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| | |
|------------------|------------|
| Sequence Number: | 08-20-22 |
| Rule ID(s): | 9746 |
| File Date: | 8/26/2022 |
| Effective Date: | 11/24/2022 |

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: | Air Pollution Control Board |
| Division: | Air Pollution Control |
| Contact Person: | Travis Blake |
| Address: | William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15 th Floor Nashville, Tennessee |
| Zip: | 37243 |
| Phone: | (615) 532-0617 |
| Email: | travis.blake@tn.gov |

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row.)

| Chapter Number | Chapter Title |
|----------------|--|
| 1200-03-27 | Nitrogen Oxides |
| Rule Number | Rule Title |
| 1200-03-27-.12 | NO _x SIP Call Requirements for Stationary Boilers and Combustion Turbines |

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1200-03-27
Nitrogen Oxides

Amendments

Paragraph (11) of Rule 1200-03-27-.12 NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines is amended by deleting it in its entirety and substituting instead the following:

(11) Monitoring and Reporting

(a) Owners, operators, and Responsible Officials of affected units shall implement a monitoring and reporting system sufficient to attribute ozone season NO_x mass emissions to each unit. The applicable monitoring, recordkeeping, and reporting requirements set out in 40 CFR Part 75 Subpart H, shall be the required monitoring method for all affected units unless and until an approved alternative monitoring method is incorporated into a federally enforceable construction or operating permit issued for the affected unit, at which time that approved monitoring method shall be the required monitoring method for the unit. NO_x mass emissions measurements recorded and reported in accordance with an approved monitoring method implemented pursuant to this subparagraph shall be used to determine compliance with the NO_x budgets allocated in accordance with paragraph (6) of this rule. For sources that monitor in accordance with 40 CFR Part 75 Subpart H, or a monitoring alternative for which EPA authorizes direct reporting to EPA pursuant to 40 CFR Part 75, the Responsible Official shall be authorized as provided in, and shall certify each submission and may delegate the Responsible Official's authority in accordance with, 40 CFR 72 subpart B. The approved alternative monitoring methods are:

1. 40 CFR 60 Subpart D to determine NO_x emission rate in lb/MMBtu, multiplied by measured fuel consumption in MMBtu to determine NO_x mass emissions;
2. 40 CFR 60 Subpart Db to determine NO_x emission rate in lb/MMBtu, multiplied by measured fuel consumption in MMBtu to determine NO_x mass emissions; or
3. An alternative monitoring method approved by EPA in a revision to the State Implementation Plan. Alternative methodologies must address monitoring, recordkeeping, and reporting procedures, including direct reporting of NO_x emissions to the Technical Secretary for each control period.

(b) Reserved.

(c) An application submitted to the Technical Secretary for a construction or operating permit requesting to use an alternative monitoring method listed in part (a)1 or (a)2 of this paragraph shall include a description of the overall monitoring program for conducting continuous in-stack monitoring for NO_x mass emissions. To be approvable, the program must address the following:

1. Specifications demonstrating that the proposed monitoring instruments will meet the requirements of 40 CFR 60, Appendix B;
2. Specifications for the proposed fuel flow meter and a discussion of how the fuel Btu content will be determined;
3. Proposed location(s) of the monitoring instruments in the effluent gas stream;
4. Proposed procedures for conducting performance specification testing of the monitoring instruments in units of the applicable standard;
5. Proposed ongoing monitoring instrument quality assurance procedures;

6. Procedures for addressing missing data; and
 7. Proposed format for the reporting of data.
- (d) An affected facility or affected unit monitoring in accordance with parts (a)1, (a)2, or (a)3 of this paragraph must directly report NO_x emissions to the Technical Secretary for each control period and may not report directly to EPA under 40 CFR Part 75 unless EPA expressly authorizes such reporting when approving a source-specific SIP revision.
 - (e) For each control period, the approved monitoring method in effect at midnight on the first day (May 1) of a control period shall be used for the entire control period.
 - (f) No later than January 31 following the end of each control period, the Technical Secretary will report to the Administrator the total NO_x mass emissions (in tons) from affected units subject to this rule and certify compliance with the NO_x budget established by paragraph (5) of this rule and the allowances allocated to each affected unit as specified in paragraph (6) of this rule.
 - (g) References to the Code of Federal Regulations in this paragraph (11) are to be regulations as published in the July 1, 2021, edition of the Code of Federal Regulations.

