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Sequence Number: 06-28-13
 Rule ID(s): 5500-5501
 File Date: 6/25/13
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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:	Malcolm H. Butler
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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
0400-30-17	Conflict of Interest
Rule Number	Rule Title
0400-30-17-.01	Purpose and Intent
0400-30-17-.02	Protecting the Public Interests
0400-30-17-.03	Conflict of Interest on the Part of the Board and Technical Secretary
0400-30-17-.04	Conflict of Interest in the Permitting of Municipal Solid Waste Incineration Units
0400-30-17-.05	Policy of Ethics and the Avoidance of Conflicts of Interest

Chapter Number	Chapter Title
1200-03-17	Conflict of Interest
Rule Number	Rule Title
1200-03-17-.01	Purpose and Intent
1200-03-17-.02	Conflict of Interest on the Part of the Board and Technical Secretary
1200-03-17-.03	Conflict of Interest in the Permitting of Municipal Solid Waste Incineration Units

(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>)

Repeal

Chapter 1200-03-17
Conflict of Interest

Chapter 1200-03-17 Conflict of Interest is repealed.

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

New Rule

Chapter 0400-30-17
Conflict of Interest

Table of Contents

0400-30-17-.01 Purpose and Intent
0400-30-17-.02 Protecting the Public Interests
0400-30-17-.03 Conflict of Interest on the Part of the Board and Technical Secretary
0400-30-17-.04 Conflict of Interest in the Permitting of Municipal Solid Waste Incineration Units
0400-30-17-.05 Policy of Ethics and the Avoidance of Conflicts of Interest

0400-30-17-.01 Purpose and Intent

- (1) It is the purpose of this chapter to address requirements for the state air pollution control board imposed through the federal Clean Air Act, as amended, (42 USC §§ 7401 et seq.) with respect to the composition of the board and conflict-of-interest provisions in hearing cases involving permits and enforcement and also to adopt a conflict of interest policy required by T.C.A § 68-201-105(e). Conflict of interest described at 42 USC § 7428 is addressed in Rules 0400-30-17-.02 and 0400-30-17-.03. Conflict of interest described at 42 USC § 7429(e) is addressed in Rule 0400-30-17-.04. The conflict of interest policy required by T.C.A. § 68-201-105(e) is addressed in Rule 0400-30-17-.05.

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

0400-30-17-.02 Protecting the Public Interest

- (1) The Board shall at its first meeting in a calendar year or after receiving a new member determine that it has at least a majority of members who represent the public interest and who do not derive any significant portion of their income from persons subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03.
- (2) Definitions
 - (a) "Represent the public interest" means not owning a controlling interest in, having 5% or more of his or her capital invested in, serve as attorney for, act as a consultant for, serve as officer or director of, or hold any other official or contractual relationship with, either a person subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03, or a trade or business association of which such a person is a member.
 - (b) "Significant portion of income" means 10% or more of gross personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends, except that it shall mean 50% or more of gross personal income for a calendar year if the recipient is over 60 years of age and receiving such a portion pursuant to retirement, pension, or similar arrangement. The term "significant portion of income" also means any one or more of the following situations:
 1. When the Technical Secretary or the Board Member receives more than \$5,000 annually in investment income from a source. Said investment is limited to those that arise from

the purchase of shares of stock in the source that were purchased on the open market and generally available to any person at that price.

2. When the Technical Secretary or Board Member receives more than \$100 annually due to a private investment made in a source. Said private investment is one where the purchase of stock or interest in a partnership was made directly with the source and such opportunity was not generally available to the public as a whole.
3. When the Technical Secretary or Board Member receives a salary in any amount from a source for services rendered.
4. When the Technical Secretary or Board Member sells or is about to sell property or equipment to a source. For the purposes of this part, equipment does not include consumer goods that are offered to the public at the same price offered to the source.
5. When the Technical Secretary or Board Member buys or is about to buy property or equipment from a source. For the purposes of this part, equipment does not include consumer goods that can be purchased by the public at the same price the source offered to the Technical Secretary or Board Member.
6. When the Technical Secretary or Board Member has taken out a loan from a source in any amount unless:
 - (i) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;
 - (ii) The loan is secured by a recorded security interest in collateral, bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule.

For purpose of this subparagraph, income derived from mutual-fund payments, or from other diversified investments as to which the recipient does not know the identity of the primary sources of income, shall be considered part of the recipient's gross personal income but shall not be treated as income derived from persons subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03.

- (c) "Persons subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03" or a "source," as used in this chapter, includes any individual, corporation, partnership, or association who holds, is an applicant for, or is subject to any permit, or who is or may become subject to any enforcement order under this rule division, 0400-30 or rule division 1200-03, except that it does not include:
 1. An individual who is or may become subject to an enforcement order by reason of his or her ownership or operation of a motor vehicle,
 2. Any department or agency of a state, local, or regional government; or
 3. Any individual who is involved in the program of an institute of higher learning whose duties do not include the institute's compliance with this rule division, 0400-30 or rule division 1200-03.
- (3) Upon the request of the Technical Secretary, members of the Board shall provide the necessary information needed to determine compliance with paragraph (1) of this rule.

