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Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 11-10-16
Rule ID(s): 4863
File Date: 11/10/2016
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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. TCA Section 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	9 th Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1531
Phone:	615-532-0600
Email:	Malcolm.Butler@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
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
1200-03-09-.01	Construction Permits
1200-03-09-.02	Operating 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

Amendments

Part 3 of subparagraph (a) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by deleting the "I" in "1981" and replacing it with a "1" so that, as amended, the part shall read:

3. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this paragraph or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this paragraph who commences construction after June 3, 1981 without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

Part 46 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by deleting the word "Reserved" and replacing it as follows:

46. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of Chapter I of Title 40 of the Code of Federal Regulations, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:
 - (i) Greenhouse gases (GHGs), the air pollutant defined in part 86.1818-12(a) of Chapter I of Title 40 of the Code of Federal Regulations as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in subparts (iv) through (v) of this part.
 - (ii) For purposes of subparts (iii) through (v) of this part, the term tpy CO₂ equivalent emissions (CO₂e) shall represent an amount of GHGs emitted, and shall be computed as follows:
 - (I) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of part 98 of Chapter I of Title 40 of the Code of Federal Regulations - Global Warming Potentials.
 - (II) Sum the resultant value from item (ii)(I) of this part for each gas to compute a tpy CO₂e.
 - (iii) The term emissions increase as used in subparts (iv) through (v) of this part shall mean that both a significant emissions increase (as calculated using the procedures in part (c)4 of this paragraph) and a significant net emissions increase (as defined in parts (b)4 and (b)24 of this paragraph) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO₂e instead of applying the value in subpart (b)24(ii) of this paragraph.
 - (iv) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

- (I) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or
 - (II) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more; and,
- (v) Beginning July 1, 2011, in addition to the provisions in subpart (iv) of this part, the pollutant GHGs shall also be subject to regulation:
- (I) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or
 - (II) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

Subpart (iv) of part 47 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding the words "as defined in part (b)46 of this paragraph" after the first occurrence of the words "Federal Clean Air Act" and deleting the remainder of the subpart so that, as amended, the subpart shall read:

- (iv) Any pollutant that otherwise is subject to regulation under the Federal Clean Air Act as defined in part (b)46 of this paragraph.

Part 47 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding a new subpart "(v)" as follows:

- (v) Notwithstanding subparts (b)47(i) through (iv) of this paragraph, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in section 112 of the Federal Clean Air Act or added to the list pursuant to section 112(b)(2) of the Federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the Federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Federal Clean Air Act.

Subpart (ii) of part 14 of subparagraph (b) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by adding the words "subject to regulation" between the words "air pollutant" and "(including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator)" so that, as amended, the subpart shall read:

- (ii) A major stationary source of air pollutants, as defined in section 302 of the Federal Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Federal Act, unless the source belongs to one of the following categories of stationary sources:

Subparagraph (b) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by adding a new part "32" as follows:

32. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of Chapter I of Title 40 of the Code of Federal Regulations, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:
- (i) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂equivalent emissions.
 - (ii) The term tpy CO₂equivalent emissions (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e.

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
Tracy R. Carter	✓				Tracy R. Carter
Dr. Brian Christman	✓				B. Christman
Dr. Wayne T. Davis	✓				Wayne T. Davis
Dr. Mary English	✓				Mary R. English
Stephen R. Gossett	✓				Stephen R. Gossett
Honorable Mayor Tommy Green, Jr.				✓	
Dr. Shawn A. Hawkins	✓				Shawn A. Hawkins
Helen S. Hennon	✓				Helen S. Hennon
Richard M. Holland	✓				Richard M. Holland
John R. Roberts, Sr.	X				John R. Roberts
Alicia M. Wilson	✓				Alicia M. Wilson
Honorable Mayor Larry Waters	✓				Larry Waters

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control (board/commission/ other authority) on 10/13/2010 (mm/dd/yyyy), 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: 07/16/10

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



Date: October 18, 2010

Signature: Barry R. Stephens

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

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: October 18, 2010

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

11-9-10

Date

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Filed with the Department of State on: 11/10/2010

Effective on: 02/08/2011

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

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.

Comments: "The commenter request that a provision be incorporated in the rules which will state that these rules to regulate GHGs are not to be applicable or enforceable if the federal proposal to regulate such is withdrawn, limited, rejected, or stayed because of legal challenges or a court decision."

Response: An attorney in the Department's Office of General Counsel discussed this issue with the Tennessee Attorney General's Office, and was told that they would not approve the rule with this type of restriction. It is imperative that this rule become effective as soon as possible to avoid tremendous costs to the Department and the regulated community. Should any of these situations occur, the Department will take action to remove the proposed rule from the rulemaking process, or delete it from the regulations if the rule has been made final, if such action is approved by the Tennessee Air Pollution Control Board.

Comments: "The commenter would further request that a statement be added that the intent of these rules will not impose the current Title 5 or non-Title 5 fees on these emissions. Any fee schedule to be proposed and adopted by the Air Pollution Control Board under the provision of Administrative Fees will be based on the new level of work required to regulate these new emissions."

Response: As currently written, Chapter 1200-03-26 of the Tennessee Air Pollution Control Regulations does not allow the Division to charge construction permit or annual emissions fees for greenhouse gas emissions. Any revisions to Chapter 1200-03-26 to charge fees for these emissions will be reviewed by the Tennessee Air Pollution Control Board.

Comments: Rule 1200-03-09-.01(4)(b)24(ii) - "Significant definition: Adding "and part (b)46" to this definition has the effect of eliminating the 0 tpy (i.e. any emissions rate) mass basis threshold for GHGs. The definition of "significant" in 40 CFR 51.166 does not include this exemption for GHGs. The preamble to the Tailoring rule clearly explains that the current significance threshold for GHGs on a mass basis remains as "any emissions increase".