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) |
|--|------------|-----------|----------------|---------------|------------------------------------|
| Dr. Ronné Adkins Commissioner's Designee, Dept. of Environment and Conservation | X | | | | |
| Dr. John Benitez Licensed Physician with experience in health effects of air pollutants | X | | | | |
| Dr. Chunrong Jia Environmental Interests | X | | | | |
| Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation | X | | | | |
| Richard Holland Working for Industry with technical experience | X | | | | |
| Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests | X | | | | |
| Ken Moore Working in Municipal Government | X | | | | |
| Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control | X | | | | |
| Mike Haverstick Working in management in Private Manufacturing | X | | | | |
| Stephen Moore Working for Industry with technical experience | X | | | | |
| Amy Spann, PE Registered Professional Engineer | X | | | | |
| Greer Tidwell, Jr. Conservation Interest | | | X | | |
| Larry Waters County Mayor | X | | | | |
| Jimmy West 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 01/12/2022 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: 08/24/2021

Rulemaking Hearing(s) Conducted on: (add more dates). 11/02/2021

Date: January 13, 2022

Signature: *Michelle W. Owenby*

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-27

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
Herbert H. Slatery III
Attorney General and Reporter
8/26/2022
Date

Department of State Use Only

Filed with the Department of State on: 8/26/2022

Effective on: 11/24/2022

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED

AUG 26 2022

Secretary of State
Division of Publications

Public Hearing Comments

The public hearing for this permit was held on November 2, 2021. The following comments were received during the public comment period.

The following comments were submitted by U. S. EPA:

1. Comment: TAPCR 1200-03-27-.12(11) Proposed SIP Amendment – Pursuant to 40 CFR 51.122(c)(1)(i), Tennessee has an obligation to report ozone season NO_x mass emissions to the EPA. When sources are reporting under [40 CFR] Part 75 monitoring and reporting, states do not have to report emissions data to the EPA because the sources are doing so directly. However, if [40 CFR] Part 75 monitoring and reporting is replaced with an alternative monitoring methodology, the State should report to the EPA the total ozone season NO_x mass emissions data and verify compliance with the NO_x budget rather than the source.

Therefore, the EPA requests Tennessee establish either a SIP provision at 1200-03-27-.12(11)(d) or a commitment in the final SIP revision package that the Technical Secretary shall report to the EPA by January 31st (following the end of the control period), the total NO_x mass emissions (in tons) from affected units subject to 1200-03-27-.12 and verify compliance with the NO_x budget at 1200-03-27-.12(5) and allowances allocated to each affected unit specified at 1200-03-27-.12(6). The emission report should be in tabular form and include a certification statement of compliance with the state NO_x Budget. Alternatively, the EPA Region is available for further discussion on an alternative reporting consideration.

Response: The Board added a subparagraph (1200-03-27-.12(11)(f)) to the final rule, which addresses EPA's comment.

2. Comment: The EPA recommends Tennessee include an "or" at the end of Rule 1200-03-27-.12(11)(a)2.

Response: The Board updated the rule to make the recommended correction.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (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 Air Pollution Control Board (“Board”) anticipates that no small businesses will bear the cost of, or directly benefit from, these amended rules. None of the existing facilities subject to the amended rules are small businesses. Because this rule affects large emission sources in capital intensive industries (chemical plants, paper mills, and similar industries), the Board believes that any new source subject to this rulemaking would not be owned or operated by 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.

With respect to small businesses, the Board anticipates that there would be no 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.

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

This rulemaking applies to large industrial sources only and is not expected to have any economic impact on small businesses.

- (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.

This rulemaking is less burdensome than the existing rule. If a specific facility does not wish to comply with the proposed rule change, it may continue to comply with their existing requirements by monitoring NO_x emissions in accordance with 40 CFR Part 75 (as published in the July 1, 2021, edition of the Code of Federal Regulations). This rulemaking is not projected to impact small businesses.

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

At least one state (South Carolina) has adopted similar provisions (S.C. Code Regs. 61-62.96). South Carolina’s rule contains similar provisions to this rulemaking (use of 40 CFR Part 60 as alternative monitoring provisions) but does not include a general provision that allows other alternatives to be adopted in the State Implementation Plan.

- (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.