- (4) In the event that the Board cannot make a finding that at least a majority of the Board as constituted by appointment of its members meets the requirements required by the Clean Air Act, as amended, at § 128 (42 USC § 7428), then the Technical Secretary shall notify the Governor of the Board's failure to make a determination that at least a majority of its membership meets § 128 requirements. The Technical Secretary shall also advise and make recommendations regarding corrective action necessary to allow the Board to be qualified under § 128 including substitutionary appointments of a member or members. The Board shall not act to hear contested cases until it has determined that it can do so consistent with § 128.

0400-30-17-.03 Conflict of Interest on the Part of the Board and Technical Secretary

- (1) Definition - A "conflict of interest" occurs when a Board member or the Technical Secretary takes an action in the performance of their duties that singularly benefits a source when the Board member or the Technical Secretary has a significant portion of their personal income derived from the operations of said source.

The actual or potential receipt of penalties, judgments, grant awards, or fees by the State of Tennessee as a result of promulgated rules, orders by the Technical Secretary, Board orders, judgments awarded in a court of law, or grant applications to government or private entities shall not identify the State of Tennessee as a source as that term is defined in subparagraph (2)(c) of Rule 0400-30-17-.02. If a specific case involves a source of pollution owned or operated by state or federal government, the Technical Secretary or Board member shall have a conflict of interest only if a significant portion of his or her income is derived from the operation of that source of pollution.

- (2) Declaration - Prior to the issuance of a permit, variance or an enforcement order that requires an action on their part, the Technical Secretary or a Board member shall issue a written statement that declares any conflict of interest that they may have in the matter. Statements by the Technical Secretary shall be written and delivered to the Chairman or Vice-Chairman of the Board. Statements by Board members may either be in writing or be verbal and made part of the Board Meeting minutes. No Board Member or the Technical Secretary shall be required to quantify their conflict of interest or make a more detailed explanation of their conflict than otherwise required by Rule 0400-30-17-.05 or by T.C.A. § 4-5-302. For the purpose of this chapter, a "yes" or "no" declaration is sufficient and that is required only if a conflict of interest is present.

- (3) Rulemaking Exclusion - It is recognized that the Board's make-up is such that certain interest groups are represented by each Board member. To that end, a Board member supporting rulemaking for their interest group as a whole will not be viewed as having a conflict of interest for such advocacy. However, industry-specific rulemaking that would relax an otherwise general emission standard or procedural requirement for a source that causes a Board member to have a conflict of interest shall be subject to a disclosure of conflict of interest by Board members.

- (4) Procedure When a Conflict of Interest is Encountered –

- (a) Procedure for the Technical Secretary - In the event that the Technical Secretary has a conflict of interest, his actions in such matters shall be subject to ratification by the Board. The Board shall have the power to affirm, modify or set aside the proposed actions of the Technical Secretary. Upon ratification, the Technical Secretary's action shall become final.

1. Any timelines for action placed upon the Technical Secretary or Department in this rule division, 0400-30 or rule division 1200-03, shall be extended by the amount of time needed to bring the proposed action to the Board for review and ratification. Deadlines for action imposed by federal regulations of the United States Environmental Protection Agency are not eligible for such extension. Similarly, deadlines specifically imposed in Tennessee statutes are not eligible for such extension.

- (b) Procedure for Board Members - In the event that a Board member has a conflict of interest, the following procedures shall apply:

1. If a Board member has a conflict of interest as that term is defined in this chapter, the Board member shall recuse himself or herself from participation in the matter for which

the conflict exists as provided in Rule 0400-30-17-.05.

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

0400-30-17-.04 Conflict of Interest in the Permitting of Municipal Solid Waste Incineration Units

- (1) No permit for a solid waste incineration unit that combusts municipal waste shall be issued by the Technical Secretary if he is responsible in whole or part, for the design and construction or operation of the unit. In the event that the Technical Secretary faces such a permit decision, the procedures of subparagraph (4)(a) of Rule 0400-30-17-.03 shall apply to his development of a draft permit for Board ratification.
- (2) No permit for a solid waste incineration unit that combusts municipal solid waste shall be approved or denied by a Board member that is a person responsible in whole or part, for the design and construction or operation of the unit. Such Board member shall recuse himself or herself as provided in Rule 0400-30-17-.05.

