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**For Department of State Use Only**

Sequence Number: 08-18-16  
Rule ID(s): 6284  
File Date: 8/18/16  
Effective Date: 11/16/16

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Environment & Conservation  
**Division:** Air Pollution Control  
**Contact Person:** Paul LaRock  
**Address:** William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 15th Floor  
Nashville, TN  
**Zip:** 37243  
**Phone:** (615) 532-0617  
**Email:** [paul.larock@tn.gov](mailto:paul.larock@tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1200-03-05	Visible Emissions Regulations
Rule Number	Rule Title
1200-03-05-.02	Exceptions

(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://sos.tn.gov/sites/default/files/forms/Rulemaking\\_Guidelines\\_August2014.pdf](http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf))

Chapter 1200-03-05  
Visible Emissions Regulations

Amendment

Paragraph (1) of Rule 1200-03-05-.02 Exceptions is amended by deleting it in its entirety and substituting instead the following:

- (1) Consistent with the requirements of Chapter 1200-3-20, due allowance may be made for visible emissions in excess of that permitted in this chapter which are necessary or unavoidable due to routine startup and shutdown conditions. However, no visible emission in excess of that permitted in this chapter shall be allowed which can be proved to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter 1200-03-03 and the National Ambient Air Quality Standards. The owner or operator shall maintain a continuous, current log of all excess visible emissions showing the time at which such conditions began and ended. Such record shall be available to the Technical Secretary or the Technical Secretary's representative upon request.

Authority: §§ 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)
<b>Dr. Ronne Adkins</b> Commissioner's Designee, Dept. of Environment and Conservation	X				
<b>Dr. John Benitez</b> Licensed Physician with experience in health effects of air pollutants	X				
<b>Karen Cisler</b> Environmental Interests	X				
<b>Dr. Wayne T. Davis</b> Conservation Interests	X				
<b>Stephen Gossett</b> Working for Industry with technical experience	X				
<b>Dr. Shawn A. Hawkins</b> Working in field related to Agriculture or Conservation				X	
<b>Richard Holland</b> Working for Industry with technical experience	X				
<b>L. Shawn Lindsey</b> Working in Municipal Government				X	
<b>Dr. Tricia Metts</b> Involved with Institution of Higher Learning on air pollution evaluation and control				X	
<b>Chris Moore</b> Working in management in Private Manufacturing	X				
<b>John Roberts</b> Small Generator of Air Pollution representing Automotive Interests	X				
<b>Amy Spann</b> Registered Professional Engineer	X				
<b>Larry Waters</b> County Mayor	X				
<b>Jimmy West</b> Commissioner's Designee, Dept. of Economic and Community Development	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 07/13/2016, 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: 04/29/16

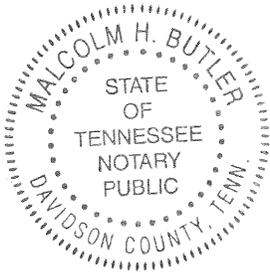
Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/16

Date: July 13, 2016

Signature: *Michelle W. Owenby*

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: July 13, 2016

Notary Public Signature: *Malcolm H. Butler*

My commission expires on: 1-11-2017

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

*Herbert H. Slatyer III*  
Herbert H. Slatyer III  
Attorney General and Reporter

8/17/2016 Date

**Department of State Use Only**

Filed with the Department of State on: 8/18/16

Effective on: 11/16/16

*Tre Hargett*  
Tre Hargett  
Secretary of State

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## 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 federal Environmental Protection Agency (EPA) commented that the proposed revision to paragraph (1) of Rule 1200-03-05-.02 presents the same deficiencies noted in the final Startup, Shutdown and Malfunction SIP call notices. Specifically, the EPA expressed concern that the revision still provides “an impermissible discretionary exemption because it allows a state official to give ‘due allowance’ to the fact that excess emissions occurred during startup or shutdown events.”

Response: In response to EPA’s comment relating to the proposed amendment, the Air Pollution Control Board draws EPA’s attention to the regulatory language in the proposed rule changes that any “due allowance” shall not cause or contribute to violations of National Ambient Air Quality Standards (NAAQS) as established by EPA. Enforcement of the NAAQS fulfills the responsibility of the State of Tennessee to protect and maintain air quality standards.

**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.

The proposed rule amendments are in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015. The proposed amendments bring the State of Tennessee into compliance with federal SSM SIP Call requirements and are federally mandated as provided by Tenn. Code Ann. § 4-5-404.

### **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 does not anticipate that these amended rules will 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;

This proposed amendment to paragraph (1) of Rule 1200-03-05-.02 clarifies that notwithstanding due allowance regarding visible emissions during start-up and shutdown, no emission will be allowed that can be proved to cause or contribute to violations of National Ambient Air Quality Standards (NAAQS).

- (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 proposed amendment is in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015 (80 Fed. Reg. 33840). In the SSM SIP Call, EPA took issue with "due allowance" provisions that could be interpreted as allowing a state official to exclude excess visible emissions from enforcement actions. The addition of language expressly stating that no "due allowance" proved to cause or contribute to violations of NAAQS is authorized fulfills the responsibility of the State of Tennessee to protect and maintain air quality standards.

- (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;

Large industrial facilities are most directly affected by the proposed rule amendments. Industry representatives were consulted during the drafting of the rule amendments. Other than a comment by EPA, no comments regarding the adoption or rejection of the rule amendments were made during the comment period.

