

**Title 8. Environmental Law**

**Chapter I. Arkansas Pollution Control and Ecology Commission, Department of Energy and Environment**

**Subchapter D. Air Quality**

**Part 41. Rules of the Arkansas Plan of Implementation for Air Pollution Control**

**Subpart 1. Title, Intent, and Purpose — Definitions**

**8 CAR § 41-101. Title.**

The following part, adopted in accordance with the provisions of Subchapter 2 of the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-201 et seq., shall be known as “Rules of the Arkansas Plan of Implementation for Air Pollution Control”, hereinafter referred to as “8 CAR pt. 41”.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-102. Applicability.**

This part is applicable to any stationary source that has the potential to emit any federally regulated air pollutant.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-103. Intent and construction.**

(a)(1) The purpose and intent of this part, as amended, is to provide a clear delineation of those rules that are promulgated by the Arkansas Pollution Control and Ecology Commission in satisfaction of certain requirements of the Clean Air Act, and the federal regulations stemming therefrom.

(2) Federal programs that the Division of Environmental Quality is responsible for administering include, but are not limited to:

(A) The attainment and maintenance of the national ambient air quality standards (40 C.F.R. pt. 50);

(B) Certain delegated subparts of the new source performance standards (40 C.F.R. pt. 60);

(C) Provisions designed for the prevention of significant deterioration (40 C.F.R. § 52.21);

(D) Minor new source review as described in Subpart 3 of this part (40 C.F.R. pt. 51); and

(E) Certain delegated subparts of the national emission standards for hazardous air pollutants (40 C.F.R. pts. 61 and 63).

(3) This subsection shall not be construed as limiting the future delegation of federal programs to the division for administration.

(b)(1) This part, as amended, is further intended to limit the federal enforceability of its requirements to only those mandated by federal law.

(2) This part, as amended, is also intended to facilitate a permit system for

stationary sources within the state, which permit shall provide which provisions are federally enforceable and which provisions are state enforceable.

(c)(1) This part, as amended, presumes a single-permit system, encompassing both federal and state requirements.

(2) A regulated facility that is subject to permitting under this part shall be required to apply for and comply with only one (1) permit, even though that permit may contain conditions derived from the federal mandates contained in this part, as well as conditions predicated solely on state law.

(3) This part, through construction or implication, shall not support the conclusion that all conditions of a permit have become federally enforceable because the permit contains provisions derived from this part.

(4) Permits or permit conditions issued under the authority of state law, or enforcement issues arising out of state law, shall not be federally enforceable.

(d)(1) To the extent consistent with state law and efficient protection of the state's air quality, this part shall be construed in a manner that promotes:

(A) A streamlined permitting process;

(B) Mitigation of regulatory costs; and

(C) Flexibility in maintaining compliance with federal mandates.

(2) Any applicable documents (e.g., "White Papers", regulatory preambles, or interpretive memoranda) issued by the United States Environmental Protection Agency that are consistent with this part and the legislative intent of state laws governing air pollution control (Arkansas Code § 8-4-301 et seq.) are aids for construing the requirements of this part.

(3) Any procedure applicable to major sources that promotes operational flexibility are presumed to be authorized by this part unless manifestly inconsistent with its substantive terms.

(e) Nothing in this part shall be construed as curtailing the division's or commission's authority under state law.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-104. Severability.**

(a) If any provision of this part is determined to be invalid, such invalidity shall not affect other provisions of this part.

(b) If federal legislation or a federal court stays, invalidates, delays the effective date of, or otherwise renders unenforceable, in whole or in part, the United States Environmental Protection Agency's regulation of greenhouse gases, then the provisions of this part concerning greenhouse gases based thereon shall be stayed and shall not be enforceable until such time as the Arkansas Pollution Control and Ecology Commission makes a final decision on whether or not to revise this part due to the federal legislation or federal court order.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-105. Incorporation by reference.**

Unless a contrary intent is expressly stated, any adoption or descriptive reference to a

law or federal regulation shall be construed as though the reference law were set forth in this part line-by-line, word-for-word as it existed on the effective date of this part.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-106. Definitions.**

(a) Terms and phrases used in this part that are not explicitly defined herein shall have the same meaning as those terms that are used in the Clean Air Act.

(b) For purposes of this part:

(1) "Actual emissions" means the quantity of federally regulated air pollutants emitted from a stationary source considering emissions control equipment and actual hours of source operation or amount of material processed;

(2) "Clean Air Act" means the federal Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.;

(3)(A) "CO<sub>2</sub> equivalent emissions" means an amount of greenhouse gases emitted, and shall be computed by multiplying the mass amount of emissions in tons per year, for each of the six (6) greenhouse gases in the pollutant greenhouse gases, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 C.F.R. pt. 98, "Global Warming Potentials", and summing the resultant value for each to compute a tons-per-year of CO<sub>2</sub> equivalent emissions.

(B) Table A-1 to Subpart A of 40 C.F.R. pt. 98 is incorporated by reference as of January 1, 2015;

(4) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(5) "Construction" means fabrication, erection, or installation of equipment (see also 40 C.F.R. § 60.2, 40 C.F.R. § 51.165, and 40 C.F.R. § 52.21);

(6) "Control apparatus" means any device that prevents, controls, detects, or records the emission of any federally regulated air pollutants;

(7)(A) "Division" means the Division of Environmental Quality, or its successor.

(B) When reference is made in this part to actions taken by or with reference to the Division of Environmental Quality, the reference is to the staff of the Division of Environmental Quality acting at the direction of the Director of the Division of Environmental Quality;

(8) "Director" means the Director of the Division of Environmental Quality, or its successor, acting directly or through the staff of the Division of Environmental Quality;

(9) "Emission limitation" and "emission standard" mean a requirement established by the Division of Environmental Quality or the Administrator of the United States Environmental Protection Agency that limits the emissions of federally regulated air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction;

(10) "Emission unit" means any article, machine, equipment, operation, or contrivance that emits or has the potential to emit any federally regulated air pollutant;

(11) "EPA" means the United States Environmental Protection Agency;

(12) "Equipment" means any device, except equipment used for any mode of vehicular transportation, capable of causing the emission of a federally regulated air pollutant into the open air, and any stack, conduit, flue, duct, vent, or similar device connected or attached to or serving the equipment;

(13) "Federally regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compounds;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Except as provided in subdivision (b)(13)(E) of this section, any pollutant that is subject to any standard promulgated under the Clean Air Act, as of the effective date of this part;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act, as of the effective date of this part; and

(E) Greenhouse gases, except that greenhouse gases shall not be a federally regulated air pollutant unless the greenhouse gas emissions are:

(i) From a stationary source emitting or having the potential to emit seventy-five thousand (75,000) tons per year or more of CO<sub>2</sub> equivalent emissions; and

(ii) Regulated under Subpart 8 of this part;

(14)(A) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(B) Those emissions are those that, according to customary and good engineering practice, considering technological and economic feasibility, could not pass through a stack, chimney, vent, or other functionally equivalent opening, except that the Division of Environmental Quality will utilize the definition of fugitive emissions for those industries for which an approved United States Environmental Protection Agency definition exists under federal law or regulation and that are meeting that law or regulation;

(15) "Greenhouse gases" means the aggregate group of six (6) greenhouse gases:

(A) Carbon dioxide;

(B) Nitrous oxide;

(C) Methane;

(D) Hydrofluorocarbons;

(E) Perfluorocarbons; and

(F) Sulfur hexafluoride;

(16) "Hazardous air pollutant" means any air pollutant listed pursuant to § 112 of the Clean Air Act as of the effective date of this part;

(17) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the emission rate of any federally regulated air pollutant over permitted rates or that results in the emission of a federally regulated air pollutant not previously emitted, except that:

(A) Routine maintenance, repair, and replacement shall not be considered a physical change; and

(B) The following shall not be considered a change in the method of operation:

(i) Any change in the production rate, if such change does not

exceed the permitted operating capacity of the source;

(ii) Any change in the hours of operation, as long as it does not violate applicable air permit conditions; or

(iii) The use of an alternate fuel or raw material, as long as it does not violate applicable air permit conditions.

(C) De minimis changes, as defined in 8 CAR § 41-307(c), and changes in ownership shall not be considered;

(18) "National ambient air quality standards" means those ambient air quality standards promulgated by the United States Environmental Protection Agency in 40 C.F.R. pt. 50 as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on October 26, 2015 (80 FR 65292), as set forth in Appendix B of this part;

(19) "National ambient air quality standards state implementation plan", as defined by Arkansas Code § 8-4-303, means a state implementation plan that specifies measures to be used in the implementation of the state's duties under the Clean Air Act for the attainment and maintenance of a specified national ambient air quality standard in each air quality control region or portion of an air quality control region within the state;

(20) "Opacity" means the degree to which air emissions reduce the transmission of light and obscure the view of an object in the background;

(21) "Operator" means any person who leases, operates, controls, or supervises any equipment affected by this part;

(22) "Owner" means any person who has legal or equitable title to any source, facility, or equipment affected by this part;

(23) "Part 70 source" means any stationary source subject to the permitting requirements of Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42;

(24) "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter equal to or less than one hundred (100) micrometers;

(25) "Particulate matter emissions" means all particulate matter, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternate method, specified in 40 C.F.R. pt. 60, Appendix A, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on February 27, 2014 (79 FR 11257), or by a test method specified in this part or any supplement thereto, with the exception of condensable particulate matter;

(26) "Person" means any individual or other legal entity or their legal representative or assignee;

(27) "PM<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers as measured by a reference method based on Appendix L of 40 C.F.R. pt. 50 as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on October 17, 2006 (71 FR 61226), or by an approved regional method designated in accordance with Appendix C of 40 C.F.R. pt. 53;

(28) "PM<sub>2.5</sub> emissions" means PM<sub>2.5</sub> emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. pt.

