

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 02-05-15
Rule ID(s): 5871
File Date: 2/5/15
Effective Date: 5/6/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Jeryl W. Stewart
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15 th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0605
Email:	Jeryl.Stewart@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
1200-03-05	Visible Emission Regulations
Rule Number	Rule Title
1200-03-05-.07	Repealed
1200-03-05-.08	Titanium Dioxide (TIO ₂) Manufacturing
1200-03-05-.09	Kraft Mill and Soda Mill Recovery Furnaces
1200-03-05-.11	Repealed
1200-03-05-.12	Coke Battery Underfire (Combustion) Stacks

(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 1200-03-05
Visible Emission Regulations

Amendments

The Table of Contents of Chapter 1200-03-05 Visible Emission Regulations is amended by deleting the titles of Rules 1200-03-05-.07, 1200-03-05-.08, 1200-03-05-.09, 1200-03-05-.11, and 1200-03-05-.12 and substituting the following new titles for those rules:

1200-03-05-.07 Reserved
1200-03-05-.08 Reserved
1200-03-05-.09 Reserved
1200-03-05-.11 Reserved
1200-03-05-.12 Reserved

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

Rule 1200-03-05-.07 Repealed is amended by deleting the word "Repealed" and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200-03-05-.07 Reserved

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

Rule 1200-03-05-.08 Titanium Dioxide (TiO₂) Manufacturing is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200-03-05-.08 Reserved

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

Rule 1200-03-05-.09 Kraft Mill and Soda Mill Recovery Furnaces is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200-03-05-.09 Reserved

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

Rule 1200-03-05-.11 Repealed is amended by deleting the word "Repealed" and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200-03-05-.11 Reserved

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

Rule 1200-03-05-.12 Coke Battery Underfire (Combustion) Stacks is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200-03-05-.12 Reserved

Authority: T.C.A. §§ 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)
J. Ronald Bailey				✓	
Thomas L. Beehan				✓	
John Benitez	✓				<i>John Benitez</i>
Elaine Boyd	✓				<i>Elaine Boyd</i>
Karen Cisler	✓				<i>Karen Cisler</i>
Wayne T. Davis	✓				<i>Wayne T. Davis</i>
Stephen R. Gossett	✓				<i>Stephen R. Gossett</i>
Shawn A. Hawkins				✓	
Helen Hennon				✓	
Richard Holland	✓				<i>Richard Holland</i>
John Roberts	✓				<i>John Roberts</i>
Larry Waters	✓				<i>Larry Waters</i>
Jimmy West	✓				<i>Jimmy West</i>
Alicia M. Wilson	✓				<i>Alicia M. Wilson</i>

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 12/11/2013, 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: 10/09/13

Rulemaking Hearing(s) Conducted on: (add more dates). 12/03/13



Date: December 11, 2013

Signature: *Barry R. Stephens*

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: December 12, 2013

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
February 3, 2015
Date

Department of State Use Only

Filed with the Department of State on: 2/5/15

Effective on: 5/6/15

Tre Hargett
Tre Hargett
Secretary of State

2015 FEB - 5 AM 11:30
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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 only comment was from Region 4 of the United States Environmental Protection Agency. The comment requested that the Division clarify whether the facilities subject to Rules 1200-03-05-.08, 1200-03-05-.09, and 1200-03-05-.12 have shut down or have been modified and justify accordingly.

Response: Rule 1200-03-05-.08 only applied to two spray dryers located at a single facility. Both spray dryers have been modified so that they are now subject to federal rules contained in 40 CFR Part 60, Subpart UUU. Rule 1200-03-05-.08 allowed for an 80% opacity limit and the federal rules allow for a 10% opacity limit.

Rule 1200-03-05-.09 only applied to five recovery furnaces located at three facilities. Two of the recovery furnaces have been shut down and demolished; a third recovery furnace has been shut down and converted into a boiler, which is subject to different rules. The remaining two recovery furnaces have been modified so that they are now subject to federal rules contained in 40 CFR Part 60, Subpart BB. Both Rule 1200-03-05-.09 and the federal rules allow for a 35% opacity limit.

Rule 1200-03-05-.12 only applied to a single facility, which has been shut down and demolished.