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

0400-30-17-.05 Policy of Ethics and the Avoidance of Conflicts of Interest

- (1) The Policy of the Board
 - (a) No member of the Board shall participate in making any decision concerning a permit, enforcement case, or upon a case in which the municipality, firm or organization which the member represents, or by which the member is employed, or in which the member derives a significant portion of income, is involved, or is in any way a conflict of interest as defined by Rules 0400-30-17-.03 and 0400-30-17-.04.
 - (b) Each member of the Board shall avoid any action, whether or not specifically prohibited by statute or regulation, which might result in or create the appearance of:
 1. Using public office for private gain;
 2. Losing complete independence or impartiality;
 3. Making a government decision outside of official channels; or
 4. Affecting adversely the confidence of the public in the integrity of the government.
 - (c) No member of the Board shall, directly or indirectly:
 1. Use, disclose, or allow the use of official information which was obtained through or in connection with his or her appointment to the board and which has not been made available to the general public for the purpose of furthering the private interest or personal profit or any person, including the board member; or
 2. Engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her appointment to the board.
 - (d) No member of the Board shall make use of the facilities, equipment, personnel, or supplies of the State or its agencies for private use or gain, except to the extent that the use is de minimis or it's lawfully available to the general public.
 - (e) Each member of the Board shall avoid all known conflicts of interest, and to the extent the member of the Board becomes aware of a conflict of interest in connection with any matter brought before the Board, the member of the Board shall disclose such conflict, as provided in paragraph (2) of Rule 0400-30-17-.03, to the other members of the Board, Administrative Law Judge, and/or other appropriate person(s) and will further recuse himself or herself from participating in any consideration of the matter.

- (f) No member of the Board shall participate in discussions or actions involving individuals in his or her immediate family, individuals employed by the member of the Board or the member of the Board's business or any other matter in which the member of the Board's participation may create an appearance of bias or impropriety.
 - (g) When a member of the Board is in doubt as to the proper interpretation of this rule, he or she shall seek the advice of the Department's Office of General Counsel.
- (2) Each member of the Board during the first meeting of the Board each calendar year, or the member's first attendance of a Board meeting of the calendar year, shall:
- (a) Make a written disclosure of financial interests or other possible conflicts of interest;
 - (b) Acknowledge in writing that they have read and understand all aspects of this rule; and
 - (c) State as a condition of serving as a member of the board that he or she is not in conflict with the conditions of this rule.

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:

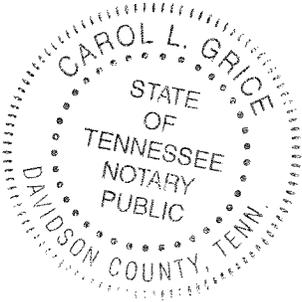
Board Member	Aye	No	Abstain	Absent	Signature (if required)
J. Ronald Bailey	✓				<i>J. Ronald Bailey</i>
Elaine Boyd	✓				<i>Elaine Boyd</i>
Brian Christman				✓	
Karen Cisler	✓				<i>Karen Cisler</i>
Wayne T. Davis	✓				<i>Wayne Davis</i>
Stephen Gossett	✓				<i>Stephen Gossett</i>
Tommy Green	✓				<i>Tommy Green</i>
Shawn A. Hawkins				✓	
Helen Hennon	✓				<i>Helen S. Hennon</i>
Richard Holland	✓				<i>Richard Holland</i>
John Roberts				✓	
Larry Waters	✓				<i>Larry Waters</i>
Jimmy West	✓				<i>Jimmy West</i>
Alicia 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 06/12/2013, 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: 12/04/12

Rulemaking Hearing(s) Conducted on: (add more dates). 01/29/13



Date: June 12, 2013

Signature: *Barry R. Stephens*

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

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

Notary Public Signature: *Carol L. Grice*

My commission expires on: June 21, 2016

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.
Robert E. Cooper, Jr.
Attorney General and Reporter
6-20-13
Date

Department of State Use Only

Filed with the Department of State on: 6/25/13

Effective on: 9/23/13

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.

Commentor: EPA (R. Scott Davis, Chief Air Planning Branch)

Comment: Please clarify whether the Technical Secretary's section 128 authorities are delegated to the Tennessee Department of [Environment and Conservation] staff. If so, please indicate whether such delegated officials are also subject to [Rule] 0400-30-17-.03 Conflict of Interest Disclosure Requirements described in the new rule. The EPA interprets the requirements of section 128(a) (1) as they may apply to the Technical Secretary as likewise applying to applying to any officials exercising a delegation of that authority.

Response: The Technical Secretary does not delegate the statutory authority to issue orders. Therefore, it is not necessary to specify any restrictions on any other officials based on sec. 128.

Comment: [Rule] 0400-30-17-.02(1) of the new rule describes that the Board shall at its first meeting determine that it has a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders. Please clarify as to what happens in the event that such a determination cannot be made, or if the Board determines that some members do have a conflict. Please provide an explanation as to the path forward in either of those situations.

Response: Language was added to 0400-30-17-02 in a new paragraph (4) to provide for corrective action in the event the board cannot determine that at least a majority of its members met the board composition requirements in CAA sec. 128. The board will not act to hear cases unless it can make such a determination. The new language also allows for corrective action including appointment of new members if needed.