51, Appendix M, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on April 2, 2014 (79 FR 18452), or by a test method specified in this part or any supplement thereto;

(29) "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 C.F.R. pt. 50 as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on August 7, 1987 (52 FR 29467), or by an equivalent method designated in accordance with 40 C.F.R. pt. 53 as of December 8, 1984;

(30) "PM<sub>10</sub> emissions" means PM<sub>10</sub> emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. pt. 51, Appendix M, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on April 2, 2014 (79 FR 18452), or by a test method specified in this part or any supplement thereto;

(31)(A) "Potential to emit" means the maximum capacity of a stationary source to emit a federally regulated air pollutant under its physical and operational design.

(B) Any physical or operational limitation on the capacity of the source to emit a federally regulated air pollutant, including, but not limited to, air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable to the extent it is regulated by the Clean Air Act.

(C) Secondary air emissions do not count in determining the potential to emit of a stationary source;

(32) "Responsible official" means one (1) of the following:

(A) For a corporation, a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative or such person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) in second quarter 1980 United States dollars; or

(ii) The delegation of authority to such representative is approved in advance by the Division of Environmental Quality;

(B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(C)(i) For a municipality, state, federal, or other public agency, either a principal executive officer or ranking elected official.

(ii) For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the United States Environmental Protection Agency); or

(D) For acid rain sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under Part 70;

(33) "Rule 8" means Arkansas Pollution Control and Ecology Commission Regulation No. 8 until it is amended to replace the term "regulation" with "rule." After that time, "Rule 8" means Arkansas Pollution Control and Ecology Commission Rule 8;

(34) "Rule 18" means Arkansas Pollution Control and Ecology Commission Regulation No. 18, until it is amended to replace the term "regulation" with "rule." After that time, "Rule 18" means Arkansas Pollution Control and Ecology Commission Rule 18;

(35) "Rule 26" means Arkansas Pollution Control and Ecology Commission Regulation No. 26, until it is amended to replace the term "regulation" with "rule." After that time, "Rule 26" means Arkansas Pollution Control and Ecology Commission Rule 26;

(36) "Secondary emissions" means those emissions of federally regulated air pollutants that, although associated with a source, are not emitted from the source itself;

(37) "Shutdown" means the cessation of operation of equipment;

(38) "Startup" means the setting in operation of equipment;

(39) "State implementation plan", as defined at Arkansas Code § 8-4-303, means a plan that specifies measures to be used in the implementation of the state's duties under the Clean Air Act, and that is developed by the Division of Environmental Quality and submitted to the United States Environmental Protection Agency for review and approval;

(40) "Stationary source" means any building, structure, facility, or installation that emits or may emit any federally regulated air pollutant;

(41)(A) "Title I modification" means any modification as defined under any regulation promulgated pursuant to Title I of the Clean Air Act.

(B) De minimis changes under this part, changes to state-only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications;

(42) "Twelve-month period" means a period of twelve (12) consecutive months determined on a rolling basis with a new twelve-month period beginning on the first day of each calendar month; and

(43)(A) "Volatile organic compounds" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

(B) This includes any organic compound other than the following, which have been determined to have negligible photochemical reactivity:

(i) Acetone;

(ii) Methane;

(iii) Ethane;

(iv) Methylene chloride (dichloromethane);

(v) 1,1,1-trichloroethane (methyl chloroform);

(vi) Tetrachloroethylene (perchloroethylene);

- (vii) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
- (viii) Trichlorofluoromethane (CFC-11);
- (ix) Dichlorodifluoromethane (CFC-12);
- (x) Chlorodifluoromethane (HCFC-22);
- (xi) Trifluoromethane (HFC-23);
- (xii) 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
- (xiii) Chloropentafluoroethane (CFC-115);
- (xiv) 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- (xv) 1,1,1,2-tetrafluoroethane (HFC-134a);
- (xvi) 1,1-dichloro 1-fluoroethane (HCFC-141b);
- (xvii) 1-chloro-1,1-difluoroethane (HCFC-142b);
- (xviii) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
- (xix) Pentafluoroethane (HFC-125);
- (xx) 1,1,2,2-tetrafluoroethane (HFC-134);
- (xxi) 1,1,1-trifluoroethane (HFC-143a);
- (xxii) 1,1-difluoroethane (HFC-152a);
- (xxiii) Parachlorobenzotrifluoride (PCBTF);
- (xxiv) Cyclic, branched, or linear completely methylated siloxanes;
- (xxv) 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
- (xxvi) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
- (xxvii) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
- (xxviii) Difluoromethane (HFC-32);
- (xxix) Fluoroethane (ethyl fluoride or HFC-161);
- (xxx) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
- (xxxi) 1,1,2,2,3-pentafluoropropane (HFC-245ca);
- (xxxii) 1,1,2,3,3-pentafluoropropane (HFC 245ea);
- (xxxiii) 1,1,1,2,3-pentafluoropropane (HFC-245eb);
- (xxxiv) 1,1,1,3,3-pentafluoropropane (HFC-245fa);
- (xxxv) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
- (xxxvi) 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
- (xxxvii) Chlorofluoromethane (HCFC-31);
- (xxxviii) 1-chloro-1-fluoroethane (HCFC-151a);
- (xxxix) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
- (xl) 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ( $C_4F_9OCH_3$  or HFE-7100);
- (xli) 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $((CF_3)_2CFCF_2OCH_3)$ ;
- (xlii) 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ( $C_4F_9OC_2H_5$  or HFE-7200);
- (xliii) 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $((CF_3)_2CFCF_2OC_2H_5)$ ;
- (xliv) Methyl acetate;
- (xlv) 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ( $n-C_3F_7OCH_3$  or HFE-7000);



(xlvi) 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);

(xlvii) 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);

(xlviii) Methyl formate (HCOOCH<sub>3</sub>);

(xlix) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);

(l) Propylene carbonate;

(li) Dimethyl carbonate;

(lii) (1E)-1,3,3,3-tetrafluoroprop-1-ene (HFO-1234ze);

(liii) HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134);

(liv) HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2);

(lv) HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13);

(lvi) HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 [or 150 or 180]);

(lvii) (1E)-1-chloro-3,3,3-trifluoroprop-1-ene;

(lviii) 2,3,3,3-tetrafluoropropene;

(lix) 2-amino-2-methyl-1-propanol;

(lx) T-butyl acetate;

(lxi) Cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mz-Z); and

(lxii) Perfluorocarbon compounds that fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(C)(i) For purposes of determining compliance with emission limits, volatile organic compounds are measured by the test methods in the approved state implementation plan or 40 C.F.R. pt. 60, Appendix A, as applicable.

(ii) Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as volatile organic compounds if the amount of such compounds is accurately quantified, and such exclusion is approved by the Division of Environmental Quality.

(D) As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the Division of Environmental Quality may require an owner or operator of a stationary source to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Division of Environmental Quality, the amount of negligibly reactive compounds in the emissions from the stationary source.

(E) [Reserved].

**Authority.** Arkansas Code § 8-4-311.

**Codification Notes.** “Rule 8”, defined in this section, is codified in the Code of Arkansas Rules as 8 CAR pt. 11. During codification, all other references in this rule to “Rule 8” were changed to “8 CAR pt. 11”.

“Rule 18”, defined in this section, is codified in the Code of Arkansas Rules as 8 CAR pt. 40. During codification, all other references in this rule to “Rule 8” were changed to “8 CAR pt. 40”.

“Rule 26”, defined in this section, is codified in the Code of Arkansas Rules as 8 CAR pt. 42. During codification, all other references in this rule to “Rule 8” were changed to “8 CAR pt. 42”.

## **Subpart 2. Protection of the National Ambient Air Quality Standards**

### **8 CAR § 41-201. Purpose.**

(a) The purpose of this subpart is to state the responsibilities of the Division of Environmental Quality and regulated sources in meeting and maintaining the national ambient air quality standards.

(b) If any area of the state is determined to be in violation of the national ambient air quality standards, all applicable requirements contained in the Clean Air Act, as amended, and all regulations promulgated thereto shall be met by the division.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-202. Division responsibilities.**

The Division of Environmental Quality shall be responsible for taking the following precautions to prevent the national ambient air quality standards from being exceeded:

(1) Ambient air monitoring in any area that can reasonably be expected to be in excess of the national ambient air quality standards.

(2)(A) Computer modeling of regulated air pollutant emissions for any area that can reasonably be expected to be in excess of the national ambient air quality standards, and review of the ambient air impacts of any new or modified source of federally regulated air emission that is the subject of the requirements of this part.

(B) All computer modeling shall be performed using United States Environmental Protection Agency-approved models, and using averaging times commensurate with averaging times stated in the national ambient air quality standards.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-203. Regulated sources responsibilities.**

Any source subject to the provisions of this part shall be responsible for taking the following precautions to prevent the national ambient air quality standards from being exceeded:

(1) When required by law or this part, obtaining a permit from the Division of Environmental Quality prior to construction of a new source of federally regulated air pollutant emissions or prior to the modification of an existing source of air emissions;

(2) Operating equipment in such a manner as to meet any applicable permit requirement or any applicable rules; and

(3)(A) Repairing malfunctioning equipment and pollution control equipment as quickly as possible.

(B) If the malfunctioning equipment is causing, or contributing to, a violation of the national ambient air quality standards as determined by computer modeling, the source is responsible for ceasing operations of the affected equipment until such time that it is repaired.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-204. Delegated federal programs.**

(a)(1) Sources subject to this part shall also comply with all federal programs that the Division of Environmental Quality is responsible for administering, including:

(A) Certain delegated subparts of the new source performance standards (40 C.F.R. pt. 60);

(B) Provisions designed for the prevention of significant deterioration (40 C.F.R. § 52.21); and

(C) Certain delegated subparts of the national emission standards for hazardous air pollutants (40 C.F.R. pts. 61 and 63).

(2) These delegated subparts only apply to major sources.