Response: In agreement with this comment, the proposed amendment to Rule 1200-03-09-.01(4)(b)24(ii) has been withdrawn.

Comments: 1200-03-09-.01(4)(b)46(v) - Typographical error: Please revise the provision listed above to read: (v) Beginning July 1, 2011, in addition to the provisions in subpart (iv) of this part, the pollutant GHGs shall also be subject to regulation.

Response: This has been revised.

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:

This amendment is required by the United States Environmental Protection Agency (USEPA). With this rule, it is expected that about fifteen small businesses will be required to obtain major source permits that do not already have these permits. Without promulgation of this rule, tens of thousands of small businesses in Tennessee could potentially be subject to costly and time-consuming permitting requirements.

- (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:

The Department cannot accurately estimate projected administrative costs as a result of this amendment at this time. Worst case costs should not exceed \$10,000 in most circumstances.

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

This rule will increase industry permitting costs in some sectors. This increase may ultimately result in higher costs for consumer goods.

- (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 proposed rule revision is required by the USEPA (Pages 31514-31608 of the Federal Register published June 3, 2010). All states and local programs must adopt these requirements or the USEPA will enforce them directly.

- (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.

Exemption of small businesses from these requirements at the state level will result in direct regulation of these businesses by the USEPA, which is typically more costly than regulation by the State of Tennessee.

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)

This amendment will impact local governments if they operate certain types of sources. These sources may have to receive major source permits.

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;

This proposed rule is required by the USEPA. It contains provisions requiring large sources of greenhouse gas emissions to be permitted by the Division of Air Pollution Control. Under this rule, sources with the potential to emit 100,000 tons per year of greenhouse gases (measured as carbon dioxide equivalents) will be subject to permitting as Title V sources. Existing sources in this category must determine the applicability of the Prevention of Significant Deterioration (PSD) permitting requirements if they seek to modify a source of greenhouse gas emissions, and new sources in this category will be required to obtain PSD permits.

- (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 contains the requirements for states that operate their own air pollution control programs. Specifically, 40 CFR 51.166 and 40 CFR 70 contain the requirements for Title V permits and Prevention of Significant Deterioration permits for major sources of air pollution.

- (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;

Commercial, Industrial and institutional sources of air pollution (greenhouse gases) are most affected by this rule. These entities urge adoption of this rule if it is upheld at the federal level. Without this rule, they will be required to obtain Title V and PSD permits at very low levels of emissions of greenhouse gases (100 or 250 tons of greenhouse gases per year).

- (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 Department anticipates an increase in expenditures. The amount cannot be estimated at this time.

- (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
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
Department of Environment and conservation
20th Floor L & C Tower
Nashville, Tennessee 37243-1548
(615) 532-0131
Alan.Leiserson@tn.gov

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

The Department is not aware of any.

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Chapter Number	Chapter Title
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Chapter 1200-03-09
Construction and Operating Permits

Amendments

Part 3 of subparagraph (a) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by deleting the "1" in "1981" and replacing it with a "1" so that, as amended, the part shall read:

3. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this paragraph or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this paragraph who commences construction after June 3, 1981 without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

Part 46 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by deleting the word "Reserved" and replacing it as follows:

46. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of Chapter I of Title 40 of the Code of Federal Regulations, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:
 - (i) Greenhouse gases (GHGs), the air pollutant defined in part 86.1818–12(a) of Chapter I of Title 40 of the Code of Federal Regulations as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in subparts (iv) through (v) of this part.
 - (ii) For purposes of subparts (iii) through (v) of this part, the term tpy CO₂ equivalent emissions (CO₂e) shall represent an amount of GHGs emitted, and shall be computed as follows:
 - (I) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of part 98 of Chapter I of Title 40 of the Code of Federal Regulations - Global Warming Potentials.
 - (II) Sum the resultant value from item (ii)(I) of this part for each gas to compute a tpy CO₂e.
 - (iii) The term emissions increase as used in subparts (iv) through (v) of this part shall mean that both a significant emissions increase (as calculated using the procedures in part (c)4 of this paragraph) and a significant net emissions increase (as defined in parts (b)4 and (b)24 of this paragraph) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO₂e instead of applying the value in subpart (b)24(ii) of this paragraph.
 - (iv) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

- (I) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or
 - (II) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more; and,
- (v) Beginning July 1, 2011, in addition to the provisions in subpart (iv) of this part, the pollutant GHGs shall also be subject to regulation:
- (I) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or
 - (II) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

Subpart (iv) of part 47 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding the words "as defined in part (b)46 of this paragraph" after the first occurrence of the words "Federal Clean Air Act" and deleting the remainder of the subpart so that, as amended, the subpart shall read:

- (iv) Any pollutant that otherwise is subject to regulation under the Federal Clean Air Act as defined in part (b)46 of this paragraph.

Part 47 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding a new subpart "(v)" as follows:

- (v) Notwithstanding subparts (b)47(i) through (iv) of this paragraph, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in section 112 of the Federal Clean Air Act or added to the list pursuant to section 112(b)(2) of the Federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the Federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Federal Clean Air Act.

Subpart (ii) of part 14 of subparagraph (b) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by adding the words "subject to regulation" between the words "air pollutant" and "(including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator)" so that, as amended, the subpart shall read:

- (ii) A major stationary source of air pollutants, as defined in section 302 of the Federal Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Federal Act, unless the source belongs to one of the following categories of stationary sources:

Subparagraph (b) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by adding a new part "32" as follows:

32. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of Chapter I of Title 40 of the Code of Federal Regulations, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:
- (i) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂equivalent emissions.
 - (ii) The term tpy CO₂equivalent emissions (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e.

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