Comment: [Rule] 0400-30-17-.03(2) requires that the Technical Secretary deliver a written statement to the Board declaring any conflict of interest that he/she may have in a matter. The same [rule] requires Board Members with conflicts to make verbal declarations of such conflicts to the Board that are then included with the Board minutes. Please clarify how the Technical Secretary's statement is made available to the public under this process and whether the Board's minutes are available to the public for inspection.

Response: The Technical Secretary statement of a conflict of interest would be a public record and would be available to the public under Tennessee's Open records Act, Tenn. Code Ann. Sec. 10-7-503 and related statutes. Also, the board minutes are public records and available to the public pursuant to this state law.

Comment: It is not clear which entity or entities perform(s) the functions described by section 128(a) (1) of the CAA (i.e., approval of permits or enforcement orders under the CAA). Presumably these functions are carried out by the "Board" and "Technical Secretary" referenced in the new rule; however, this is not expressly stated. Please clarify which entity or entities perform(s) the section 128(a) (1) functions. Please also explain which entity or entities decide(s) administrative appeals of such actions and how such entity or entities meet(s) any applicable section 128(a) requirements.

Response: Under Tenn. Code Ann. § 68-201-104 the air pollution board is constituted with its members being appointed by the governor. Under Tenn. Code Ann. § 68-201-108 the board is granted the power to hear contested cases in administrative review of issuance or denial of permits. Under Tenn. Code Ann. § 68-201-116, the board is granted the power of administrative review of orders for corrective action for violations under the Tennessee Air Quality Act and its implementing rules or for assessment of civil penalties in enforcement for violations of the Tennessee Air Quality Act

and its implementing rules. The Technical Secretary exercises enforcement power by statute at Tenn. Code Ann. § 68-201-116 and issues permits under power created in rules promulgated by the board.

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.

New Rule 0400-30-17-.05 is adopted to comply with § 5 of Public Chapter No. 765 passed in 2012 and now codified as T.C.A. § 68-201-105(e), which requires the Board to implement rules and regulations to create a conflict of interest policy for the Board, therefore, it is exempt from the requirements of T.C.A. §§ 4-5-401 et seq.

New Rule 0400-30-17-.02 is adopted to address a deficiency identified by EPA. According to EPA, Tennessee's Air Pollution Control program fails to comply with Clean Air Act by failing to comply with the board requirements of 110(a)(2)(E)(ii) and the requirements of 128(a)(1). CAA 128(a)(1) requires any board or body which approves permits or enforcement orders to have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA. New Rule 0400-30-17-.02 contains definitions and requirements that will enable to Board to clearly determine if it has a majority of members who represent the public interest. Since these requirements are mandated by federal law this new rule is exempt from the requirements of T.C.A. §§ 4-5-401 et seq.

Renumber these rules by repealing Chapter 1200-03-17 and move them to a new Chapter 0400-30-17 are not directly applicable to small businesses and only apply to the Technical Secretary and members of the Air Pollution Control Board.

- (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 renumbering of Chapter 1200-03-17 to Chapter 0400-30-17 does not impact small businesses.

- (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.

None.

- (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.

All state air pollution control programs are subject to the small federal requirements.

- (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;

The intent of this rulemaking is to accomplish three objectives.

- Renumber these rules by repealing Chapter 1200-03-17 and move them to a new Chapter 0400-30-17.
- Comply with § 5 of Public Chapter No. 765 passed in 2012 and now codified as T.C.A. § 68-201-105(e), which requires the Board to implement rules and regulations to create a conflict of interest policy for the Board. Rule 0400-30-17-.05 satisfies this legislative mandate.
- Address a deficiency identified by EPA. According to EPA, Tennessee's Air Pollution Control program fails to comply with Clean Air Act by failing to comply with the board requirements of 110(a)(2)(E)(ii) and the requirements of 128(a)(1). CAA 128(a)(1) requires any board or body which approves permits or enforcement orders to have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA. Rule 0400-30-17-.02 contains definitions and requirements that will enable to Board to clearly determine if it has a majority of members who represent the public interest.

- (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;

CAA 110(a)(2)(E)(ii) and CAA 128(a)(1) regarding Air Pollution Control Board members; T.C.A. § 68-201-105(e) regarding conflict of interest; and T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq. regarding the overall rulemaking.

- (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;

Person most directly affected by this rulemaking are the Technical Secretary and members of the Air Pollution Control Board and they did not object to its adoption.

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

The Tennessee Air Pollution Control 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;

There will be no fiscal impact as a result of this rulemaking.

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

Malcolm H. Butler
Division of Air Pollution Control
9th Floor, L & C Annex
401 Church Street
Nashville, Tennessee 37243-1531

- (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, 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
401 Church Street
20th Floor, L & C Tower
Nashville, Tennessee 37243-1531
Phone: (615) 532-0131
Alan.Leiserson@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.