(b) There are subparts that apply to minor sources, but the division has not requested delegation of them as of April 28, 2006.

**Authority.** Arkansas Code § 8-4-311.

**Subpart 3. Minor Source Review**

**8 CAR § 41-301. General applicability.**

No person shall cause or permit the operation, construction, or modification of a stationary source whose actual emissions are:

(1) Seventy-five (75) tons per year or more of carbon monoxide;

(2) Forty (40) tons per year or more of nitrogen oxides;

(3) Forty (40) tons per year or more of sulfur dioxide;

(4) Forty (40) tons per year or more of volatile organic compounds;

(5) Ten (10) tons per year or more of direct PM<sub>2.5</sub>;

(6) Fifteen (15) tons per year or more of PM<sub>10</sub>;

(7) One-half (0.5) ton per year or more of lead;

(8) Two (2) tons per year or more of any single hazardous air pollutant; or

(9) Five (5) tons per year or more of any combination of hazardous air pollutants without first obtaining a permit from the Division of Environmental Quality pursuant to the provisions of this subpart.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-302. Approval criteria.**

No permit shall be granted or modified under this subpart unless the owner/operator demonstrates to the reasonable satisfaction of the Division of Environmental Quality that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this part or without interfering with the attainment or maintenance of a national ambient air quality standard.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-303. Owner/operator's responsibilities.**

Issuance of a permit by the Division of Environmental Quality does not affect the responsibility of the owner/operator to comply with applicable portions of this part.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-304. Required information.**

(a) **General.** Application for a permit shall be made on such forms and contain such information as the Division of Environmental Quality may reasonably require, including but not limited to:

(1) Information on the nature and amounts of federally regulated air pollutants to be emitted by the stationary source; and

(2) Such information on the location, design, and operation of the stationary source as the division may reasonably require.

(b) **Duty to supplement submittal.** If, while processing an application that has been determined to be complete, the division determines that additional information is necessary to evaluate or take final action on that application, the division may request such information in writing and set a reasonable deadline for a response.

(c) **Duty to correct submittal.**

(1) Any owner/operator who fails to submit any relevant facts or who has submitted incorrect information shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

(2) In addition, an applicant shall provide additional information as necessary to address any relevant requirements that become applicable to the stationary source before final action is taken on its application.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-305. Action on application.**

(a) **Technical review.** The Division of Environmental Quality will review the application submitted under this subpart in order to ensure to their reasonable satisfaction that:

(1) The stationary source will be constructed or modified to operate without interfering with attainment or maintenance of a national ambient air quality standard;

(2) The stationary source will be constructed or modified to operate without

violating any applicable regulation adopted by the United States Environmental Protection Agency pursuant to §§ 111, 112, and 114 of the Clean Air Act, as amended;

(3) The stationary source will be constructed or modified to operate without resulting in a violation of any applicable provisions of this part;

(4) The emission rate calculations are complete and accurate; and

(5) If the facility wishes to measure and/or monitor operating parameters rather than actual emissions, the application describes a process that will be used to ensure that the calculations are translated into enforceable limits on operational parameters rather than emissions.

**(b) Proposed action.**

(1) If the division initially determines the requirements of subsection (a) of this section are met, they shall prepare a draft permit that:

(A) Contains such conditions as are necessary to comply with this part;

and

(B) Addresses all federally regulated air pollutant emissions and all federally regulated air pollutant emitting equipment at the stationary source except pollutants or equipment specifically exempt.

(2)(A) If the division initially determines the requirements of this subpart are not met, they shall prepare a notice of intent to deny.

(B) This notice will state the reasons for the division's denial of the stationary source's submittal.

(3) Except as provided in 8 CAR § 41-307, the public shall have an opportunity to comment on the division's proposed permit decision in accordance with 8 CAR § 41-306.

(4)(A) Within ninety (90) days of receipt by the division of an initial permit application, or an application for a major modification that contains such information as required by the division (unless said period is extended by mutual agreement between the division and the applicant), the division shall notify the applicant in writing of its draft permitting decision.

(B)(i) If the division fails to take action on the application within the prescribed timeframes, the aggrieved applicant may petition the Arkansas Pollution Control and Ecology Commission for relief from division inaction.

(ii) The commission shall either grant or deny the petition within forty-five (45) days of its submittal.

**(c) Final action.**

(1) The division shall take final action on a permit application after the close of the public comment period.

(2) The division shall notify in writing the owner/operator and any person that submitted a written comment of the division's final action and the division's reasons for its final action.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-306. Public participation.**

(a) **General.** No permit shall be issued, denied, or modified unless the public has first

had an opportunity to comment on the information submitted by the owner/operator and the Division of Environmental Quality's analysis, as demonstrated by the permit record, of the effect of construction or modification on ambient air quality, including the division's proposed approval or disapproval of the permit.

**(b) Public availability of information.**

(1) For purposes of this section, opportunity to comment shall include, at a minimum:

(A) Availability for the public inspection in at least one (1) location in the area where the source is located, or proposes to locate, and in the division's central offices of the division's draft decision, information submitted by the owner/operator, and any information developed by the division in support of its draft permit decision;

(B) A thirty-day period for submittal of public comment (beginning on the date of the latest newspaper notice, ending on the date thirty (30) days later);

(C)(i) A publication in a newspaper of general circulation in the area where the source is located or proposes to locate, and in a state publication designed to give general public notice.

(ii) Such notice shall, as a minimum, describe the locations at which the information submitted by the owner/operator and the division's analysis of this information may be inspected and the procedure for submitting public comment; and

(D) A copy of the notice, required pursuant to this subsection, shall be sent to the owner/operator and to the:

(i) Regional Administrator of the United States Environmental Protection Agency;

(ii) Mayor of the community where the stationary source is proposed to be constructed or modified;

(iii) County judge of the county where the equipment is proposed to be constructed or modified; and

(iv) Appropriate air pollution control agencies of adjoining states if the construction or modification of the source will impact air quality in adjoining states.

(2) Public comments addressing the technical merits of the permit application and the division's analysis of the effect of the proposed emissions on air quality submitted in accordance with procedures in the public notice shall be considered by the division prior to taking final action on the permit application.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-307. Permit amendments.**

**(a) Administrative permit amendments.**

(1) An administrative permit amendment is a permit revision that:

(A) Corrects a typographical error;

(B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change in the source;

(C) Requires more frequent monitoring or reporting by the permittee;

(D) Incorporates a change in the permit involving the retiring of

equipment or emission units, or the decrease of permitted emissions from equipment or emission units; or

(E) Incorporates a change to the facility's insignificant activities list.

(2) The Division of Environmental Quality shall revise the permit as expeditiously as practicable and may incorporate such revisions without providing notice to the public.

(3) The applicant may implement the changes addressed in the request for an administrative amendment immediately upon approval.

**(b) Change in ownership.**

(1) Permits issued under this part shall remain freely transferable, provided the applicant for the transfer:

(A) Notifies the Director of the Division of Environmental Quality at least thirty (30) days in advance of the proposed transfer date on such forms as the director may reasonably require; and

(B)(i) Submits a disclosure statement, or other such documents as required by the division.

(ii) The disclosure statement shall include but not be limited to the following information:

(a) The full name, business address, and Social Security number or tax i.d. number of the applicant and all affiliated persons;

(b) The full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or which is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state;

(c) A description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation;

(d) A listing and explanation of any civil or criminal legal actions by governmental agencies involving environmental protection laws or regulations against the applicant and affiliated persons in the ten (10) years immediately preceding the filing of the application, including:

(1) Administrative enforcement actions resulting in the imposition of sanctions;

(2) Permit or license revocations or denials issued by any state or federal authority;

(3) Actions that have resulted in a finding or a settlement of a violation; and

(4) Actions that are pending;

(e) A listing of any federal environmental agency and any other environmental agency outside this state that has or has had regulatory responsibility over the applicant; and

(f) Any other information the director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

(iii) The following persons or entities are not required to file a disclosure statement:

(a)(1) Governmental entities, consisting only of subdivisions or agencies of the federal government, agencies of the state government, counties, municipalities, or duly authorized regional solid waste authorities as defined by law.

(2) This exemption shall not extend to improvement districts or any other subdivision of government which is not specifically instituted by an act of the General Assembly; and

(b) Applicants for a general permit to be issued by the division pursuant to its authority to implement the National Pollutant Discharge Elimination System for stormwater discharge or any other person or entity the Arkansas Pollution Control and Ecology Commission may by rule exempt from the submission of a disclosure statement.

(2) Nothing in this section, including the exemptions listed herein, shall be construed as a limitation upon the authority of the director to deny a permit based upon a history of noncompliance to any applicant or for other just cause.

(3)(A) Any applicant that is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company, shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission which provide information regarding legal proceedings in which the applicant has been involved.

(B) The applicant shall submit such other information as the director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

(4) The director may deny the issuance or transfer of any permit, license, certification, or operational authority if he or she finds, based upon the disclosure statement and other investigation that he or she deems appropriate, that:

(A) The applicant has a history of noncompliance with the environmental laws or rules of this state or any other jurisdiction;

(B) An applicant who owns or operates other facilities in the state is not in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, the environmental laws or rules of this state; or

(C) A person with a history of noncompliance with environmental laws or rules of this state or any other jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant that could have an impact upon the environment.

(5) Public notice requirements shall not apply to changes in ownership or changes in name.

(6) Denial of a permit transfer shall constitute a final permitting decision of the director and may be appealed to the Arkansas Pollution Control and Ecology Commission.

**(c) De minimis changes.**

(1) A proposed change to a facility will be considered de minimis if:

(A) Minimal judgment is required to establish the permit requirements for the change; and

(B) The change will result in a trivial environmental impact.

