

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 03-14-13
Rule ID(s): 545.9
File Date: 3/21/13
Effective Date: 6/19/13

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 & Conservation
Division:	Air Pollution Control
Contact Person:	Jeryl W. Stewart
Address:	9 th Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1531
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
1200-03-20	Limits on Emissions Due to Malfunction, Startups, and Shutdowns
Rule Number	Rule Title
1200-03-20-.04	Logs and Reports

(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 1200-03-20
Limits on Emissions Due to Malfunction, Startups, and Shutdowns

Amendment

Paragraph (2) of rule 1200-03-20-.04 Logs and Reports is amended by deleting the paragraph in its entirety and replacing it with the word "Reserved" so that, as amended, the paragraph shall read:

(2) 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)
Michael Atchison	✓				Michael Atchison
Dr. J. Ronald Bailey	✓				J. Ronald Bailey
Elaine Boyd	✓				Elaine Boyd
Dr. Brian W. Christman				✓	
Dr. Wayne T. Davis	✓				Wayne Davis
Dr. Mary English				✓	
Stephen R. Gossett				✓	
Mayor Tommy Green				✓	
Dr. Shawn A. Hawkins	✓				Shawn Hawkins
Helen Hennon				✓	
Richard M. Holland	✓				Richard Holland
John Roberts	✓				John Roberts
Mayor Larry Waters	✓				Larry Waters
Alicia M. Wilson				✓	

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 08/08/2012, 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: 08/27/09

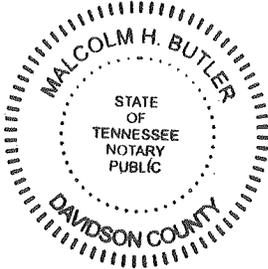
Rulemaking Hearing(s) Conducted on: (add more dates). 10/20/09

Date: Sept. 10, 2012

Signature: Barry R. Stephens

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

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: September 10, 2012

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 2013

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

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter
3-19-13

Date

Department of State Use Only

Filed with the Department of State on: 3/21/13

Effective on: 6/19/13

Tre Hargett

Tre Hargett
Secretary of State

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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 Division must provide further technical analysis and information related to the potential impact of the proposed amendment to attainment, maintenance, and reasonable further progress for the National Ambient Air Quality Standards per Section 110(l) of the Clean Air Act (CAA).

Response: The rationale behind the proposed rule revision is the fact that the affected rule is very old and requires the submittal of a quarterly report of startups, shutdowns, and malfunctions for affected sources. The rule was adopted in the 1970's and represents the first requirements for sources to report to the Division. Currently the Tennessee Title V program set forth in paragraph (11) of Rule 1200-03-09-.02 specifies both the semi-annual reporting requirement and the annual compliance certification requirement for affected sources. The same rule requires the reporting of emissions from sources taking restrictions to remain below the applicability thresholds for Title V applicability. In addition, the reporting requirements of 40 CFR 63.10, which are applicable to all the source categories subject to the national emission standards for hazardous air pollutants, utilize a semi-annual reporting time period as the default value. Therefore, the quarterly reporting time frame required by paragraph (2) of Rule 1200-03-20-.04 is not consistent with current time frames for the submittal of emissions reports and the Division is proposing to remove it from the regulations to prevent a duplication of reporting requirements.

In addressing the requirements of Section 110(l) of the Clean Air Act, The Tennessee Division of Air Pollution Control declares that this proposed SIP revision will have no affect on any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement as it simply involves removing an obsolete and redundant reporting requirement from the SIP to avoid burdening sources with submitting duplicitous reports. In addressing the requirements of Section 193 of the Clean Air Act, The Tennessee Division of Air Pollution Control declares that this proposed SIP revision is not a control requirement. While the original rule was in effect prior to November 15, 1990, the original rule only addresses the reporting of emissions and does not address any emissions reduction or emissions control requirements. Given that the original regulation has been superseded by newer, federally mandated, reporting requirements, deleting the original regulation will have no affect on the emissions of any air pollutant.

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:

The revision to paragraph (2) of Rule 1200-03-20-.04 could potentially affect any permitted source located in any nonattainment area established by the EPA in the future. The benefit from the deletion of this rule would be the elimination of the requirement for the submittal of duplicate reports from many sources.

- (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:

The revisions to paragraph (2) of Rule 1200-03-20-.04 could potentially impact small businesses by eliminating the potential for requiring the submittal of duplicate reports. It should have no impact on consumers.

- (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:

None.

- (5) A comparison of the proposed rule with any federal or state counterparts:

The provisions of paragraph (2) of Rule 1200-03-20-.04 were originally required by 40 CFR 51.211 (Source Surveillance – Emission reports and recordkeeping). The deletion of paragraph (2) of Rule 1200-03-20-.04 will allow affected source to utilize current reporting time frames and avoid submitting duplicate reports.

- (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)

These proposed rule revisions will have no projected 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;

This proposed amendment to the rules repeals the requirement to submit certain reports on a quarterly basis, thus reconciling the state's periodic reporting requirement to that of the current federal rule that requires the same reports to be submitted on a semiannual basis.