The proposed rule is not projected to impact small businesses because the NO_x SIP Call affects large emission sources in capital intensive industries.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits for the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments." The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The Board anticipates that these amended rules will not result in an increase in expenditures or a decrease in revenues for 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 rulemaking amends Rule 1200-03-27-.12(11) to include additional monitoring methods for nitrogen oxides (NO_x), including the current versions of 40 CFR 60 Subpart D, 40 CFR 60 Subpart Db, and a source-specific alternative approved as a revision to the State Implementation Plan (SIP). Currently, all facilities subject to this rule are required to monitor NO_x emissions using the methods specified in 40 CFR Part 75, and the changes allow facilities to monitor NO_x emissions at a lower cost. This rule amendment also removes the petition requirements of Rule 1200-03-27-.12(11)(b).

- (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;

The rulemaking is not required in order to continue to comply with current state or federal law. 40 CFR § 51.121 (NO_x SIP Call) requires SIPs to prohibit sources and other activities from emitting NO_x in amounts that will contribute significantly to nonattainment in one or more other states with respect to the one-hour ozone NAAQS. The federal regulation also specifies control measures for states that elect to meet those requirements by controlling emissions from boilers, combustion turbines, or combined cycle units with a maximum design heat input greater than 250 MMBtu/hr. Prior to March 8, 2019, the federal regulation included a requirement to monitor NO_x emissions in accordance with 40 CFR Part 75. On March 8, 2019, EPA amended the NO_x SIP Call regulation to allow NO_x emissions monitoring using alternatives to 40 CFR Part 75.

- (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;

Persons, organizations, corporations, or governmental entities most directly affected by this rulemaking are fossil fuel-fired boilers and combustion turbines which do not produce electricity for retail sale, including the following facilities:

- Packaging Corporation of America
- Tate & Lyle, Loudon
- Resolute FP, US, Inc.
- Eastman Chemical Company
- The Valero Refining Company - Tennessee, LLC
- Tennessee Valley Authority, Cumberland Fossil Plant (startup boilers only)
- Tennessee Valley Authority, Johnsonville Cogeneration (auxiliary boilers only)

The Division of Air Pollution Control has not received any indication from these persons that they object to this rulemaking.

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

The Board is not aware of any opinions of the Attorney General and Reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule

- (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;

This rulemaking is unlikely to lead to an increase or decrease in state and local revenues and expenditures.

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

Jimmy Johnston
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
james.johnston@tn.gov

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

Horace Tipton
Legislative Liaison
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) 253-5339
Horace.Tipton@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The action proposed is the adoption of amendments to Rule 1200-03-27-.12 regarding the NO_x SIP Call to add flexibility to the monitoring requirements of the existing rule. These amendments are implemented pursuant to Tennessee Code Annotated, Title 68, Chapter 201 and the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

This rulemaking is believed to be the least-cost method to monitor NO_x emissions from fossil fuel-fired boilers and combustion turbines.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

This rulemaking revises the NO_x monitoring requirements for large boilers and combustion turbines. The annual savings associated with this amendment are estimated to be between \$21,500 and \$60,000 for each affected boiler, based on discussions with two facilities subject to the rule. Based on this comparison, the benefits of moving forward with this rulemaking outweigh the costs.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

This action represents the most efficient allocation of public and private resources because the change will provide savings to the regulated community with minimal additional cost to the Division of Air Pollution Control.

- (5) A determination of the effect of the action on competition.

This rulemaking would have minimal or no impact on competition in the marketplace. For large industrial operations, the barriers to entry are substantial for reasons that are unrelated to this rulemaking (e.g., high capital and operating costs).

(6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

The cost of living in the geographical area(s) in which the action would occur will not be affected.

(7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

It is not anticipated that the action will affect employment.

(8) The source of revenue to be used for the action.

The action can be accommodated with existing resources.

(9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

This action will allow sources subject to the NO_x SIP Call to monitor NO_x emissions using alternative monitoring methods that may be implemented at a lower cost compared to the existing rules. The facilities listed below will directly or indirectly benefit from this action by saving on NO_x monitoring costs.