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Division of Publications**

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

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Chapter 0400-30-17 Conflict of Interest

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0400-30-17-.01 Purpose and Intent

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0400-30-17-.023 Conflict of Interest on the Part of the Board and Technical Secretary

0400-30-17-.034 Conflict of Interest in the Permitting of Municipal Solid Waste Incineration Units

0400-30-17-.05 Policy of Ethics and the Avoidance of Conflicts of Interest

~~1200-3-17-.04~~ 0400-30-17-.01 Purpose and Intent

- (1) It is the purpose of this Chapter chapter to address a conflict of interest as described in the requirements for the state air pollution control board imposed through the federal Clean Air Act, as amended, (42 USC §§ 7401 et seq. November 15, 1990) with respect to the composition of the board and conflict-of-interest provisions in hearing cases involving permits and enforcement and also to adopt a conflict of interest policy required by T.C.A. § 68-201-105(e). Conflict of interest described at 42 USC Section § 7428 is addressed in Rules .02 of this Chapter 0400-30-17-.02 and 0400-30-17-.03. Conflict of interest described at 42 USC Section § 7429(e) is addressed in Rule .03 of this Chapter 0400-30-17-.04. The conflict of interest policy required by T.C.A. § 68-201-105(e) is addressed in Rule 0400-30-17-.05.

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

0400-30-17-.02 Protecting the Public Interest

- (1) The Board shall at its first meeting in a calendar year or after receiving a new member determine that it has at least a majority of members who represent the public interest and who do not derive any significant portion of their income from persons subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03.

(2) Definitions

- (a) "Represent the public interest" means not owning a controlling interest in, having 5% or more of his or her capital invested in, serve as attorney for, act as a consultant for, serve as officer or director of, or hold any other official or contractual relationship with, either a person subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03, or a trade or business association of which such a person is a member.

- (b) "Significant portion of income" means 10% or more of gross personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends, except that it shall mean 50% or more of gross personal income for a calendar year if the recipient is over 60 years of age and receiving such a portion pursuant to retirement, pension, or similar arrangement. The term "significant portion of income" also means any one or more of the following situations:

1. When the Technical Secretary or the Board Member receives more than \$5,000 annually

in investment income from a source. Said investment is limited to those that arise from the purchase of shares of stock in the source that were purchased on the open market and generally available to any person at that price.

2. When the Technical Secretary or Board Member receives more than \$100 annually due to a private investment made in a source. Said private investment is one where the purchase of stock or interest in a partnership was made directly with the source and such opportunity was not generally available to the public as a whole.
3. When the Technical Secretary or Board Member receives a salary in any amount from a source for services rendered.
4. When the Technical Secretary or Board Member sells or is about to sell property or equipment to a source. For the purposes of this part, equipment does not include consumer goods that are offered to the public at the same price offered to the source.
5. When the Technical Secretary or Board Member buys or is about to buy property or equipment from a source. For the purposes of this part, equipment does not include consumer goods that can be purchased by the public at the same price the source offered to the Technical Secretary or Board Member.
6. When the Technical Secretary or Board Member has taken out a loan from a source in any amount unless:
 - (i) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;
 - (ii) The loan is secured by a recorded security interest in collateral, bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule.

For purpose of this subparagraph, income derived from mutual-fund payments, or from other diversified investments as to which the recipient does not know the identity of the primary sources of income, shall be considered part of the recipient's gross personal income but shall not be treated as income derived from persons subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03.

- (c) "Persons subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03" or a "source" as used in this chapter includes any individual, corporation, partnership, or association who holds, is an applicant for, or is subject to any permit, or who is or may become subject to any enforcement order under this rule division, 0400-30 or rule division 1200-03, except that it does not include:
1. An individual who is or may become subject to an enforcement order by reason of his or her ownership or operation of a motor vehicle.
 2. Any department or agency of a state, local, or regional government; or
 3. Any individual who is involved in the program of an institute of higher learning whose duties do not include the institute's compliance with this rule division, 0400-30 or rule division 1200-03.

- (3) Upon the request of the Technical Secretary, members of the Board shall provide the necessary information needed to determine compliance with paragraph (1) of this rule.

- (4) In the event that the Board cannot make a finding that at least a majority of the Board as constituted by appointment of its members meets the requirements required by the Clean Air Act, as amended, at § 128 (42 USC § 7428), then the Technical Secretary shall notify the Governor of the Board's failure to make a determination that at least a majority of its membership meets § 128 requirements. The Technical Secretary shall also advise and make recommendations regarding corrective action necessary to allow the Board to be qualified under § 128 including substitutionary appointments of a member or members. The Board shall not act to hear contested cases until it has determined that it can do so consistent with § 128.

