

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 11-07-12  
Rule ID(s): 5334  
File Date: 11-5-12  
Effective Date: 2-3-13

## Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Environment & Conservation
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	Lacey J. Hardin
<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) 532-0545
<b>Email:</b>	<a href="mailto:Lacey.Hardin@tn.gov">Lacey.Hardin@tn.gov</a>

**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
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
1200-03-09-.01	Construction Permits

(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 1200-03-09  
Construction and Operating Permits

Subpart (vi) of part 47 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by deleting the subpart part in its entirety and replacing it with a new subpart as follows:

- (vi)  $PM_{2.5}$  emissions and  $PM_{10}$  emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for  $PM_{2.5}$  and  $PM_{10}$  in PSD permits. Compliance with emissions limitations for  $PM_{2.5}$ , and  $PM_{10}$  issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this paragraph unless the applicable implementation plan required condensable particulate matter to be included.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	✓				Michael Atchison
Dr. J. Ronald Bailey	✓				J. Ronald Bailey
Elaine Boyd	✓				Elaine Boyd
Dr. Brian W. Christman				✓	
Dr. Wayne T. Davis	✓				Wayne T. Davis
Dr. Mary English				✓	
Stephen R. Gossett				✓	
Mayor Tommy Green				✓	
Dr. Shawn A. Hawkins	✓				Shawn Hawkins
Helen Hennon				✓	
Richard M. Holland	✓				Richard M. Holland
John Roberts	✓				John Roberts
Mayor Larry Waters	✓				Larry Waters
Alicia M. Wilson				✓	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 08/08/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/14/12

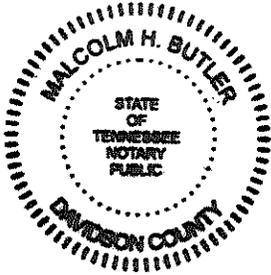
Rulemaking Hearing(s) Conducted on: (add more dates). 08/06/12

Date: Sept. 10, 2012

Signature: Barry R. Stephens

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

Title of Officer: Technical Secretary



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

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 2013

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

RE Cooper Jr  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
10-31-12  
Date

Department of State Use Only

Filed with the Department of State on: 11-5-12

Effective on: 2-3-13

Tre Hargett  
Tre Hargett  
Secretary of State

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PUBLIC AFFAIRS

## **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 during the public comment period.

### Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

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

The revision to subpart (4)(b)47(vi) of Rule 1200-03-09-.01 would not affect any facility currently considered as being a 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:

None.

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

The revision subpart (4)(b)47(vi) of Rule 1200-03-09-.01 would have no impact on small businesses and consumers.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

None.

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

The removal of the words "Particulate matter (PM) emissions" in the first sentence and "PM" in the second and third sentence in subpart (4)(b)47(vi) of Rule 1200-03-09-.01 is being done to correct a mistake made by EPA in the federal regulations which were then inadvertently adopted by the Department.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Not Applicable.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These proposed rule revisions will have no projected impact on local governments.

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

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

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

The removal of the words "Particulate matter (PM) emissions" in the first sentence and "PM" in the second and third sentence in subpart (4)(b)47(vi) of Rule 1200-03-09-.01 is being done to correct a mistake made by EPA in the federal regulations which were then inadvertently adopted by the Department.

- (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;

40 CFR 51.166(a)(7)(iv). These federal regulations require states to submit State Implementation Plans showing how they will attain and maintain the National Ambient Air Quality Standards. These specific requirements were published in the Federal Register on May 16, 2008.

- (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 major sources of air pollution are affected by this rule. No comments were received.

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

The Department is not aware of any.

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

The fiscal impact is minimal.

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

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

Legal Services Director, Office of General Counsel  
Tennessee Department of Environment and Conservation

20<sup>th</sup> Floor, L & C Tower  
Nashville, TN 37243-1548  
(615) 532-0131  
[Alan.Leiserson@tn.gov](mailto:Alan.Leiserson@tn.gov)

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

The Board is not aware of any.

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<b>Zip:</b>	37243-1531
<b>Phone:</b>	(615) 532-0545
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
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- (vi) ~~Particulate Matter (PM) emissions.~~ PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for ~~PM~~, PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits. Compliance with emissions limitations for ~~PM~~, PM<sub>2.5</sub>, and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this paragraph unless the applicable implementation plan required condensable particulate matter to be included.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	X				
Dr. J. Ronald Bailey	X				
Elaine Boyd	X				
Dr. Brian W.Christman				X	
Dr. Wayne T. Davis	X				
Dr. Mary English				X	
Stephen R. Gossett				X	
Mayor Tommy Green				X	
Dr. Shawn A. Hawkins	X				
Helen Hennon				X	
Richard M. Holland	X				
John Roberts	X				
Mayor Larry Waters	X				
Alicia M. Wilson				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 08/08/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/14/12

Rulemaking Hearing(s) Conducted on: (add more dates). 08/06/12

Date: \_\_\_\_\_

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

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

Title of Officer: Technical Secretary

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

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

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

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

\_\_\_\_\_  
Robert E. Cooper, Jr.  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

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

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

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

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TENNESSEE

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Not Applicable.

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Owners and operators of major sources of air pollution are affected by this rule. No comments were received.

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The fiscal Impact is minimal.

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

Lacey J. Hardin  
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Tennessee Department of Environment and Conservation  
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