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

The Department is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to this amendment.

- (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 is no expected increase or decrease in revenues or expenditures resulting from promulgation of this rule.

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

Paul LaRock  
Air Pollution Control  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 22nd Floor  
Nashville, Tennessee 37243  
(615) 532-0617  
[paul.larock@tn.gov](mailto:paul.larock@tn.gov)

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

Lucian Geise  
Senior Counsel for Legislative Affairs  
Office of General Counsel

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

Office of General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 532-0108  
[Lucian.Geise@tn.gov](mailto:Lucian.Geise@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 requests.

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# Rulemaking Hearing Rule(s) Filing Form

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**Agency/Board/Commission:** Environment & Conservation  
**Division:** Air Pollution Control  
**Contact Person:** Paul LaRock  
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 312 Rosa L. Parks Avenue, 15th Floor  
 Nashville, TN  
**Zip:** 37243  
**Phone:** (615) 532-0617  
**Email:** [paul.larock@tn.gov](mailto:paul.larock@tn.gov)

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1200-03-05	Visible Emissions Regulations
Rule Number	Rule Title
1200-03-05-.02	Exceptions

(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://sos.tn.gov/sites/default/files/forms/Rulemaking\\_Guidelines\\_August2014.pdf](http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf))

Chapter 1200-03-05  
Visible Emissions Regulations

Amendment

Paragraph (1) of Rule 1200-03-05-.02 Exceptions is amended by deleting it in its entirety and substituting instead the following:

- (1) Consistent with the requirements of Chapter 1200-3-20, due allowance may be made for visible emissions in excess of that permitted in this chapter which are necessary or unavoidable due to routine startup and shutdown conditions. However, no visible emission in excess of that permitted in this chapter shall be allowed which can be proved to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter 1200-03-03 and the National Ambient Air Quality Standards. The owner or operator shall maintain a continuous, current log of all excess visible emissions showing the time at which such conditions began and ended ~~and that~~. Such record shall be available to the Technical Secretary or ~~his~~ the Technical Secretary's representative upon ~~his~~ request.

Authority: §§ 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:

<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
<b>Dr. Ronne Adkins</b> Commissioner's Designee, Dept. of Environment and Conservation	X				
<b>Dr. John Benitez</b> Licensed Physician with experience in health effects of air pollutants	X				
<b>Karen Cisler</b> Environmental Interests	X				
<b>Dr. Wayne T. Davis</b> Conservation Interests	X				
<b>Stephen Gossett</b> Working for Industry with technical experience	X				
<b>Dr. Shawn A. Hawkins</b> Working in field related to Agriculture or Conservation				X	
<b>Richard Holland</b> Working for Industry with technical experience	X				
<b>L. Shawn Lindsey</b> Working in Municipal Government				X	
<b>Dr. Tricia Metts</b> Involved with Institution of Higher Learning on air pollution evaluation and control				X	
<b>Chris Moore</b> Working in management in Private Manufacturing	X				
<b>John Roberts</b> Small Generator of Air Pollution representing Automotive Interests	X				
<b>Amy Spann</b> Registered Professional Engineer	X				
<b>Larry Waters</b> County Mayor	X				
<b>Jimmy West</b> Commissioner's Designee, Dept. of Economic and Community Development	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 07/13/2016, 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: 04/29/16

Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/16

Date: July 13, 2016

Signature: \_\_\_\_\_

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

---

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

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

## Public Hearing Comments

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**Comment:** The federal Environmental Protection Agency (EPA) commented that the proposed revision to paragraph (1) of Rule 1200-03-05-.02 presents the same deficiencies noted in the final Startup, Shutdown and Malfunction SIP call notices. Specifically, the EPA expressed concern that the revision still provides “an impermissible discretionary exemption because it allows a state official to give 'due allowance' to the fact that excess emissions occurred during startup or shutdown events.”

**Response:** In response to EPA's comment relating to the proposed amendment, the Air Pollution Control Board draws EPA's attention to the regulatory language in the proposed rule changes that any “due allowance” shall not cause or contribute to violations of National Ambient Air Quality Standards (NAAQS) as established by EPA. Enforcement of the NAAQS fulfills the responsibility of the State of Tennessee to protect and maintain air quality standards.

**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.

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### **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 does not anticipate that these amended rules will have a financial impact on local governments.

## Additional Information Required by Joint Government Operations Committee

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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 paragraph (1) of Rule 1200-03-05-.02 clarifies that notwithstanding due allowance regarding visible emissions during start-up and shutdown, no emission will be allowed that can be proved to cause or contribute to violations of National Ambient Air Quality Standards (NAAQS).

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- (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;

Large industrial facilities are most directly affected by the proposed rule amendments. Industry representatives were consulted during the drafting of the rule amendments. Other than a comment by EPA, no comments regarding the adoption or rejection of the rule amendments were made during the comment period.

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

The Department is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to this amendment.

- (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 is no expected increase or decrease in revenues or expenditures resulting from promulgation of this rule.

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

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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;

Lucian Geise  
Senior Counsel for Legislative Affairs  
Office of General Counsel

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

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Tennessee Department of Environment and Conservation  
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The Tennessee Air Pollution Control Board is not aware of any requests.