- Packaging Corporation of America
- Tate & Lyle, Loudon
- Resolute FP, US, Inc.
- Eastman Chemical Company
- The Valero Refining Company - Tennessee, LLC
- Tennessee Valley Authority, Cumberland Fossil Plant (startup boilers only)
- Tennessee Valley Authority, Johnsonville Cogeneration (auxiliary boilers only)
- Domtar Paper Company, LLC

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| | |
|---------------------------------|--|
| Agency/Board/Commission: | Air Pollution Control Board |
| Division: | Air Pollution Control |
| Contact Person: | Travis Blake |
| Address: | William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15 th Floor Nashville, Tennessee |
| Zip: | 37243 |
| Phone: | (615) 532-0617 |
| Email: | travis.blake@tn.gov |

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

| Chapter Number | Chapter Title |
|----------------|--|
| 1200-03-27 | Nitrogen Oxides |
| Rule Number | Rule Title |
| 1200-03-27-.12 | NO _x SIP Call Requirements for Stationary Boilers and Combustion Turbines |

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1200-03-27
Nitrogen Oxides

Amendments

Paragraph (11) of Rule 1200-03-27-.12 NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines is amended by deleting it in its entirety and substituting instead the following:

(11) Monitoring and Reporting

- (a) ~~Except as otherwise allowed in subparagraph (b) of this paragraph, the owners and operators, and to the extent applicable, the Owners, operators, and Responsible Official, Officials of an affected unit units shall comply with the applicable monitoring, recordkeeping, and reporting requirements provided in 40 CFR part 75 for each control period implement a monitoring and reporting system sufficient to attribute ozone season NO_x mass emissions to each unit. The applicable monitoring, recordkeeping, and reporting requirements set out in 40 CFR Part 75 Subpart H, shall be the required monitoring method for all affected units unless and until an approved alternative monitoring method is incorporated into a federally enforceable construction or operating permit issued for the affected unit, at which time that approved monitoring method shall be the required monitoring method for the unit. NO_x mass emissions measurements recorded and reported in accordance with an approved monitoring method implemented pursuant to this subparagraph shall be used to determine compliance with the NO_x budgets allocated in accordance with paragraph (6) of this rule. The For sources that monitor in accordance with 40 CFR Part 75 Subpart H, or a monitoring alternative for which EPA authorizes direct reporting to EPA pursuant to 40 CFR Part 75, the Responsible Official shall be authorized as provided in, and shall certify each submission and may delegate his or her the Responsible Official's authority in accordance with, 40 CFR 72 subpart B. The approved alternative monitoring methods are:~~
- ~~1. 40 CFR 60 Subpart D to determine NO_x emission rate in lb/MMBtu, multiplied by measured fuel consumption in MMBtu to determine NO_x mass emissions;~~
 - ~~2. 40 CFR 60 Subpart Db to determine NO_x emission rate in lb/MMBtu, multiplied by measured fuel consumption in MMBtu to determine NO_x mass emissions; or~~
 - ~~3. An alternative monitoring method approved by EPA in a revision to the State Implementation Plan. Alternative methodologies must address monitoring, recordkeeping, and reporting procedures, including direct reporting of NO_x emissions to the Technical Secretary for each control period.~~
- (b) ~~Reserved. Petitions. The Responsible Official of an affected unit may submit a petition to the Technical Secretary and the Administrator requesting approval of an alternative to any requirement of this paragraph. The application of any alternative to any requirement of this paragraph is granted only to the extent that the petition is approved in writing by both the Technical Secretary and the Administrator.~~
- (c) ~~An application submitted to the Technical Secretary for a construction or operating permit requesting to use an alternative monitoring method listed in part (a)1 or (a)2 of this paragraph shall include a program for conducting continuous in-stack monitoring for NO_x mass emissions. To be approvable, the program must address the following:~~
- ~~1. A description of the overall monitoring program;~~
 - ~~2. Specifications demonstrating that the proposed monitoring instruments will meet the requirements of 40 CFR 60, Appendix B;~~

3. Specifications for the proposed fuel flow meter and a discussion of how the fuel Btu content will be determined;
 4. Proposed location(s) of the monitoring instruments in the effluent gas stream;
 5. Proposed procedures for conducting performance specification testing of the monitoring instruments in units of the applicable standard;
 6. Proposed ongoing monitoring instrument quality assurance procedures;
 7. Procedures for addressing missing data; and
 8. Proposed format for the reporting of data.
- (d) An affected facility or affected unit monitoring in accordance with parts (a)1, (a)2, or (a)3 of this paragraph must directly report NO_x emissions to the Technical Secretary for each control period and may not report directly to EPA under 40 CFR Part 75 unless EPA expressly authorizes such reporting when approving a source-specific SIP revision.
- (e) For each control period, the approved monitoring method in effect at midnight on the first day (May 1) of a control period shall be used for the entire control period.
- (f) No later than January 31 following the end of each control period, the Technical Secretary will report to the Administrator the total NO_x mass emissions (in tons) from affected units subject to this rule and certify compliance with the NO_x budget established by paragraph (5) of this rule and the allowances allocated to each affected unit as specified in paragraph (6) of this rule.
- (g) References to the Code of Federal Regulations in this paragraph (11) are to be regulations as published in the July 1, 2021, edition of the Code of Federal Regulations.