~~1200-3-17-02~~ 0400-30-17-03 Conflict of Interest on the Part of the Board and Technical Secretary

- (1) Definition - A "conflict of interest" occurs when a Board member or the Technical Secretary takes an action in the performance of their duties that singularly benefits a source when the Board member or the Technical Secretary has a significant portion of their personal income derived from the operations of said source.

~~(a) The term "significant portion of personal income" shall mean any one or more of the following situations as it relates to the personal income of a Board member or Technical Secretary:~~

- ~~1. When the Technical Secretary or the Board Member receives more than five thousand dollars (\$5,000) annually in investment income from the source. Said investment is limited to those that arise from the purchase of shares of stock in the source that were purchased on the open market and generally available to any person at that price.~~
- ~~2. When the Technical Secretary or Board Member receives more than one hundred dollars annually (\$100) due to a private investment made in the source. Said private investment is one where the purchase of stock or interest in a partnership was made directly with the source and such opportunity was not generally available to the public as a whole.~~
- ~~3. When the Technical Secretary or Board Member receives a salary in any amount from the source for services rendered.~~
- ~~4. When the Technical or Board Member sells or is about to sell property or equipment to the source. For the purposes of this part, equipment does not include consumer goods that are offered to the public at the same price offered to the source.~~
- ~~5. When the Technical Secretary or Board Member buys or is about to buy property or equipment from the source. For the purposes of this part, equipment does not include consumer goods that can be purchased by the public at the same price the source offered to the Technical Secretary or Board Member.~~
- ~~6. When the Technical Secretary or Board Member has taken out a loan from the source in any amount unless:
 - ~~(i) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;~~
 - ~~(ii) The loan is secured by a recorded security interest in collateral, bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule.~~~~

~~(b) The actual or potential receipt of penalties, judgments, grant awards, or fees by the State of Tennessee as a result of promulgated rules, orders by the Technical Secretary, Board orders, judgments~~

awarded in a court of law, or grant applications to government or private entities shall not identify the State of Tennessee as a source as that term is ~~used in 1200-3-17-02(1)~~ defined in subparagraph (2)(c) of Rule 0400-30-17-02. If a specific case involves a source of pollution owned or operated by state or federal government, the Technical Secretary or Board member shall have a conflict of interest only if a significant portion of his or her income is derived from the operation of that source of pollution.

~~(c) For the additional purpose of defining a conflict of interest, the Board recognizes the Department's conflict of interest policy governing Department employees.~~

- (2) Declaration - Prior to the issuance of a permit, variance or an enforcement order that requires an action on their part, the Technical Secretary or a Board member shall issue a written statement that declares any conflict of interest that they may have in the matter. Statements by the Technical Secretary shall be written and delivered to the Chairman or Vice-Chairman of the Board. Statements by Board members shall ~~may either be in writing or~~ be verbal and made part of the Board Meeting minutes. No Board Member or the Technical Secretary shall be required to quantify their conflict of interest or make a more detailed explanation of their conflict unless they wish to make a detailed disclosure than otherwise required by Rule 0400-30-17-05 or by T.C.A. § 4-5-302. For the purpose of this ~~Chapter 1200-3-17 chapter,~~ a "yes" or "no" declaration is sufficient and that is required only if a conflict of interest is present.
- (3) Rulemaking Exclusion - It is recognized that the Board's make-up is such that certain interest groups are represented by each Board member. To that end, a Board member supporting rulemaking for their interest group as a whole will not be viewed as having a conflict of interest for such advocacy. However, industry-specific rulemaking that would relax an otherwise general emission standard or procedural requirement for a source that causes a Board member to have a conflict of interest shall be subject to a disclosure of conflict of interest by Board members.
- (4) Procedure When ~~A~~ a Conflict of Interest is Encountered –
 - (a) Procedure for the Technical Secretary - In the event that the Technical Secretary has a conflict of interest, his actions in such matters shall be subject to ratification by the Board. The Board shall have the power to affirm, modify or set aside the proposed actions of the Technical Secretary. Upon ratification, the Technical Secretary's action shall become final.
 1. Any timelines for action placed upon the Technical Secretary or Department in ~~Division 1200-3 this rule division, 0400-30 or rule division 1200-03,~~ shall be extended by the amount of time needed to bring the proposed action to the Board for review and ratification. Deadlines for action imposed by federal regulations of the United States Environmental Protection Agency are not eligible for such extension. Similarly, deadlines specifically imposed in Tennessee statutes are not eligible for such extension.
 - (b) Procedure for Board Members - In the event that a Board member has a conflict of interest, the following procedures shall apply:
 1. If a Board member has a conflict of interest as that term is defined in this ~~Chapter 1200-3-17 chapter,~~ the Board member shall answer "abstain" when voting in any roll call vote upon a matter before the Board for a decision shall recuse himself or herself from participation in the matter for which the conflict exists as provided in Rule 0400-30-17-05.