(2) The environmental impact of a proposed change generally will be considered



trivial if the emission increase, based on the differences between the sum of the proposed permitted rates for all emissions units and the sum of previously permitted emission rates for all units will either:

- (A) Be less than the following amounts:
  - (i) Seventy-five (75) tons per year of carbon monoxide;
  - (ii) Forty (40) tons per year of:
    - (a) Nitrogen dioxides;
    - (b) Sulfur dioxides; or
    - (c) Volatile organic compounds;
  - (iii) Twenty-five (25) tons per year of particulate matter emissions;
  - (iv) Ten (10) tons per year of direct PM<sub>2.5</sub>;
  - (v) Fifteen (15) tons per year of PM<sub>10</sub> emissions; and
  - (vi) One-half (0.5) a ton per year of lead; or
- (B) Result in an air quality impact less than:

Pollutant	<i>De Minimis</i> Concentration	Averaging Time
carbon monoxide	Five hundred (500) micrograms per cubic meter	Eight-hour
nitrogen dioxide	Ten (10) micrograms per cubic meter	Annual
PM <sub>2.5</sub>	Two (2) micrograms per cubic meter	Twenty-four-hour
PM <sub>10</sub>	Eight (8) micrograms per cubic meter	Twenty-four-hour
sulfur dioxide	Eighteen (18) micrograms per cubic meter	Twenty-four-hour
lead	One-tenth (0.1) micrograms per cubic meter	Three-month

(3) [Reserved.]

(4) The following changes will not be considered de minimis changes:

(A) Any increase in the permitted emission rate at a stationary source without a corresponding physical change or change in the method of operation at the source;

(B) Any change that would result in a violation of the Clean Air Act;

(C) Any change seeking to change a case-by-case determination of an emission limitation established pursuant to Best Available Control Technology, § 112(g), § 112(i)(5), § 112(j), or § 111(d) of the Clean Air Act;

(D) A change that would result in a violation of any provision of this part;

(E) Any change in a permit term, condition, or limit that a source has assumed to avoid an applicable requirement to which the source would otherwise be subject;

(F) Any significant change or relaxation to existing testing, monitoring, reporting, or recordkeeping requirements; or

(G) Any proposed change that requires more than minimal judgment to determine eligibility.

(5)(A) A source may not submit multiple applications for de minimis changes that are designed to conceal a larger modification that would not be considered a de minimis change.

(B) The division will require such multiple applications be processed as a permit modification with public notice and reconstruction requirements.

(C) Deliberate misrepresentation may be grounds for permit revocation.

(6) The applicant may implement de minimis changes immediately upon approval by the division.

(7)(A) The division shall revise the permit as expeditiously as practicable and may incorporate de minimis changes without providing notice to the public.

(B) The applicant may implement de minimis changes immediately upon approval by the division.

**Authority.** Arkansas Code § 8-4-311.

**Codification Notes.** The Securities and Exchange Act of 1934 is codified generally at 15 U.S.C. § 78a et seq.

**8 CAR § 41-308. Exemption from permitting.**

(a) **Insignificant activities.** Stationary sources and activities listed in Appendix A of this part shall be considered to be insignificant and will not require a permit under this subpart or be included in a source's permit.

(b) **Grandfathering.** Stationary sources operating prior to June 30, 1975, and that have not been modified since, will not be required to obtain a permit under this subpart.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-309. [Reserved.]**

**8 CAR § 41-310. Permit revocation and cancellation.**

(a) **Revocation.** Any permit issued under this part is subject to revocation, suspension, or modification in whole or in part, for cause, including without limitation:

- (1) Violation of any condition of the permit;
- (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
- (3) Change in any applicable rule or change in any preexisting condition affecting the nature of the emission that requires either a temporary or permanent reduction or elimination of the permitted emission.

(b) **Cancellation.** The Director of the Division of Environmental Quality may cancel a permit if the construction or modification is not begun within eighteen (18) months from the date of the permit issuance or if the work involved in the construction or modification is suspended for a total of eighteen (18) months or more.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-311. General permits.**

(a) **General authority.**

(1) The Division of Environmental Quality may, after notice and opportunity for public participation provided under this subpart, issue a general permit covering numerous similar sources.

(2) The criteria for the review and approval of permits under this subpart shall be used for general permits as well.

(3) Any general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit.

(4) They shall also include enforceable emission limitations or other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this part.

(5) To sources that qualify, the division shall grant the conditions and terms of the general permit.

(6) The source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(b) **Application.**

(1) Sources that would qualify for a general permit must apply to the division for coverage under the terms of the general permit or must apply for a permit consistent with this subpart.

(2) The division may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(3)(A) When any application for the issuance of a new permit or a modification of an existing permit is filed with the division, the division shall cause notice of the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.

(B) The notice required by subdivision (b)(3)(A) of this section shall advise that any interested person may request a public hearing on the permit application by giving the division a written request within ten (10) days of the publication of the notice.

(C) Should a hearing be deemed necessary by the division, or in the event the division desires such a hearing, the division shall schedule a public hearing and shall, by first-class mail, notify the applicant and all persons who have submitted comments of the date, time, and place thereof.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-312. Dispersion modeling.**

(a) The following shall apply when dispersion or other air quality modeling is used to meet the requirements of this subpart.

(b) **General.** All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in Appendix W of 40 C.F.R. pt. 51, Guideline on Air Quality Models.

(c) **Substitution.**

(1) Where an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted.

(2) Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific pollutant or type of stationary source.

(3) Written approval of the Administrator of the United States Environmental Protection Agency must be obtained for any modification or substitution.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-313. Confidentiality.**

(a) Information that constitutes a trade secret shall be held confidential and segregated from the public files of the Division of Environmental Quality if requested in writing by the permit applicant in accordance with this section.

(b) For purposes of this section, “trade secret” means any information, including formula, pattern, compilation, program, device, method, technique, process, or rate of production that:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through, proper means by other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(c)(1) In order to establish entitlement to confidentiality, the applicant must submit a sworn affidavit to the division that is subject to public scrutiny that describes in a manner that does not reveal trade secrets the processes or market conditions that support the applicant’s confidentiality claim in the terms of subdivisions (b)(1) and (2) of this section.

(2) This affidavit must also recite the following:

The applicant agrees to act as an indispensable party and to exercise extraordinary diligence in any legal action arising from the Division's denial of public access to the documents or information claimed herein to be a trade secret.

(3) If an applicant anticipates numerous permit modifications that may involve regulatory review of trade secrets, it may submit an omnibus affidavit establishing the prerequisites of subdivisions (b)(1) and (2) of this section and reference this document in future confidentiality claims.

(d)(1) Confidentiality claims shall be afforded interim protected status until the division determines whether the requirements of subsection (c) of this section are satisfied.

(2)(A) The division shall make such determination prior to the issuance of any permit or publication of any draft permit.

(B) In the event the division does not make such determination prior to permit issuance, the information shall be deemed confidential until a request is made.

(3)(A) If a third-party request to review information claimed as confidential is received before the division provides its written determination concerning the claim, the division shall not release such information before notifying the applicant of the request.

(B) The division shall notify the applicant of the request and the division's determination on the confidentiality claim at least two (2) business days before releasing the information, at which time the applicant may choose to supplement its affidavit supporting confidentiality or seek legal recourse.

(e)(1) For any permit application submitted subject to a claim of trade secret, the applicant shall provide two (2) copies of the application:

(A) One (1) prominently marked as confidential; and

(B) Another that is subject to public review with confidential information excised.

(2) The division will not accept applications that are deemed totally confidential except under extraordinary circumstances guaranteeing future disclosure at a meaningful time for public review.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-314. Operational flexibility — Applicant's duty to apply for alternative scenarios.**

(a)(1) The permit applicant shall apply for any reasonably anticipated alternative stationary source operating scenarios at the time of permit application.

(2) The Division of Environmental Quality shall include approved alternative operating scenarios in the permit.

(b) The permittee may implement any operating scenario allowed in the permit without the need for a permit revision or notification to the division.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-315. Changes resulting in no emissions increases.**

(a) A permittee may make a change to a stationary source that contravenes permit terms without a permit revision if the change:

- (1) Is not a Title I modification;
- (2) Does not exceed emissions allowable under the permit, whether expressed therein as a rate of emissions or in the terms of total emissions;
- (3) Does not violate applicable requirements; and
- (4) Does not violate federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(b) The permittee shall provide written notice to the Division of Environmental Quality at least seven (7) days prior to implementing the proposed changes allowed under subsection (a) of this section, or such shorter timeframe that the division allows for emergencies.

(c)(1) The permittee and the division shall attach each such notice pursuant to subsection (b) of this section to their copy of the relevant permit.

(2) For each such change, the written notice shall include:

- (A) A brief description of the change to the permitted stationary source;
- (B) The date the change will occur;
- (C) Any change in emissions; and
- (D) Any permit term or condition that is no longer applicable as a result of the change.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-316. Permit flexibility.**

(a)(1) The Division of Environmental Quality may grant an extension to any testing, compliance, or other date in the permit.

(2) No extensions shall be authorized until the permittee of the stationary source receives written approval from the division.

(3) The division may grant such a request, at its discretion, in the following circumstances:

- (A) The permittee of the stationary source makes such a request in writing at least fifteen (15) days in advance of the deadline specified in the stationary source's permit;
- (B) The extension does not violate a federal requirement;
- (C) The permittee of the stationary source demonstrates the need for the extension; and
- (D) The permittee of the stationary source documents that all reasonable measures have been taken to meet the current deadline and documents reasons the current deadline cannot be met.

(b)(1) The division may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement, or other limit in a stationary source's permit.

(2) No such activities shall be authorized until the permittee of the stationary source receives written approval from the division.