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) |
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| Dr. Ronné Adkins Commissioner's Designee, Dept. of Environment and Conservation | X | | | | |
| Dr. John Benitez Licensed Physician with experience in health effects of air pollutants | X | | | | |
| Dr. Chunrong Jia Environmental Interests | X | | | | |
| Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation | X | | | | |
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| Ken Moore Working in Municipal Government | X | | | | |
| Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control | X | | | | |
| Mike Haverstick Working in management in Private Manufacturing | X | | | | |
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| Greer Tidwell, Jr. Conservation Interest | | | X | | |
| Larry Waters County Mayor | X | | | | |
| Jimmy West 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 01/12/2022 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

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Rulemaking Hearing(s) Conducted on: (add more dates). 11/02/2021

Date: January 13, 2022

Signature: _____

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-27

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

The public hearing for this permit was held on November 2, 2021. The following comments were received during the public comment period.

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1. Comment: TAPCR 1200-03-27-.12(11) Proposed SIP Amendment – Pursuant to 40 CFR 51.122(c)(1)(i), Tennessee has an obligation to report ozone season NO_x mass emissions to the EPA. When sources are reporting under [40 CFR] Part 75 monitoring and reporting, states do not have to report emissions data to the EPA because the sources are doing so directly. However, if [40 CFR] Part 75 monitoring and reporting is replaced with an alternative monitoring methodology, the State should report to the EPA the total ozone season NO_x mass emissions data and verify compliance with the NO_x budget rather than the source.

Therefore, the EPA requests Tennessee establish either a SIP provision at 1200-03-27-.12(11)(d) or a commitment in the final SIP revision package that the Technical Secretary shall report to the EPA by January 31st (following the end of the control period), the total NO_x mass emissions (in tons) from affected units subject to 1200-03-27-.12 and verify compliance with the NO_x budget at 1200-03-27-.12(5) and allowances allocated to each affected unit specified at 1200-03-27-.12(6). The emission report should be in tabular form and include a certification statement of compliance with the state NO_x Budget. Alternatively, the EPA Region is available for further discussion on an alternative reporting consideration.

Response: The Board added a subparagraph (1200-03-27-.12(11)(f)) to the final rule, which addresses EPA's comment.

2. Comment: The EPA recommends Tennessee include an "or" at the end of Rule 1200-03-27-.12(11)(a)2.

Response: The Board updated the rule to make the recommended correction.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (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 Air Pollution Control Board (“Board”) anticipates that no small businesses will bear the cost of, or directly benefit from, these amended rules. None of the existing facilities subject to the amended rules are small businesses. Because this rule affects large emission sources in capital intensive industries (chemical plants, paper mills, and similar industries), the Board believes that any new source subject to this rulemaking would not be owned or operated by 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.

With respect to small businesses, the Board anticipates that there would be no 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.

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

This rulemaking applies to large industrial sources only and is not expected to have any economic impact on small businesses.

- (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.

This rulemaking is less burdensome than the existing rule. If a specific facility does not wish to comply with the proposed rule change, it may continue to comply with their existing requirements by monitoring NO_x emissions in accordance with 40 CFR Part 75 (as published in the July 1, 2021, edition of the Code of Federal Regulations). This rulemaking is not projected to impact small businesses.

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

At least one state (South Carolina) has adopted similar provisions (S.C. Code Regs. 61-62.96). South Carolina’s rule contains similar provisions to this rulemaking (use of 40 CFR Part 60 as alternative monitoring provisions) but does not include a general provision that allows other alternatives to be adopted in the State Implementation Plan.

- (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.