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.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.
None.
- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.
None.
- (3) A statement of the probable effect on impacted small businesses and consumers.
Not applicable.
- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.
Not applicable.
- (5) A comparison of the proposed rule with any federal or state counterparts.
Not applicable.
- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.
Not applicable.

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 anticipates that this amended rule will not 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;

Rule 1200-03-05-.08 Titanium Dioxide (TiO₂) Manufacturing, Rule 1200-03-05-.09 Kraft Mill and Soda Mill Recovery Furnaces, and Rule 1200-03-05-.12 Coke Battery Underfire (Combustion) Stacks are being deleted and reserved, as all existing facilities formerly subject to these rules have been either modified so that these rules no longer apply to them or have shutdown, so that there are no longer facilities subject to these rules. Rule 1200-03-05-.07 and Rule 1200-03-05-.11 are being modified consistent with current practice to use the language "Reserved."

- (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;

None.

- (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;

None – the only comment was from the USEPA which requested clarifying information.

- (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;

Jeryl W. Stewart
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
(615) 532-0605

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

Emily Urban
Assistant General Counsel
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) 532-0125
Emily.Urban@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any additional relevant information.

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Jeryl W. Stewart
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Zip:	37243
Phone:	(615) 532-0605
Email:	Jeryl.Stewart@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
1200-03-05	Visible Emission Regulations
Rule Number	Rule Title
1200-03-05-.07	Repealed
1200-03-05-.08	Titanium Dioxide (TIO2) Manufacturing
1200-03-05-.09	Kraft Mill and Soda Mill Recovery Furnaces
1200-03-05-.11	Repealed
1200-03-05-.12	Coke Battery Underfire (Combustion) Stacks

(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 1200-03-05
Visible Emission Regulations

Amendments

The Table of Contents of Chapter 1200-03-05 Visible Emission Regulations is amended by deleting the titles of Rules 1200-03-05-.07, 1200-03-05-.08, 1200-03-05-.09, 1200-03-05-.11, and 1200-03-05-.12 and substituting the following new titles for those rules:

1200-03-05-.07 ~~Repealed~~ Reserved
1200-03-05-.08 ~~Titanium Dioxide (TiO₂) Manufacturing~~ Reserved
1200-03-05-.09 ~~Kraft Mill and Soda Mill Recovery Furnaces~~ Reserved
1200-03-05-.11 ~~Repealed~~ Reserved
1200-03-05-.12 ~~Coke Battery Underfire (Combustion) Stacks~~ Reserved

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

Rule 1200-03-05-.07 ~~Repealed~~ is amended by deleting the word "Repealed" and replacing it with the word "Reserved" so that, as amended, the rule shall read:

~~1200-03-05-.07 REPEALED~~ Reserved

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

Rule 1200-03-05-.08 ~~Titanium Dioxide (TiO₂) Manufacturing~~ is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

~~1200-03-05-.08 TITANIUM DIOXIDE (TiO₂) MANUFACTURING~~ Reserved

~~(1) Visible emissions from the spray dryers used for pigment drying in the chloride process for the manufacture of (TiO₂) shall meet an emission limit of 80 percent opacity provided that these sources comply with the applicable particulate matter emission limits set forth in Chapter 1200-3-7.~~

~~(2) Opacity for the purposes of this rule shall be determined by the reference method specified in the Federal Register, Volume 39, No. 219, November 12, 1974.~~

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

Rule 1200-03-05-.09 ~~Kraft Mill and Soda Mill Recovery Furnaces~~ is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

~~1200-03-05-.09 KRAFT MILL AND SODA MILL RECOVERY FURNACES~~ Reserved

~~(1) Visible emissions from kraft mill and soda mill recovery furnaces under construction or in operation prior to September 24, 1976, shall not exhibit 35 percent opacity or greater.~~

~~(2) Opacity for the purposes of this rule shall be determined by Reference Method 9 specified in the Federal Register, Vol. 39, No. 219, November 12, 1974, beginning on page 39874.~~

~~(3) In order for a source subject to this rule (1200-3-5-.09) to obtain the applicable opacity de minimis level specified in Paragraph 1200-3-20-.06(5), the monitoring of opacity emissions as described in Rule 1200-3-10-.02 shall be conducted.~~

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

Rule 1200-03-05-.11 ~~Repealed~~ is amended by deleting the word "Repealed" and replacing it with the word "Reserved" so that, as amended, the rule shall read:

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

Rule 1200-03-05-.12 Coke Battery Underfire (Combustion) Stacks is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

~~1200-03-05-.12 COKE BATTERY UNDERFIRE (COMBUSTION) STACKS~~ Reserved

- ~~(1) In the event emissions from a coke battery underfire stack are determined to be in violation of the opacity limitations contained in other rules of this chapter, the owner or operator may elect within thirty (30) days after notification of violation to conduct particulate emissions testing in accordance with the provisions of this chapter to demonstrate compliance with the applicable particulate mass emission limitation within 45 days after such election. In the event that such testing demonstrates compliance with the mass emission limitation and visible emissions are in excess of the opacity limitation during such testing, the opacity observed during such testing shall become the alternate opacity limitation for that emission point.~~
- ~~(2) The following methods shall be used to determine an alternate opacity limitation:
 - ~~(a) Opacity readings shall be recorded at 15-second intervals. Each observation period shall begin with the start of each stack test run meeting the applicable mass emissions limitation and shall end with the completion of the stack test run or sixty minutes later, whichever shall occur first. Opacity observations made during any stack test run which fails to demonstrate compliance with the applicable mass emissions limitation shall not be used in determining the alternate opacity limitation.~~
 - ~~(b) The highest average of sixty minutes or less (the highest average of the first 240 consecutive 15-second opacity observations during each stack test run meeting the applicable mass emissions limitation) shall be determined. If a stack test run is less than one hour, the average of the 15-second opacity observations made during the stack test run shall constitute the average sixty minutes or less for that stack test run.~~
 - ~~(c) The highest rolling six minute average (the highest average of any 24 consecutive 15-second opacity observations during a stack test run meeting the applicable mass emissions limitation) shall be determined.~~
 - ~~(d) The alternate opacity limitation shall consist of the highest average of sixty minutes or less and the highest rolling six-minute average plus seven percent (opacity).~~~~
- ~~(3) An alternate opacity limitation determined pursuant to this rule shall be imposed as a condition on any permit issued for the affected source.~~
- ~~(4) In the event there has been a previous violation of an opacity limitation contained in other rules of this chapter and, if the opacity level of the previous violation did not exceed the alternate opacity limitation established pursuant to this rule, the owner or operator shall not be subject to criminal or civil sanctions for the previous violation.~~

Authority: T.C.A. §§ 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)
J. Ronald Bailey Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Thomas L. Beehan Working in Municipal Government				X	
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants	X				
Elaine Boyd Commissioner's Designee, Dept. of Environment and Conservation	X				
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen R. Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation				X	
Helen Hennon Registered Professional Engineer				X	
Richard Holland Working for Industry with technical experience	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				
Alicia M. Wilson Working in management in Private Manufacturing	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 12/11/2013, 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: 10/09/13

Rulemaking Hearing(s) Conducted on: (add more dates). 12/03/13

Date: December 11, 2013

Signature: _____

Name of Officer: Barry R. Stephens

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

2015 FEB -5 AM 11:30
RECEIVED
SECRETARY OF STATE

Public Hearing Comments

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Comment: The only comment was from Region 4 of the United States Environmental Protection Agency. The comment requested that the Division clarify whether the facilities subject to Rules 1200-03-05-.08, 1200-03-05-.09, and 1200-03-05-.12 have shut down or have been modified and justify accordingly.

Response: Rule 1200-03-05-.08 only applied to two spray dryers located at a single facility. Both spray dryers have been modified so that they are now subject to federal rules contained in 40 CFR Part 60, Subpart UUU. Rule 1200-03-05-.08 allowed for an 80% opacity limit and the federal rules allow for a 10% opacity limit.

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Regulatory Flexibility Addendum

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- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

None.
- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

None.
- (3) A statement of the probable effect on impacted small businesses and consumers.

Not applicable.
- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Not applicable.
- (5) A comparison of the proposed rule with any federal or state counterparts.

Not applicable.
- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Not applicable.

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)

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- (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;

None.

- (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;

None – the only comment was from the USEPA which requested clarifying information.

- (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;

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

Emily Urban
Assistant General Counsel
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
SS-7039 (October 2011)

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312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0125
Emily.Urban@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any additional relevant information.