(3) The division may grant such a request, at its discretion, in the following circumstances:

(A) The permittee of the stationary source makes such a request in writing at least thirty (30) days in advance of the date that temporary emissions and/or testing would otherwise exceed a permitted emission rate, throughput requirement, or other limit in a stationary source's permit;

(B) Such a request does not violate a federal requirement;

(C) Such a request is temporary in nature;

(D) Such a request will not result in a condition of air pollution as defined in 8 CAR § 40-105 of the Arkansas Air Pollution Code, 8 CAR pt. 40;

(E) The request contains such information necessary for the division to evaluate the request, including without limitation, quantification of such emissions and the date and time such emission will occur;

(F) Such a request will result in increased emissions less than five (5) tons of any individual criteria pollutant, one (1) ton of any single hazardous air pollutant, and two and one-half (2.5) tons of total hazardous air pollutants; and

(G) The permittee of the stationary source maintains records of the dates and results of such temporary emissions and/or testing.

(c)(1) The division may grant a request to allow an alternative to the monitoring specified in a stationary source's permit.

(2) No such activities shall be authorized until the permittee of the stationary source receives written approval from the division.

(3) The division may grant such a request, at its discretion, in the following circumstances:

(A) The permittee operator of the stationary source makes such a request in writing at least thirty (30) days in advance of the first date that the monitoring alternative will be used;

(B) Such a request does not violate a federal requirement;

(C) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the stationary source's permit; and

(D) Any such request for an alternative monitoring method, if approved by the division, is incorporated into the next permit modification application by the permittee of the stationary source.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-317. Registration.**

(a)(1) Sources currently holding permits issued pursuant to this part but whose emissions are below the permitting thresholds of 8 CAR § 41-301, and above the registration thresholds of 8 CAR § 40-215, may elect to continue to operate under their existing Part 41 permit or they may submit a registration under 8 CAR § 40-215 and request their Part 41 permit to be terminated.

(2) The Part 41 permit shall remain in effect until terminated.

(3) If a source takes no action, the Part 41 permit shall remain in effect.

(b) A source otherwise subject to registration under 8 CAR § 40-215 may elect to instead operate under a permit issued in accordance with 8 CAR § 41-302.

**Authority.** Arkansas Code § 8-4-311.

#### **Subpart 4. General Emissions Limitations Applicable to Equipment**

##### **8 CAR § 41-401. Purpose.**

(a) The purpose of this subpart is to define the general federally regulated air pollutant emissions limitations applicable to all equipment subject to this part.

(b) Stricter specific limitations may be required in applicable permits if such limitations are necessary to comply with federal law or regulations that are in effect as of the effective date of this part.

**Authority.** Arkansas Code § 8-4-311.

##### **8 CAR § 41-402. General rules.**

No person shall cause or permit the construction or modification of equipment that would cause or allow the following standards or limitations to be exceeded:

(1) Any national ambient air quality standard as defined herein;

(2) Any ambient air increment pursuant to Subpart 8 of this part;

(3) Any applicable emission limitation promulgated by the United States Environmental Protection Agency; or

(4) Any applicable emission limitation promulgated by the Division of Environmental Quality in this part.

**Authority.** Arkansas Code § 8-4-311.

##### **8 CAR § 41-403. Visible emission rules.**

(a) No person shall cause or permit visible emissions (other than uncombined water vapor) from equipment identified hereunder and that was installed and in operation, or for which a permit had been issued by the Division of Environmental Quality prior to January 30, 1972, to exceed the following limitations:

(1) Emissions shall not exceed forty percent (40%) opacity, except that emissions greater than forty percent (40%) opacity will be allowed for not more than six (6) minutes in the aggregate in any consecutive sixty-minute period, provided such emissions will not be permitted more than three (3) times during any twenty-four-hour period.

(b) No person shall cause or permit visible emissions (other than uncombined water vapor) from new equipment identified hereunder that was installed or permitted by the division after January 30, 1972, to exceed the following limitations or to exceed any applicable visible emission limitations of the new source performance standards promulgated by the United States Environmental Protection Agency:



(1) For incinerators and fuel-burning equipment, exclusively, emissions shall not exceed twenty percent (20%) opacity except that emissions greater than twenty percent (20%) opacity but not exceeding sixty percent (60%) opacity will be allowed for not more than six (6) minutes in the aggregate in any consecutive sixty-minute period, provided such emissions will not be permitted more than three (3) times during any twenty-four-hour period; and

(2) For equipment used in a manufacturing process, emissions shall not exceed twenty percent (20%).

(c) Opacity of visible emissions shall be determined using United States Environmental Protection Agency Method 9 (40 C.F.R. pt. 60, Appendix A).

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-404. Stack height/dispersion rules.**

(a) The stack height provisions of 40 C.F.R. § 51.118 are incorporated by reference.

(b) The definition of “stack”, “a stack in existence”, “dispersion technique”, “good engineering practice”, “nearby”, and “excessive concentration” are defined in 40 C.F.R. § 51.100(ff) – (kk) and are incorporated into this subpart by reference.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-405. Revised emissions limitation.**

(a)(1) The emissions limitations contained within this part and applicable permits are for the purpose of assuring the attainment and maintenance of the national ambient air quality standards and have been established within the framework of information presently available to the Division of Environmental Quality.

(2) As additional and more precise information becomes available, the emission limitations and reporting procedures of this subpart may be amended as described below:

(A)(i) More restrictive limitations to protect the national ambient air quality standards.

(ii) In accordance with the provisions of the federal Clean Air Act, as amended, and the federal regulations promulgated pursuant to the Clean Air Act, as amended, the emission limitations and reporting procedures of this subpart or any applicable permits may be further amended and made more restrictive where the Director of the Division of Environmental Quality finds more restrictive measures are necessary to assure maintenance of the national ambient air quality standards; and

(B)(i) Less restrictive limitations.

(ii) Any person subject to the emission limitations contained in this part or in a permit may petition the director for a less stringent limitation on the grounds that the existing limitation cannot be met when considering physical, economical, or technological constraints.

(iii) In no case shall the director approve a less stringent limitation if it would cause a violation of the national ambient air quality standards.

(iv) The director shall not approve a less stringent limitation if it violates a federal emission standard or regulation, unless approved according to applicable

federal regulations.

(3) The director shall take into account the following factors when making such determinations:

(A) The process, fuels, and raw materials available and to be employed in the facility involved;

(B) The engineering aspects of the application of various types of control techniques that have been adequately demonstrated;

(C) Process and fuel changes;

(D) The respective costs of the application of all such control techniques, process changes, alternative fuels, etc.; and

(E) Locational and siting considerations.

(b) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(c) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

**Authority.** Arkansas Code § 8-4-311.

## **Subpart 5. Upset and Emergency Conditions**

### **8 CAR § 41-501. Upset conditions.**

(a)(1) For purposes of this subpart, “upset condition” means exceedances of applicable emission limitations lasting thirty (30) or more minutes, in the aggregate, during a twenty-four-hour period, unless otherwise specified in an applicable permit or rule (such as new source performance standards).

(2) All upset conditions resulting in a violation of an applicable permit or rule shall be reported to the Division of Environmental Quality.

(b)(1) Any source exceeding an emission limit established by this part or applicable permit shall be deemed in violation of this part or permit and shall be subject to enforcement action.

(2) The division may forego enforcement action for federally regulated air pollutant emissions given that the person responsible for the source of the excess emissions does the following:

(A) Demonstrates to the satisfaction of the division that the emissions resulted from:

(i) Equipment malfunction or upset and are not the result of negligence or improper maintenance; or

(ii) Physical constraints on the ability of a source to comply with the emission standard, limitation, or rate during startup or shutdown; and

(iii) That all reasonable measures have been taken to immediately minimize or eliminate the excess emissions;

(B) Reports such occurrence or upset or breakdown of equipment to the division by the end of the next business day after the discovery of the occurrence; and

(C) Submits to the division, at its request, a full report of such occurrence,

including the identification of and location of the process and control equipment involved in the upset and including a statement of all known causes and the scheduling and nature of the actions to be taken to eliminate future occurrences or to minimize the amount by which said limits are exceeded and to reduce the length of time for which said limits are exceeded.

**Authority.** Arkansas Code § 8-4-311.

[REDACTED]

## **Subpart 6. Sampling, Monitoring, and Reporting Requirements**

### **8 CAR § 41-601. Purpose.**

(a) The purpose of this subpart is to generally define the powers of the Division of Environmental Quality in requiring sampling, monitoring, and reporting requirements at stationary sources.

(b) The division shall enforce all properly incorporated and delegated federal testing

requirements at a minimum.

(c) Any credible evidence based on sampling, monitoring, and reporting may be used to determine violations of applicable emission limitations.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-602. Air emissions sampling.**

Any stationary source subject to this part shall be subject to the following requirements:

(1) **Sampling ports.** To provide any sampling ports, at the request of the Division of Environmental Quality, required for federally regulated air pollutant emissions sampling, including safe and easy access to such ports;

(2) **Sampling.**

(A) To conduct federally regulated air pollutant emissions sampling, at the request of the division, to determine the rate, opacity, composition, and/or contaminant concentration of the emissions.

(B) All compliance testing shall be done at the expense of the permittee by an independent firm, unless otherwise approved by the division.

(C) Sampling shall not be required for those pollutants with continuous emissions monitors;

(3) **Averaging times.** All compliance testing averaging times shall be consistent with the averaging times of the applicable federally regulated air pollutant emissions limitations stated in the applicable permit, which in no case shall be greater than the minimum averaging times of the applicable national ambient air quality standards;

(4) **Process rates.**

(A) Unless otherwise approved by the division, all federally regulated air pollutant emissions sampling shall be performed with the equipment being tested operating at least at ninety percent (90%) of its permitted capacity.

