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Effective Date: 04/06/09

# Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Air Pollution Control
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables.)

Chapter Number	Chapter Title
1200-03-16	New Source Performance Standards
Rule Number	Rule Title
1200-03-16-.02	Fossil Fuel Fired Steam Generators For Which Construction Is Commenced After April 3, 1972
1200-03-16-.31	Stationary Gas Turbines
1200-03-16-.59	Industrial-Commercial-Institutional Steam Generating Units
1200-03-16-.76	Standards of Performance for Municipal Solid Waste Landfills (40 CFR 60, Subpart WWW)

(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 1200-03-16  
New Source Performance Standards

Amendments

Paragraph (1) of rule 1200-03-16-.02 Fossil Fuel Fired Steam Generators For Which Construction Is Commenced After April 3, 1972 is amended by adding a new subparagraph (e) containing the following language (Any affected facility meeting the applicability requirements of 1200-03-16-.59(1)(a) commencing construction, modification, or reconstruction after November 6, 1988 is not subject to this rule.) so that, as amended, subparagraph (e) shall read:

- (e) Any affected facility meeting the applicability requirements of 1200-03-16-.59(1)(a) commencing construction, modification, or reconstruction after November 6, 1988 is not subject to this rule.

Authority: T.C.A. § 68-25-105.

Rule 1200-03-16-.31 Stationary Gas Turbines is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200-03-16-.31 Reserved.

Chapter 1200-3-16 TABLE OF CONTENTS is amended by deleting the words "Stationary Gas Turbines" and adding the word "Reserved" so that, as amended, the listing for 1200-3-16-.31 shall read:

1200-03-16-.31 Reserved.

Authority: T.C.A. § 68-25-105.

Paragraph (1) of rule 1200-03-16-.59 Industrial-Commercial-Institutional Steam Generating Units is amended by adding a new subparagraph (g) containing the following language (Any affected facility meeting the applicability requirements of 1200-03-16-.59(1)(a) commencing construction, modification, or reconstruction after November 6, 1988 is not subject to rule 1200-03-16-.02.) so that, as amended, subparagraph (g) shall read:

- (g) Any affected facility meeting the applicability requirements of 1200-03-16-.59(1)(a) commencing construction, modification, or reconstruction after November 6, 1988 is not subject to rule 1200-03-16-.02.

Authority: T.C.A. § 68-25-105.

Subparagraph (a) of paragraph (9) of rule 1200-03-16-.59 Industrial-Commercial-Institutional Steam Generating Units is amended by adding the following language (Units that burn only oil that contains no more than 0.3 weight percent sulfur or liquid or gaseous fuels with potential sulfur dioxide emission rates of 0.32 lb/MMBtu heat input or less are not required to conduct opacity or sulfur dioxide emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.) at the end of the current text so that, as amended, subparagraph (a) shall read:

- (a) The owner or operator of an affected facility subject to the opacity standard under paragraph (4) of this rule shall install, calibrate, maintain and operate a continuous monitoring system for measuring the opacity of emissions discharged to the atmosphere and record the output of the system. Units that burn only oil that contains no more than 0.3 weight percent sulfur or liquid or gaseous fuels with potential sulfur

dioxide emission rates of 0.32 lb/MMBtu heat input or less are not required to conduct opacity or sulfur dioxide emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.

Authority: T.C.A. § 68–25–105.

Subparagraph (b) of paragraph (9) of rule 1200-03-16-.59 Industrial-Commercial-Institutional Steam Generating Units is amended by deleting the first occurrence of the word “and” and adding the words “and (i)” so that, as amended, subparagraph (b) shall read:

- (b) Except as provided in subparagraphs (g), (h), and (i) of this paragraph, the owner or operator of an affected facility subject to the nitrogen oxides standard of subparagraph (5)(a) of this rule shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system.

Authority: T.C.A. § 68–25–105.

Paragraph (9) of rule 1200-03-16-.59 Industrial-Commercial-Institutional Steam Generating Units is amended by adding a new subparagraph (i) containing the following language (The owner or operator of an affected facility described below is not required to install or operate a continuous in-stack monitoring system for nitrogen oxides provided that the following criteria are met: 1. The facility combusts, alone or in combination, only natural gas, distillate oil, or residual oil with a nitrogen content of 0.30 weight percent or less; 2. The facility has a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less; and 3. The facility is subject to a Federally enforceable requirement limiting operation of the affected facility to the firing of natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less and limiting operation of the affected facility to a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less) so that, as amended, subparagraph (i) shall read:

- (i) The owner or operator of an affected facility described below is not required to install or operate a continuous in-stack monitoring system for nitrogen oxides provided that the following criteria are met:
  - 1. The facility combusts, alone or in combination, only natural gas, distillate oil, or residual oil with a nitrogen content of 0.30 weight percent or less;
  - 2. The facility has a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less; and
  - 3. The facility is subject to a Federally enforceable requirement limiting operation of the affected facility to the firing of natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less and limiting operation of the affected facility to a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less.

Authority: T.C.A. §§68–25–105.

Rule 1200-03-16-.76 Standards of Performance for Municipal Solid Waste Landfills (40 CFR 60, Subpart WWW) is amended by deleting the rule in its entirety and replacing it with the word “Reserved” so that, as amended, the rule shall read:

1200-3-16-.76 Reserved.

Chapter 1200-03-16 TABLE OF CONTENTS is amended by deleting the words "Standards of Performance for Municipal Waste Landfills (40 CFR 60, Subpart WWW)" and adding the word "Reserved" so that, as amended, the listing for 1200-3-16-.76 shall read:

1200-3-16-.76 Reserved.

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 Carter	X				
Ngee-Sing Chong				X	
Wayne T. Davis	X				
Mary English				X	
Stephen R. Gossett	X				
Helen Hennon				X	
Richard M. 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 Tennessee 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*

Robert E. Cooper, Jr.  
Attorney General and Reporter

*1-15-09*

Date

**Department of State Use Only**

Filed with the Department of State on:

*1/21/09*

Effective on:

*4/6/09*

*Tre Hargett*

Tre Hargett  
Secretary of State

RECEIVED  
2009 JAN 21 PM 3:20  
SECRETARY OF STATE  
PUBLICATIONS

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which shall be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: The Commenter urged the Tennessee Air Pollution Control Board to adopt the rule changes to make the state's rules consistent with the current federal rules.

Response: The Board agrees.

### **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 Rules 1200-03-16-.02, 1200-03-16-.31, 1200-03-16-.59 and 1200-03-16-.76 are to comply with § 111(d) of the federal Clean Air Act in order for the State to maintain its status as a delegated state program. These amendments relate to the New Source Performance Standards program required under the Clean Air Act, making this rule amendment federally mandated and exempt from the requirements of T.C.A. § 4-5-401 et seq.

## Additional Information Required by Joint Government Operations Committee

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

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

These rule revisions serve to update certain state rules consistent with the equivalent Federal rule as published in the current Code of Federal Regulations. Specifically these rule revisions serve to update rules addressing large boilers, stationary gas turbines, and landfills.

- (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;

Chapter 1200-03-16 is the state equivalent of the Federal regulations found in Title 40, Part 60 of the Code of Federal Regulations.

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

The rule revision will affect facilities that have large boilers, stationary gas turbines, and landfills. The Tennessee Chamber of Commerce and Industry supported the rule update.

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

The Department is not aware of any.

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

None.

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

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Division of Air Pollution Control  
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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.

None.