

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: sos.information@state.tn.us

**For Department of State Use Only**

Sequence Number: 07-09-09  
Rule ID(s): 4252  
File Date: 07/13/2009  
Effective Date: 10/11/2009

# Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Environment & Conservation
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	Malcolm Butler
<b>Address:</b>	9 <sup>th</sup> Floor L & C Annex 401 Church Street Nashville, Tennessee
<b>Zip:</b>	37243-1531
<b>Phone:</b>	615-532-0600
<b>Email:</b>	Malcolm.Butler@state.tn.us

**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. Please enter only ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
1200-03-26	Administrative Fees Schedule
Rule Number	Rule Title
1200-03-26-.02	Construction and Annual Emission Fees

(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 1200-03-26  
Administrative Fees Schedule

Amendment

Paragraph (7) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding a new subparagraph (e), so that the new subparagraph shall read:

- (e) When a fee overpayment has been made as a result of an error by the source, an owner or operator may seek a credit or refund for such fee overpayment within One year from the date on which the Division of Air Pollution Control received payment of the fee.

Authority: T.C.A. § 68-201-105

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	X				
Tracy R. Carter	X				
J. Ronald Bailey	X				
Wayne T. Davis	X				
Mary English	X				
Stephen Gossett	X				
Helen Hennon	X				
Richard Holland	X				
Joe C McKinnon	X				
Donald Mull	X				
Dale Swafford				X	
Greer Tidwell, Jr.	X				
Larry Waters	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Air Pollution Control Board on September 10, 2008, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/30/08

Notice published in the Tennessee Administrative Register on: 07/15/08

Rulemaking Hearing(s) Conducted on: (add more dates. 08/25/08

Date: 01/14/09

Signature: Barry R. Stephens

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

Title of Officer: Technical Secretary  
Tennessee Air Pollution Control Board



Subscribed and sworn to before me on: 01/14/09

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 23, 2009

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

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.  
Attorney General and Reporter

6-29-09  
Date

**Department of State Use Only**

RECEIVED  
2009 JUL 13 PM 12:15  
SECRETARY OF STATE  
PUBLICATIONS

Filed with the Department of State on: 7/13/09

Effective on: 10/11/09

Tre Hargett  
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.

There were no comments received at the public hearing or during the comment period.

### Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

(The administrative record for this rule shows that there is no basis to perform a Regulatory Flexibility Analysis or to provide an Economic Impact Statement under requirements of TCA 4-5-404. This rule was promulgated solely to provide a time period in which a company may request a refund when a fee overpayment has been made as a result of an error by the company.)

- (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:

All Title V permit holders will benefit from this rule amendment. It is estimated that thirty percent (30%) are small business.

- (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:

There are no reporting, recordkeeping, and other administrative cost required for the proposed rule. When a fee overpayment has been made as a result of an error by the source, an owner or operator may seek a credit or refund for such fee overpayment within One year from the date on which the Division of Air Pollution Control received payment of the fee.

- (3) A statement of the probable effect on impacted small businesses and consumers:

This rule will not have an adverse effect on small business. This rule was promulgated solely to provide a time period in which a company may request a refund when the company has made a fee overpayment as a result of an error.

- (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:

There are none. If there is no fee overpayment by a company this provision does not take effect.

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

In drafting this rule amendment, the Division used the state of Florida, Oklahoma, and Kansas rules as a guide.

- (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.

There were no analysis of the effect of the possibility of exemption of small businesses from this rule because; this rule was drafted as a method to reimburse businesses as a result of an error by the business in a fee overpayment.

**Additional Information Required by Joint Government Operations Committee**

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

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

When a fee overpayment has been made as a result of an error by the source, an owner or operator may seek a credit or refund for such fee overpayment within one year from the date on which the Division of Air Pollution Control received payment of the fee.

- (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 rulemaking is authorized by the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, § 68-201-105.

- (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;

Owners and operators of Title V Major Sources operating in the state were affected by this rule. The aforementioned urge adoption of this rule.

- (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 would not be any increase or decrease in state or local government revenues and expenditures.

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

Lacey J. Hardin  
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 Dept. of Environment and Conservation

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

Office of General Counsel  
Tennessee Dept. of Environment and Conservation  
401 Church Street

20<sup>th</sup> Floor L & C Tower  
Nashville, Tennessee 37243-1531  
615-532-0131

- (l) 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.