(B) Emissions results shall be extrapolated to correlate with one hundred percent (100%) of permitted capacity to determine compliance;

(5) **Testing timeframes.** Any equipment that is to be tested at the request of the division shall be tested in accordance with the following timeframes:

(A) Equipment to be constructed or modified shall be tested within sixty (60) days after achieving its maximum permitted production rate, but no later than one hundred eighty (180) days after its initial startup; and

(B) Equipment already operating shall be tested according to the timeframes set forth by the division; and

(6) **Testing methods and records.**

(A) The division shall require that all applicable testing be performed using the methods described in:

(i) 40 C.F.R. pt. 51, Appendix M, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on April 2, 2014 (79 FR 18452);

(ii) 40 C.F.R. pt. 60, Appendix A, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the

Federal Register on February 27, 2014 (79 FR 11257);

(iii) 40 C.F.R. pt. 61, Appendix B, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on October 17, 2000 (65 FR 62161); and

(iv) 40 C.F.R. pt. 63, Appendix A, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on December 29, 1992 (57 FR 62002).

(B) The division, with the concurrence of the United States Environmental Protection Agency, may approve, at its discretion, alternate sampling methods that are equivalent to the specified methods.

(C) The results of such tests shall be submitted to the division within the timeframes and on such forms as required by the division and federal regulations.

(D) The owner or operator of the equipment shall retain the results of such tests for at least five (5) years, and shall make the results available to any agents of the division or the United States Environmental Protection Agency during regular business hours.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-603. Continuous emissions monitoring.**

Any stationary source subject to this part shall, as required by federal law and upon request of the Division of Environmental Quality:

(1)(A) Install, calibrate, operate, and maintain equipment to continuously monitor or determine federally regulated air pollutant emissions in accordance with:

(i) Applicable performance specifications in 40 C.F.R. pt. 60, Appendix B, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on February 27, 2014 (79 FR 11271);

(ii) Quality assurance procedures in 40 C.F.R. pt. 60, Appendix F, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on February 27, 2014 (79 FR 11274); and

(iii) Other methods and conditions that the division, with the concurrence of the United States Environmental Protection Agency, shall prescribe.

(B) Any source listed in a category in 40 C.F.R. pt. 51, Appendix P, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on November 7, 1986 (51 FR 40675), or in 40 C.F.R. pt. 60 as of August 30, 1992, shall adhere to all continuous emissions monitoring or alternative continuous emission monitoring requirements stated therein, if applicable; and

(2) Report the data collected by the monitoring equipment to the division at such intervals and on such forms as the division shall prescribe, in accordance with 40 C.F.R. pt. 51, Appendix P, Section 4.0 (Minimum Data Requirements) as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on November 7, 1986 (51 FR 40675), and any other applicable reporting requirements promulgated by the United States Environmental Protection Agency.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-604. Notice of completion.**

For equipment for which a new permit or major permit modification is required, the Division of Environmental Quality shall be notified in writing within thirty (30) days of the following events:

- (1) The date of commencement of construction or modification; and
- (2) The date of commencement of operation of the equipment.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-605. Recordkeeping and reporting requirements.**

(a) Any stationary source subject to this part shall, upon request by the Division of Environmental Quality:

(1)(A) Maintain records on the nature and amounts of federally regulated air pollutants emitted to the air by the equipment in question.

(B) All records, including compliance status reports and excess emissions measurements shall be retained for at least five (5) years, and shall be made available to any agent of the division or United States Environmental Protection Agency during regular business hours; and

(2) Supply the following information, correlated in units of the applicable emissions limitations, to the division:

(A) General process information related to the emissions of federally regulated air pollutants into the air; and

(B) Emissions data obtained through sampling or continuous emissions monitoring.

(b)(1) Information and data shall be submitted to the division by a responsible official on such forms and at such time intervals as prescribed by applicable federal regulations or the division.

(2) Reporting periods shall be a twelve-month period.

(c)(1) Each emission inventory is to be accompanied by a certifying statement, signed by the owner or owners or operator or operators and attesting that the information contained in the inventory is true and accurate to the best knowledge of the certifying official.

(2) The certification shall include the full name, title, signature, date of signature, and telephone number of the certifying official.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-606. Public availability of emissions data.**

Emissions data obtained by the Division of Environmental Quality shall be correlated in units of applicable emissions limitations and be made available to the public at the division's central offices during normal business hours.

**Authority.** Arkansas Code § 8-4-311.

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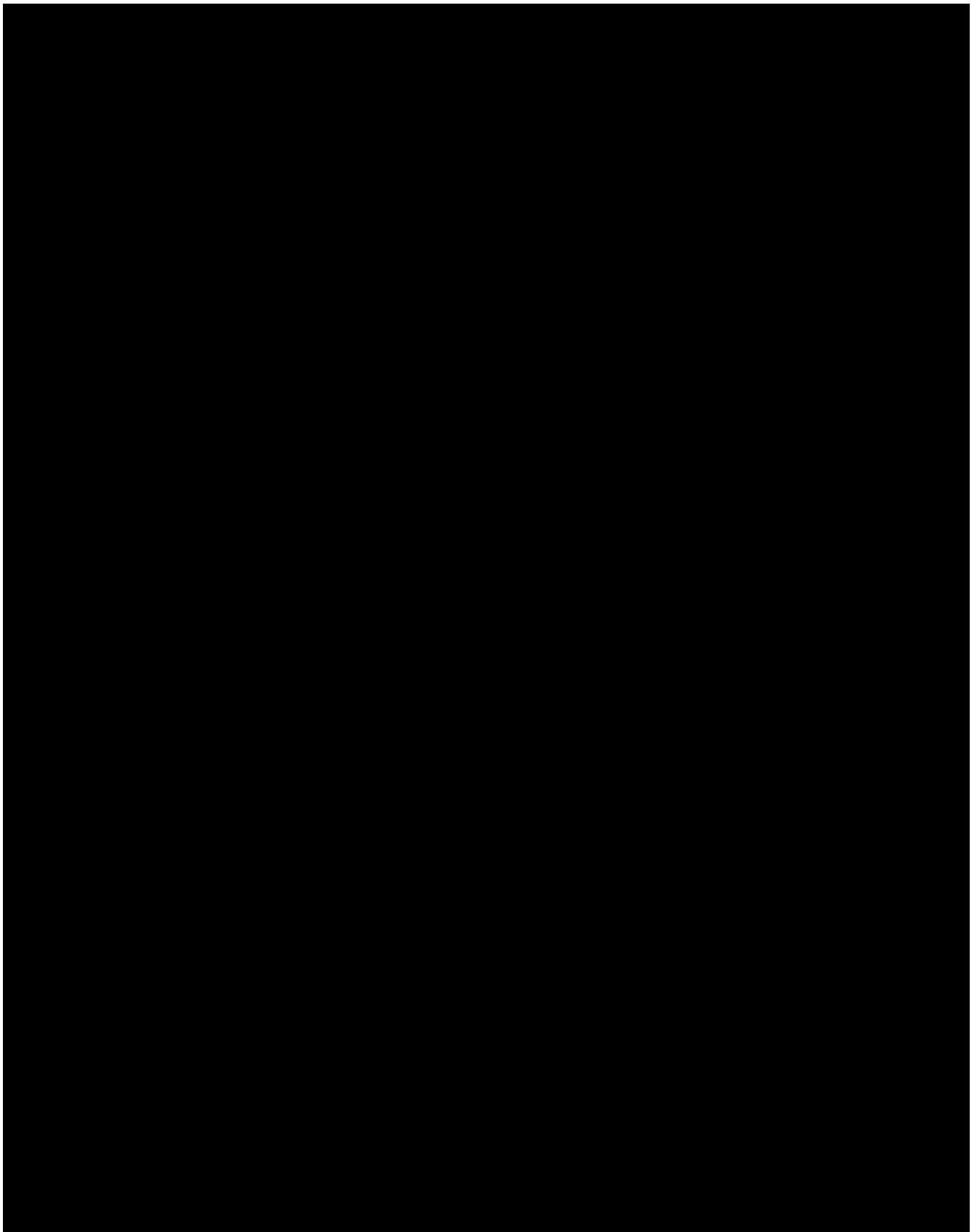
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**Subpart 8. Prevention of Significant Deterioration Rules of the Arkansas Plan of Implementation for Air Pollution Control**

**8 CAR § 41-801. Title.**

This subpart, adopted in accordance with the provisions of Part 2 of the Arkansas Water and Air Pollution Control Act at Arkansas Code § 8-4-101 et seq., shall be known as “Prevention of Significant Deterioration Rules of the Arkansas Plan of Implementation for Air Pollution Control”, hereinafter referred to, respectively, as the “Prevention of Significant Deterioration Rules”.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-802. Purposes.**

Promulgation and enforcement of this subpart is intended to further the purposes of the state implementation plan and this part, including, but not limited to, acceptance of delegation by the United States Environmental Protection Agency of authority for enforcement of rules governing the prevention of significant deterioration of air quality and rules governing the protection of visibility in mandatory Class I federal areas.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-803. Definitions.**

(a) As used in this subpart:

(1)(A) "Advance notification" (of a permit application) means any written communication that establishes the applicant's intention to construct, and that provides the Division of Environmental Quality with sufficient information to determine that the proposed source may constitute a major new source or major modification, and that such source may affect any mandatory Class I federal area, including, but not limited to:

- (i) Submittal of a draft or partial permit application;
- (ii) A prevention of significant deterioration monitoring plan; or
- (iii) A sufficiently detailed letter.

(B) "Advance notification" does not include general inquiries about Arkansas Pollution Control and Ecology Commission rules;

(2) "Regulated new source review pollutant" means the following:

(A)(i) Any pollutant for which a national ambient air quality standard has been adopted under 8 CAR § 41-106 and any pollutant identified under this subdivision (a)(2)(A) as a constituent or precursor for such pollutant.