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

~~1200-3-17-03~~ 0400-30-17-04 Conflict of Interest in the Permitting of Municipal Solid Waste Incineration Units

- (1) No permit for a solid waste incineration unit that combusts municipal waste shall be issued by the Technical Secretary if he is responsible in whole or part, for the design and construction or operation of the unit. In the event that the Technical Secretary faces such a permit decision, the procedures of subparagraph ~~1200-3-17-02~~ (4)(a) of Rule 0400-30-17-03 shall apply to his development of a draft permit for Board ratification.
- (2) No permit for a solid waste incineration unit that combusts municipal solid waste shall be approved or

denied by a Board member that is a person responsible in whole or part, for the design and construction or operation of the unit. ~~Any vote by such~~ Such Board member ~~on such unit shall be answered by "abstain"~~ shall recuse himself or herself as provided in Rule 0400-30-17-.05.

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

0400-30-17-.05 Policy of Ethics and the Avoidance of Conflicts of Interest

(1) The Policy of the Board

(a) No member of the Board shall participate in making any decision concerning a permit, enforcement case, or upon a case in which the municipality, firm or organization which the member represents, or by which the member is employed, or in which the member derives a significant portion of income, is involved, or is in any way a conflict of interest as defined by Rules 0400-30-17-.03 and 0400-30-17-.04.

(b) Each member of the Board shall avoid any action, whether or not specifically prohibited by statute or regulation, which might result in or create the appearance of:

1. Using public office for private gain;

2. Losing complete independence or impartiality;

3. Making a government decision outside of official channels; or

4. Affecting adversely the confidence of the public in the integrity of the government.

(c) No member of the Board shall, directly or indirectly:

1. Use, disclose, or allow the use of official information which was obtained through or in connection with his or her appointment to the board and which has not been made available to the general public for the purpose of furthering the private interest or personal profit or any person, including the board member; or

2. Engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her appointment to the board.

(d) No member of the Board shall make use of the facilities, equipment, personnel, or supplies of the State or its agencies for private use or gain, except to the extent that the use is de minimis or it's lawfully available to the general public.

(e) Each member of the Board shall avoid all known conflicts of interest, and to the extent the member of the Board becomes aware of a conflict of interest in connection with any matter brought before the Board, the member of the Board shall disclose such conflict, as provided in paragraph (2) of Rule 0400-30-17-.03, to the other members of the Board, Administrative Law Judge, and/or other appropriate person(s) and will further recuse himself or herself from participating in any consideration of the matter.

(f) No member of the Board shall participate in discussions or actions involving individuals in his or her immediate family, individuals employed by the member of the Board or the member of the Board's business or any other matter in which the member of the Board's participation may create an appearance of bias or impropriety.

(g) When a member of the Board is in doubt as to the proper interpretation of this rule, he or she shall seek the advice of the Department's Office of General Counsel.

(2) Each member of the Board during the first meeting of the Board each calendar year, or the member's first attendance of a Board meeting of the calendar year, shall:

(a) Make a written disclosure of financial interests or other possible conflicts of interest;

(b) Acknowledge in writing that they have read and understand all aspects of this rule; and

(c) State as a condition of serving as a member of the board that he or she is not in conflict with the conditions of this rule.

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	X				
Elaine Boyd	X				
Brian Christman				X	
Karen Cisler	X				
Wayne T. Davis	X				
Stephen Gossett	X				
Tommy Green	X				
Shawn A. Hawkins				X	
Helen Hennon	X				
Richard Holland	X				
John Roberts				X	
Larry Waters	X				
Jimmy West	X				
Alicia 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 06/12/2013, 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: 12/04/12

Rulemaking Hearing(s) Conducted on: (add more dates). 01/29/13

Date: June 12, 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.

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

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.

Commentor: EPA (R. Scott Davis, Chief Air Planning Branch)

Comment: Please clarify whether the Technical Secretary's section 128 authorities are delegated to the Tennessee Department of [Environment and Conservation] staff. If so, please indicate whether such delegated officials are also subject to [Rule] 0400-30-17-.03 Conflict of Interest Disclosure Requirements described in the new rule. The EPA interprets the requirements of section 128(a) (1) as they may apply to the Technical Secretary as likewise applying to applying to any officials exercising a delegation of that authority.

Response: The Technical Secretary does not delegate the statutory authority to issue orders. Therefore, it is not necessary to specify any restrictions on any other officials based on sec. 128.

Comment: [Rule] 0400-30-17-.02(1) of the new rule describes that the Board shall at its first meeting determine that it has a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders. Please clarify as to what happens in the event that such a determination cannot be made, or if the Board determines that some members do have a conflict. Please provide and explanation as to the path forward in either of those situations.

Response: Language was added to 0400-30-17-02 in a new paragraph (4) to provide for corrective action in the event the board cannot determine that at least a majority of its members met the board composition requirements in CAA sec. 128. The board will not act to hear cases unless it can make such a determination. The new language also allows for corrective action including appointment of new members if needed.