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

This amendment is being promulgated under the authority of T.C.A. §§ 68-201-101 et seq. The provisions of paragraph (2) of Rule 1200-03-20.04 were originally required by 40 CFR 51.211 (Source Surveillance – Emission reports and recordkeeping).

- (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 are subject Title V program referenced in paragraph (11) of Rule 1200-03-09-.02 or that have taken restrictions to avoid being subject to this paragraph, by allowing the consolidation of the reporting of compliance data. This proposed rule revision was initiated due to a request from the regulated community.

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

The Board is not aware of any.

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

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
9th Floor, L & C Annex,
401 Church St.,
Nashville, TN 37243-1531
(615) 532-0605

- (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, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548

(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

Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548
Alan.Leiserson@tn.gov

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

The Board is not aware of any.

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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 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 Malfunction, Startups, and Shutdowns
Rule Number	Rule Title
1200-03-20-.04	Logs and Reports

(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 1200-03-20
Limits on Emissions Due to Malfunction, Startups, and Shutdowns

Amendment

Paragraph (2) of rule 1200-03-20-.04 Logs and Reports is amended by deleting the paragraph in its entirety and replacing it with the word "Reserved" so that, as amended, the paragraph shall read:

- (2) ~~The owner or operator of all sources located in non-attainment areas or having a significant impact on air quality in a non-attainment area (for the pollutant designated) must submit a report to the Technical Secretary within thirty (30) days after the end of each calendar quarter listing the times at which malfunctions, startups and/or shutdowns, which resulted in emissions greater than any applicable emission limits and the estimated amount of emissions discharged during such times. This report shall also include total emissions during the quarter and be reported in a format specified by the Technical Secretary. If these emissions are required to be reported under Chapter 1200-3-10 or under rules of Chapter 1200-3-16, then the report required by this paragraph is waived. 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)
Michael Atchison	X				
Dr. J. Ronald Bailey	X				
Elaine Boyd	X				
Dr. Brian W.Christman				X	
Dr. Wayne T. Davis	X				
Dr. Mary English				X	
Stephen R. Gossett				X	
Mayor Tommy Green				X	
Dr. Shawn A. Hawkins	X				
Helen Hennon				X	
Richard M. Holland	X				
John Roberts	X				
Mayor Larry Waters	X				
Alicia M. Wilson				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 08/08/2012, 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: 08/27/09

Rulemaking Hearing(s) Conducted on: (add more dates). 10/20/09

Date: _____

Signature: _____

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

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.

Robert E. Cooper, Jr.
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

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Response: The rationale behind the proposed rule revision is the fact that the affected rule is very old and requires the submittal of a quarterly report of startups, shutdowns, and malfunctions for affected sources. The rule was adopted in the 1970's and represents the first requirements for sources to report to the Division. Currently the Tennessee Title V program set forth in paragraph (11) of Rule 1200-03-09-.02 specifies both the semi-annual reporting requirement and the annual compliance certification requirement for affected sources. The same rule requires the reporting of emissions from sources taking restrictions to remain below the applicability thresholds for Title V applicability. In addition, the reporting requirements of 40 CFR 63.10, which are applicable to all the source categories subject to the national emission standards for hazardous air pollutants, utilize a semi-annual reporting time period as the default value. Therefore, the quarterly reporting time frame required by paragraph (2) of Rule 1200-03-20-.04 is not consistent with current time frames for the submittal of emissions reports and the Division is proposing to remove it from the regulations to prevent a duplication of reporting requirements.

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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:

The revision to paragraph (2) of Rule 1200-03-20-.04 could potentially affect any permitted source located in any nonattainment area established by the EPA in the future. The benefit from the deletion of this rule would be the elimination of the requirement for the submittal of duplicate reports from many sources.

- (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:

The revisions to paragraph (2) of Rule 1200-03-20-.04 could potentially impact small businesses by eliminating the potential for requiring the submittal of duplicate reports. It should have no impact on consumers.

- (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:

None.

- (5) A comparison of the proposed rule with any federal or state counterparts:

The provisions of paragraph (2) of Rule 1200-03-20-.04 were originally required by 40 CFR 51.211 (Source Surveillance – Emission reports and recordkeeping). The deletion of paragraph (2) of Rule 1200-03-20-.04 will allow affected source to utilize current reporting time frames and avoid submitting duplicate reports.

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

This proposed amendment to the rules repeals the requirement to submit certain reports on a quarterly basis, thus reconciling the state's periodic reporting requirement to that of the current federal rule that requires the same reports to be submitted on a semiannual basis.

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

This amendment is being promulgated under the authority of T.C.A. §§ 68-201-101 et seq. The provisions of paragraph (2) of Rule 1200-03-20-.04 were originally required by 40 CFR 51.211 (Source Surveillance – Emission reports and recordkeeping).

- (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 are subject Title V program referenced in paragraph (11) of Rule 1200-03-09-.02 or that have taken restrictions to avoid being subject to this paragraph, by allowing the consolidation of the reporting of compliance data. This proposed rule revision was initiated due to a request from the regulated community.

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

The Board is not aware of any.

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

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;

Alan M. Leiserson
Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548

- (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

Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
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Alan.Leiserson@tn.gov

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

The Board is not aware of any.