(ii) Precursors identified by the division for purposes of new source review are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas; and

(c) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless Arkansas demonstrates to the Administrator of the United States Environmental Protection Agency's satisfaction or the United States Environmental Protection Agency demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

(iii) Volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area, unless Arkansas demonstrates to the Administrator of the United States Environmental Protection Agency's satisfaction or the United States Environmental Protection Agency demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;

(B) Any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act;

(C) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act;

(D) Any pollutant that otherwise is subject to regulation under the Clean Air Act;

(E) Notwithstanding subdivisions (a)(2)(A) – (D) of this section, the term “regulated new source review pollutant” shall not include any or all hazardous air pollutants either listed in Section 112 of the Clean Air Act, or added to the list pursuant to Section 112(b)(2) of the Clean Air Act, and that have not been delisted pursuant to Section 112(b)(3) of the 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 Clean Air Act; and

(F)(i) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures.

(ii) As of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on Thursday, October 25, 2012 (77 FR 65107), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in prevention of significant deterioration permits.

(iii) Compliance with emissions limitations for 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.

(iv) Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this subpart; and

(3) “Subject to regulation” means, for any air pollutant, that the pollutant is subject to either a provision of the federal Clean Air Act, or a nationally applicable regulation codified by the Administrator of the United States Environmental Protection Agency pursuant to 40 C.F.R., Chapter 1, Subchapter C, and adopted herein, 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.

(b)(1) All other terms used herein shall have the same meaning as set forth in 8 CAR § 41-106 or in 40 C.F.R. § 52.21(b) (prevention of significant deterioration) and 40 C.F.R. § 51.301 (Protection of Visibility) as of October 20, 2010, and adopted in 8 CAR § 41-804, unless manifestly inconsistent with the context in which they are used.

(2) Wherever there is a difference between the definitions in 8 CAR § 41-106 and those listed in 40 C.F.R. § 52.21(b) and 40 C.F.R. § 51.301, the federal definitions as listed in 40 C.F.R. § 52.21(b), as adopted in 8 CAR § 41-804 and subdivisions (a)(1), (2), and (3) of this section, and 40 C.F.R. § 51.301 as of October 20, 2010, shall apply.

(c) The definition for “routine maintenance, repair and replacement” in 40 C.F.R. § 52.21(b)(2)(iii)(a) is not incorporated.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-804. Adoption of rules.**

(a)(1) Except where manifestly inconsistent with the provisions of the Clean Air Act, as amended, or with federal regulations adopted pursuant thereto, and as amended specifically herein by subsections (b), (c), (d), (e), (f), and (g) of this section, the Division of Environmental Quality shall have those responsibilities and that authority, with reference to the State of Arkansas, granted to the Administrator of the United States Environmental Protection Agency under 40 C.F.R. § 52.21(a)(2) – (bb), as in effect on November 29, 2005, which are hereby incorporated herein by reference with the exception of:

(A)(i) 40 C.F.R. § 52.21(aa), which is incorporated by reference as in effect on August 13, 2012, except for instances in the sections of 40 C.F.R. § 52.21(aa) where 40 C.F.R. § 52.21(b)(49) is referenced.

(ii) In those instances, subsection (g) of this section shall apply;

(B) 40 C.F.R. § 52.21(r)(6), which is incorporated by reference as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on December 21, 2007 (72 FR 72607);

(C) 40 C.F.R. §§ 52.21(b)(23), 52.21(i)(5)(ii), and 52.21(i)(5)(iii), which are incorporated by reference as of May 16, 2008;

(D) 40 C.F.R. §§ 52.21(b)(14)(i) (major source baseline date), 52.21(b)(14)(ii) (minor source baseline date), 52.21(b)(14)(iii), 52.21(b)(15) (baseline area), 52.21(c) (ambient air increments), 52.21(k)(1) (source impact analysis requirements), and 52.21(p) (requirements for sources impacting federal Class I areas), which are incorporated herein by reference as of October 20, 2010; and

(E) 40 C.F.R. §§ 52.21(b)(49), 52.21(b)(50), 52.21(b)(55 – 58), 52.21(i)(9), and 52.21(cc), which are not incorporated herein.

(2) In the absence of a specific imposition of responsibility or grant of authority, the division shall be deemed to have that responsibility and authority necessary to attain the purposes of the state implementation plan, this subpart, and the applicable federal regulations, as incorporated herein by reference.

(b)(1) Exclusions from the consumption of increments, as provided in 40 C.F.R. § 51.166(f)(1)(iii) as of November 29, 2005, shall be effective immediately.

(2) Submission of the state implementation plan under the Governor's signature constitutes a request by the Governor for this exclusion.

(c) In addition to the requirements of 40 C.F.R. § 52.21(o) as of November 29, 2005, the following requirements, designated as subdivisions (c)(1), (2), (3), and (4) of this section, shall also apply:

(1) Where air quality impact analyses required under this subpart indicate that the issuance of a permit for any major stationary source or for any major modification would result in the consumption of more than fifty percent (50%) of any available annual increment or eighty percent (80%) of any short-term increment, the person applying for such a permit shall submit to the division an assessment of the following factors:

(A) Effects that the proposed consumption would have upon the industrial and economic development within the area of the proposed source; and

(B) Alternatives to such consumption, including alternative siting of the proposed source or portions thereof;

(2) The assessment required under subdivision (c)(1) of this section shall be

made part of the application for permit and shall be made available for public inspection as provided in 40 C.F.R. § 52.21(q) as of November 29, 2005;

(3) The assessment required under subdivision (c)(1) of this section shall be in detail commensurate with the degree of proposed increment consumption, both in terms of the percentage of increment consumed and the area affected; and

(4)(A) The assessment required under subdivision (c)(1) of this section may be made effective where a proposed source would cause an increment consumption less than that specified in said subdivision (c)(1) of this section if the Director of the Division of Environmental Quality finds that unusual circumstances exist in the area of the proposed source that warrant such an assessment.

(B) The director shall notify the applicant in writing of those circumstances that warrant said assessment.

(C) The Arkansas Pollution Control and Ecology Commission may rescind or modify the director's action upon a showing by the applicant that the circumstances alleged by the director either do not exist or do not warrant the aforementioned assessment.

(d) In addition to the requirements of 40 C.F.R. § 52.21(p)(1) as of October 20, 2010, the following requirements shall also apply:

(1)(A) Impacts on mandatory Class I federal areas include impacts on visibility.

(B) The preliminary determination that a source may affect air quality or visibility in a mandatory Class I federal area shall be made by the division, based on screening criteria agreed upon by the division and the Federal Land Manager.

(e) In all instances wherein the aforesaid 40 C.F.R. § 51.301 and 40 C.F.R. § 52.21 refer to the Administrator of the United States Environmental Protection Agency or the United States Environmental Protection Agency, the reference, for the purposes of subsection (a) of this section, shall be deemed to mean the division, unless the context plainly dictates otherwise, except in the following sections:

(1) Exclusion from increment consumption: 40 C.F.R. § 52.21(f)(1)(v), (f)(3), and (f)(4)(I);

(2) Redesignation: 40 C.F.R. § 52.21(g)(1), (g)(2), (g)(4), (g)(5), and (g)(6); and

(3) Air quality models: 40 C.F.R. § 52.21(I)(2).

(f) Redesignation of air quality areas in Arkansas shall comply with Arkansas Code § 8-3-101 et seq.

(g)(1) For the purpose of the regulation of greenhouse gases, only the standards and requirements promulgated by the United States Environmental Protection Agency as of June 3, 2010, related to the permitting of greenhouse gas emissions shall apply to the requirements of 40 C.F.R. § 52.21, as of November 29, 2005, incorporated by reference at subsection (a) of this section.

(2) The following definitions and requirements shall also apply:

(A)(i) "Emissions increase" as used in subdivisions (g)(2)(D) and (E) of this section, means that both a significant emissions increase (as calculated using the procedures in 40 C.F.R. § 52.21(a)(2)(iv), as of November 29, 2005), and a significant net emissions increase (as defined in 40 C.F.R. § 52.21(b)(3), as of November 29, 2005, and 40 C.F.R. § 52.21(b)(23), as of November 29, 2005), occur.

(ii)(a) For the pollutant greenhouse gases, an emissions increase

shall be based on tons per year of CO<sub>2</sub> equivalent emissions, and shall be calculated assuming the pollutant greenhouse gases is a regulated new source review pollutant.

(b) "Significant" is defined as seventy-five thousand (75,000) tons per year of CO<sub>2</sub> equivalent emissions instead of applying the value in 40 C.F.R. § 52.21(b)(23)(ii), as of November 29, 2005;

(B) "Greenhouse gases" means the air pollutant defined as the aggregate group of six (6) greenhouse gases, carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in subdivisions (g)(2)(D) and (E) of this section, and shall not be subject to regulation if the stationary source:

(i) Maintains its total plant-wide emissions below the greenhouse gas plant-wide applicability limitations level;

(ii) Meets the requirements in 40 C.F.R. § 52.21(aa)(1) – (aa)(15) as outlined in subdivision (a)(1)(A) of this section; and

(iii) Complies with the greenhouse gases plant-wide applicability limitations contained in the permit;

(C) "Tons per year of CO<sub>2</sub> equivalent emissions", for purposes of subdivisions (g)(2)(A), (D), and (E) of this section, shall represent an amount of greenhouse gases emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions in tons per year, for each of the six (6) greenhouse gases in the pollutant greenhouse gases, by each gas's associated global warming potential published at Table A-1 to Subpart A of 40 C.F.R. pt. 98 – Global Warming Potentials; and

(ii) Sum the resultant values from this subdivision (g)(2)(C) for each gas to compute tons per year of CO<sub>2</sub> equivalent emissions;

(D) Beginning January 2, 2011, the pollutant greenhouse gases is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated new source review pollutant that is not greenhouse gases, and also will emit or will have the potential to emit greenhouse gases at seventy-five thousand (75,000) tons per year of CO<sub>2</sub> equivalent emissions or more; or

(ii) The stationary source is an existing major stationary source for a regulated new source review pollutant that is not greenhouse gases, and also will have an emissions increase of a regulated new source review pollutant, and an emissions increase of greenhouse gases of seventy-five thousand (75,000) tons per year of CO<sub>2</sub> equivalent emissions or more; and

(E) [Reserved.]