The proposed rule is not projected to impact small businesses because the NO_x SIP Call affects large emission sources in capital intensive industries.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits for the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments." The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The Board anticipates that these amended rules will not result in an increase in expenditures or a decrease in revenues for 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 rulemaking amends Rule 1200-03-27-.12(11) to include additional monitoring methods for nitrogen oxides (NO_x), including the current versions of 40 CFR 60 Subpart D, 40 CFR 60 Subpart Db, and a source-specific alternative approved as a revision to the State Implementation Plan (SIP). Currently, all facilities subject to this rule are required to monitor NO_x emissions using the methods specified in 40 CFR Part 75, and the changes allow facilities to monitor NO_x emissions at a lower cost. This rule amendment also removes the petition requirements of Rule 1200-03-27-.12(11)(b).

- (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;

The rulemaking is not required in order to continue to comply with current state or federal law. 40 CFR § 51.121 (NO_x SIP Call) requires SIPs to prohibit sources and other activities from emitting NO_x in amounts that will contribute significantly to nonattainment in one or more other states with respect to the one-hour ozone NAAQS. The federal regulation also specifies control measures for states that elect to meet those requirements by controlling emissions from boilers, combustion turbines, or combined cycle units with a maximum design heat input greater than 250 MMBtu/hr. Prior to March 8, 2019, the federal regulation included a requirement to monitor NO_x emissions in accordance with 40 CFR Part 75. On March 8, 2019, EPA amended the NO_x SIP Call regulation to allow NO_x emissions monitoring using alternatives to 40 CFR Part 75.

- (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;

Persons, organizations, corporations, or governmental entities most directly affected by this rulemaking are fossil fuel-fired boilers and combustion turbines which do not produce electricity for retail sale, including the following facilities:

- Packaging Corporation of America
- Tate & Lyle, Loudon
- Resolute FP, US, Inc.
- Eastman Chemical Company
- The Valero Refining Company - Tennessee, LLC
- Tennessee Valley Authority, Cumberland Fossil Plant (startup boilers only)
- Tennessee Valley Authority, Johnsonville Cogeneration (auxiliary boilers only)

The Division of Air Pollution Control has not received any indication from these persons that they object to this rulemaking.

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

The Board is not aware of any opinions of the Attorney General and Reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule

- (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;

This rulemaking is unlikely to lead to an increase or decrease in state and local revenues and expenditures.

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

Jimmy Johnston
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
james.johnston@tn.gov

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

Horace Tipton
Legislative Liaison
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) 253-5339
Horace.Tipton@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The action proposed is the adoption of amendments to Rule 1200-03-27-.12 regarding the NO_x SIP Call to add flexibility to the monitoring requirements of the existing rule. These amendments are implemented pursuant to Tennessee Code Annotated, Title 68, Chapter 201 and the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

This rulemaking is believed to be the least-cost method to monitor NO_x emissions from fossil fuel-fired boilers and combustion turbines.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

This rulemaking revises the NO_x monitoring requirements for large boilers and combustion turbines. The annual savings associated with this amendment are estimated to be between \$21,500 and \$60,000 for each affected boiler, based on discussions with two facilities subject to the rule. Based on this comparison, the benefits of moving forward with this rulemaking outweigh the costs.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

This action represents the most efficient allocation of public and private resources because the change will provide savings to the regulated community with minimal additional cost to the Division of Air Pollution Control.

- (5) A determination of the effect of the action on competition.

This rulemaking would have minimal or no impact on competition in the marketplace. For large industrial operations, the barriers to entry are substantial for reasons that are unrelated to this rulemaking (e.g., high capital and operating costs).

(6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

The cost of living in the geographical area(s) in which the action would occur will not be affected.

(7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

It is not anticipated that the action will affect employment.

(8) The source of revenue to be used for the action.

The action can be accommodated with existing resources.

(9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

This action will allow sources subject to the NO_x SIP Call to monitor NO_x emissions using alternative monitoring methods that may be implemented at a lower cost compared to the existing rules. The facilities listed below will directly or indirectly benefit from this action by saving on NO_x monitoring costs.

- Packaging Corporation of America
- Tate & Lyle, Loudon
- Resolute FP, US, Inc.
- Eastman Chemical Company
- The Valero Refining Company - Tennessee, LLC
- Tennessee Valley Authority, Cumberland Fossil Plant (startup boilers only)
- Tennessee Valley Authority, Johnsonville Cogeneration (auxiliary boilers only)
- Domtar Paper Company, LLC