Comment: [Rule] 0400-30-17-.03(2) requires that the Technical Secretary deliver a written statement to the Board declaring any conflict of interest that he/she may have in a matter. The same [rule] requires Board Members with conflicts to make verbal declarations of such conflicts to the Board that are then included with the Board minutes. Please clarify how the Technical Secretary's statement is made available to the public under this process and whether the Board's minutes are available to the public for inspection.

Response: The Technical Secretary statement of a conflict of interest would be a public record and would be available to the public under Tennessee's Open records Act, Tenn. Code Ann. Sec. 10-7-503 and related statutes. Also, the board minutes are public records and available to the public pursuant to this state law.

Comment: It is not clear which entity or entities perform(s) the functions described by section 128(a) (1) of the CAA (i.e., approval of permits or enforcement orders under the CAA). Presumably these functions are carried out by the "Board" and "Technical Secretary" referenced in the new rule; however, this is not expressly stated. Please clarify which entity or entities perform(s) the section 128(a) (1) functions. Please also explain which entity or entities decide(s) administrative appeals of such actions and how such entity or entities meet(s) any applicable section 128(a) requirements.

Response: Under Tenn. Code Ann. § 68-201-104 the air pollution board is constituted with its members being appointed by the governor. Under Tenn. Code Ann. § 68-201-108 the board is granted the power to hear contested cases in administrative review of issuance or denial of permits. Under Tenn. Code Ann. § 68-201-116, the board is granted the power of administrative review of orders for corrective action for violations under the Tennessee Air Quality Act and its implementing rules or for assessment of civil penalties in enforcement for violations of the Tennessee Air Quality Act

and its implementing rules. The Technical Secretary exercises enforcement power by statute at Tenn. Code Ann. § 68-201-116 and issues permits under power created in rules promulgated by the board.

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.

New Rule 0400-30-17-.05 is adopted to comply with § 5 of Public Chapter No. 765 passed in 2012 and now codified as T.C.A. § 68-201-105(e), which requires the Board to implement rules and regulations to create a conflict of interest policy for the Board, therefore, it is exempt from the requirements of T.C.A. §§ 4-5-401 et seq.

New Rule 0400-30-17-.02 is adopted to address a deficiency identified by EPA. According to EPA, Tennessee's Air Pollution Control program fails to comply with Clean Air Act by failing to comply with the board requirements of 110(a)(2)(E)(ii) and the requirements of 128(a)(1). CAA 128(a)(1) requires any board or body which approves permits or enforcement orders to have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA. New Rule 0400-30-17-.02 contains definitions and requirements that will enable to Board to clearly determine if it has a majority of members who represent the public interest. Since these requirements are mandated by federal law this new rule is exempt from the requirements of T.C.A. §§ 4-5-401 et seq.

Renumber these rules by repealing Chapter 1200-03-17 and move them to a new Chapter 0400-30-17 are not directly applicable to small businesses and only apply to the Technical Secretary and members of the Air Pollution Control Board.

- (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 renumbering of Chapter 1200-03-17 to Chapter 0400-30-17 does not impact small businesses.

- (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.

None.

- (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.

All state air pollution control programs are subject to the small federal requirements.

- (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;

The intent of this rulemaking is to accomplish three objectives.

- Renumber these rules by repealing Chapter 1200-03-17 and move them to a new Chapter 0400-30-17.
- Comply with § 5 of Public Chapter No. 765 passed in 2012 and now codified as T.C.A. § 68-201-105(e), which requires the Board to implement rules and regulations to create a conflict of interest policy for the Board. Rule 0400-30-17-.05 satisfies this legislative mandate.
- Address a deficiency identified by EPA. According to EPA, Tennessee's Air Pollution Control program fails to comply with Clean Air Act by failing to comply with the board requirements of 110(a)(2)(E)(ii) and the requirements of 128(a)(1). CAA 128(a)(1) requires any board or body which approves permits or enforcement orders to have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA. Rule 0400-30-17-.02 contains definitions and requirements that will enable to Board to clearly determine if it has a majority of members who represent the public interest.

- (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;

CAA 110(a)(2)(E)(ii) and CAA 128(a)(1) regarding Air Pollution Control Board members; T.C.A. § 68-201-105(e) regarding conflict of interest; and T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq. regarding the overall rulemaking.

- (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;

Person most directly affected by this rulemaking are the Technical Secretary and members of the Air Pollution Control Board and they did not object to its adoption.

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

The Tennessee Air Pollution Control 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;

There will be no fiscal impact as a result of this rulemaking.

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

Malcolm H. Butler
Division of Air Pollution Control
9th Floor, L & C Annex
401 Church Street
Nashville, Tennessee 37243-1531

- (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, 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
401 Church Street
20th Floor, L & C Tower
Nashville, Tennessee 37243-1531
Phone: (615) 532-0131
Alan.Leiserson@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.