission will be allowed that is proved to cause or contribute to any violation of NAAQS.

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

The proposed rule amendments are in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015 (80 Fed. Reg. 33840). In the SSM SIP Call, the EPA took issue with the wording of paragraph (2) of Rule 1200-03-20-.06 relating to the Technical Secretary's discretion to "excuse or validate" an emission violation during SSM and with similar "excusal" language in paragraph (4) of Rule 1200-03-20-.06. The proposed amendments to Rule 1200-03-20-.06 clarify that reported facts will be used in the determination of potential enforcement actions and that the State of Tennessee will continue to effectively enforce violations of NAAQS.

- (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;

Large industrial facilities are most directly affected by the proposed rule amendments. Industry representatives were consulted during the drafting of the rule amendments. Other than a comment by EPA, no comments regarding the adoption or rejection of the rule amendments were made during the comment period.

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

The Department is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to this amendment.

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

There is no expected increase or decrease in revenues or expenditures resulting from promulgation of this rule.

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

Paul LaRock
Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 22nd Floor
Nashville, Tennessee 37243
(615) 532-0617
paul.larock@tn.gov

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

Lucian Geise
Senior Counsel for Legislative Affairs
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Lucian.Geise@tn.gov

- (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 requests.

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

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Paul LaRock
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN
Zip:	37243
Phone:	(615) 532-0617
Email:	paul.larock@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-03-20	Limits on Emissions Due to Malfunctions, Startups and Shutdowns
Rule Number	Rule Title
1200-03-20-.06	Report Required Upon the Issuance of a Notice of Violation

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1200-03-20
Limits on Emissions Due to Malfunctions, Startups and Shutdowns

Amendments

Paragraph (2) of Rule 1200-03-20-.06 Report Required Upon the Issuance of a Notice of Violation is amended by deleting it in its entirety and substituting instead the following:

- (2) The owner or operator of the violating air contaminant source shall submit within twenty (20) days after receipt of the notice of violation, the data required in paragraph (3) ~~to assist the Technical Secretary in deciding whether to excuse or validate the violation of this rule.~~ If the data required in ~~1200-03-20-.06 paragraph (3) of this rule~~ has previously been available to the Technical Secretary or the Technical Secretary's representative prior to the issuance of the notice of violation no further action is required of the violating source. However, if the owner or operator of the source desires to submit additional information, then ~~this shall~~ the additional information must be submitted within the twenty (20) day time period.

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

Paragraph (4) of Rule 1200-03-20-.06 Report Required Upon the Issuance of a Notice of Violation is amended by deleting it in its entirety and substituting instead the following:

- (4) Failure to submit the report required in paragraph (3) of this rule within the twenty (20) day period specified in ~~Paragraph paragraph (2) of this rule~~ shall preclude the admissibility of the data for ~~consideration of excusal for malfunctions determination of potential enforcement actions, and for any air contaminant source not having startup or shutdown levels as a permit condition.~~

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

Paragraph (6) of Rule 1200-03-20-.06 Report Required Upon the Issuance of a Notice of Violation is amended by deleting it in its entirety and substituting instead the following:

- (6) ~~Irrespective of the startup and shutdown exemptions set forth on the operating permit of any air contaminant source, no~~ No emission during periods of malfunction, start-up, or shutdown that is in excess of the standards in Division 1200-03 or any permit issued thereto shall be allowed which can be proved by the Technical Secretary to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter 1200-3-3 1200-03-03 or the National Ambient Air Quality Standards.

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

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants	X				
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation				X	
Richard Holland Working for Industry with technical experience	X				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Chris Moore Working in management in Private Manufacturing	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Amy Spann Registered Professional Engineer	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 07/13/2016, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/29/16

Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/16

Date: July 13, 2016

Signature: _____

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document 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 can 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 federal Environmental Protection Agency (EPA) commented that language in paragraph (4) of Rule 1200-03-20-.06 specifying reporting requirements “for any contaminant source not having startup or shutdown levels as a permit condition” seems unnecessary and is unclear and recommends deletion of the statement.

Response: Following review of the statement in paragraph (4) of Rule 1200-03-20-.06 in the context of the entirety of Chapter 1200-03-.06 it was determined by the Air Pollution Control Board that the intent of the wording in question is more clearly conveyed by previous language within Rule 1200-03-20-.06. Therefore, in response to this comment, paragraph (4) of Rule 1200-03-20-.06 has been further revised to delete the statement in question as recommended by EPA.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The proposed rule amendments are in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015. The proposed amendments bring the State of Tennessee into compliance with federal SSM SIP Call requirements and are federally mandated as provided by Tenn. Code Ann. § 4-5-404.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department does not anticipate that these amended rules will have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These proposed amendments to Rule 1200-03-20-.06 clarify that, in accordance with current practice, a single state official (the Technical Secretary) cannot exclude EPA or third-party enforcement of National Air Quality Standards (NAAQS) through "excuse" of violations. This clarification is made by stating 1) that reported facts related to excess emissions resulting from a start-up, shutdown, or malfunction (SSM) event will be used by the Division of Air Pollution Control for the determination of potential enforcement actions and 2) that no emission will be allowed that is proved to cause or contribute to any violation of NAAQS.

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

The proposed rule amendments are in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015 (80 Fed. Reg. 33840). In the SSM SIP Call, the EPA took issue with the wording of paragraph (2) of Rule 1200-03-20-.06 relating to the Technical Secretary's discretion to "excuse or validate" an emission violation during SSM and with similar "excusal" language in paragraph (4) of Rule 1200-03-20-.06. The proposed amendments to Rule 1200-03-20-.06 clarify that reported facts will be used in the determination of potential enforcement actions and that the State of Tennessee will continue to effectively enforce violations of NAAQS.

- (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;

Large industrial facilities are most directly affected by the proposed rule amendments. Industry representatives were consulted during the drafting of the rule amendments. Other than a comment by EPA, no comments regarding the adoption or rejection of the rule amendments were made during the comment period.

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

The Department is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to this amendment.

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

There is no expected increase or decrease in revenues or expenditures resulting from promulgation of this rule.

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

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Lucian Geise
Senior Counsel for Legislative Affairs
Office of General Counsel

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

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

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