(h) The following shall apply when dispersion or other air quality modeling is used to meet the requirements of this subpart:

(1)(A) General.

(B) All applications of air quality modeling involved in this subpart shall be based on the applicable models, databases, and other requirements specified in Appendix W of 40 C.F.R. pt. 51, Guideline on Air Quality Models; and

(2)(A) Substitution.

(B)(i) Where an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted.

(ii) Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific pollutant or type of stationary source.

(iii) Written approval of the Administrator of the United States Environmental Protection Agency must be obtained for any modification or substitution.

**Authority.** Arkansas Code § 8-4-311.

## **Subpart 9. Rules for the Control of Volatile Organic Compounds in Pulaski County**

### **8 CAR § 41-901. Title.**

This subpart, adopted in accordance with the provisions of the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., as amended, and pursuant to the provisions of the Clean Air Act, shall be known as the “Rules for the Control of Volatile Organic Compounds”.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-902. Purpose.**

This subpart is designed to provide for the attainment and maintenance of the National Ambient Air Quality Standards national ambient air quality standards for ozone in those areas of Arkansas which have been designated as nonattainment areas by the United States Environmental Protection Agency pursuant to the Clean Air Act and are further designed to bring this part into compliance with the provisions of the Clean Air Act.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-903. Definitions.**

(a)(1) Terms and phrases used in this subpart which are not explicitly defined herein shall have the same meaning as those terms used in 8 CAR § 41-106 or, if not defined in 8 CAR § 41-106, as those terms defined in the Clean Air Act.

(2) Unless manifestly inconsistent therewith, terms and phrases used herein shall have the same meaning as used in the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., and the Clean Air Act.

(b) When used in this subpart, the following definitions apply:

(1)(A) “Cutback asphalt” means asphalt cement which has been liquefied by blending with petroleum solvents (diluent).

(B) Upon exposure to atmospheric conditions, the diluents evaporate, leaving the asphalt cement to perform its function; and

(2) “Prime coat” means the first of two (2) or more films of coating applied to a metal surface.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-904. [Reserved.]**

**8 CAR § 41-905. Provisions for specific processes.**

(a) [Reserved.]

(b) [Reserved.]

(c) **Cutback asphalt.** No person shall mix, use, or apply cutback asphalt for roadway paving except where the cutback asphalt is used solely as a penetrating prime coat or when the maximum ambient temperature on the day of application is less than fifteen degrees Celsius (15° C) (fifty-nine degrees Fahrenheit (59° F)).

**Authority.** Arkansas Code § 8-4-311.

**Subpart 10. Major Source Permitting Procedures**

**8 CAR § 41-1001. Permitting procedure for Part 70 source.**

An owner or operator of a Part 70 source subject to Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42, shall be required to have their permit applications processed in accordance with the procedures contained in 8 CAR pt. 42.

**Authority.** Arkansas Code § 8-4-311.



**Subpart 12. Stage I Vapor Recovery**

**8 CAR § 41-1201. Purpose.**

The purpose of this subpart is to limit emissions of volatile organic compounds from gasoline stored in stationary dispensing tanks and from gasoline delivered into such tanks.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1202. Applicability.**

(a) This subpart applies to all gasoline dispensing facilities and gasoline service stations and to delivery vessels delivering gasoline to a gasoline dispensing facility or gasoline service station in a nonattainment area.

(b) This subpart applies to all persons owning or operating a gasoline distribution facility or gasoline service station in a nonattainment area.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1203. Definitions.**

As used in this subpart:



(1)(A) "Coaxial system" means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage tank occurs through a single coaxial fill tube that is a tube within a tube.

(B) Product is delivered through the inner tube, and vapor is recovered through the annular space between the walls of the inner tube and outer tube;

(2) "Delivery vessel" means tank trucks or trailers equipped with a storage tank and used for the transport of gasoline from sources of supply to stationary storage tanks of gasoline dispensing facilities;

(3) "Dual point system" means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage tank occurs through two (2) separate openings in the storage tank and two (2) separate hoses between the tank truck and the stationary storage tank;

(4)(A) "Gasoline" means any petroleum distillate or blend of petroleum distillates with other combustible liquids that is used as a fuel for internal combustion engines and has a Reid vapor pressure of four pounds per square inch (4.0 psi) or greater.

(B) This does not include diesel fuel or liquefied petroleum gas;

(5) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks;

(6) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks;

(7)(A) "Independent small business marketer" means a person engaged in the marketing of gasoline unless such person:

(i) Is a refiner or controls, is controlled by, or is under common control with a refiner or is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under common control with a refiner, unless the sole affiliation referred to is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person; or

(ii) Receives less than fifty percent (50%) of his or her annual income from refining or marketing of gasoline.

(B) For purposes of this subpart, the term "refiner" shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed sixty-five thousand (65,000) barrels per day.

(C) For purposes of this section, "control" of a corporation means ownership of more than fifty percent (50%) of its stock;

(8) "Leak free" means a condition in which there is no liquid gasoline escape or seepage of more than three (3) drops per minute from gasoline storage, handling, and ancillary equipment, including, but not limited to, seepage and escapes from aboveground fittings;

(9) "Line" means any pipe suitable for transferring gasoline;

(10) "Nonattainment area" means a county or counties designated by the United States Environmental Protection Agency as not meeting the national ambient air quality standards for ozone;

(11) "Operator" means any person who leases, operates, controls, or supervises

a facility at which gasoline is dispensed;

(12) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility;

(13) "Poppeted vapor recovery adaptor" means a vapor recovery adaptor that automatically and immediately closes itself when the vapor return line is disconnected and maintains a tight seal when the vapor return line is not connected;

(14) "Stationary storage tank" means a gasoline storage container that is a permanent fixture;

(15) "Submerged fill pipe" means any fill pipe with a discharge opening that is entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or that is entirely submerged when the level of the liquid is:

(A) Six inches (6") above the bottom of the tank if the tank does not have a vapor recovery adaptor; or

(B)(i) Twelve inches (12") above the bottom of the tank if the tank has a vapor recovery adaptor.

(ii) If the opening of the submerged fill pipe is cut at a slant, the distance is measured from the top of the slanted cut to the bottom of the tank;

(16) "Throughput" means the amount of gasoline dispensed at a facility; and

(17) "Vapor tight" means a condition in which an organic vapor analyzer or a combustible gas detector at a potential volatile organic compounds leak source shows either less than ten thousand parts per million (10,000 ppm) when calibrated with methane, or less than twenty percent (20%) of the lower explosive limit when calibrated and operated according to the manufacturer's specifications.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-1204. Exemptions.**

This subpart does not apply to:

(1) Transfers made to storage tanks at gasoline dispensing facilities or gasoline service stations equipped with floating roofs or their equivalent;

(2) Stationary storage tanks with a capacity of not more than five hundred fifty gallons (550 gals.), if the tanks are equipped with a submerged fill pipe;

(3) Stationary storage tanks used exclusively for the fueling of implements of normal farm operations;

(4) Facilities selling less than ten thousand gallons (10,000 gals.) of gasoline per month;

(5) Independent small business marketers of gasoline selling less than fifty thousand gallons (50,000 gals.) per month;

(6) Any other facility or use exempted by state or federal statute.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-1205. Prohibited activities.**

No person may cause, allow, or permit the transfer of gasoline from any delivery vessel

into any stationary storage tank unless such transfer complies with the following requirements:

- (1) The stationary storage tank is equipped with a submerged fill pipe and the vapors displaced from the tank during filling are controlled by a vapor control system as described herein;
- (2) The vapor control system is in good working order and is connected and operating with a vapor-tight connection;
- (3) The vapor control system is properly maintained and any damaged or malfunctioning components or elements of design have been repaired, replaced, or modified;
- (4) Gauges, meters, or other specified testing devices are maintained in proper working order;
- (5) All loading lines and vapor lines of delivery vessels and vapor collection systems are equipped with fittings that are leak-tight and vapor-tight;
- (6) All hatches on the delivery vessel are kept closed and securely fastened; and
- (7) The stationary storage tank has been tested, no less than annually, on a schedule acceptable to the Director of the Division of Environmental Quality according to the test methods required herein.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1206. Recordkeeping.**

The following records shall be maintained for not less than two (2) years and the same shall be made available for inspection by the Division of Environmental Quality:

- (1) The scheduled date for maintenance and testing, and the date that a malfunction was detected;
- (2) The date the maintenance and testing was performed or the malfunction corrected;
- (3) The date the component or element of design of the control system was repaired, replaced, or modified; and
- (4) Monthly totals of gallons of gasoline sold by the facility.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1207. Inspections.**

(a) The premises of any gasoline dispensing facility or gasoline service station shall be available for inspection by representatives of the Division of Environmental Quality.

(b) The process of transfer of gasoline from any delivery vessel into any stationary storage tank shall be subject to observation and inspection by representatives of the division.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1208. Vapor recovery systems.**

(a) The vapor control system required by 8 CAR § 41-1205 shall include one (1) or more of the following:

- (1) A vapor-tight line from the stationary storage tank to the delivery vessel and:

(A) For a coaxial vapor recovery system, either a poppeted or unpoppeted vapor recovery adaptor; or

(B) For a dual point vapor recovery system, a poppeted vapor recovery adaptor;

(2) A refrigeration-condensation system or equivalent designed to recover or destroy at least ninety percent (90%) by weight of the organic compounds in the displaced vapor.

(b) If an unpoppeted vapor recovery adaptor is used, the tank liquid fill connection shall remain covered either with a vapor-tight cap or a vapor return line except when the vapor return line is being connected or disconnected.

(c) If an unpoppeted vapor recovery adaptor is used, the unpoppeted vapor recovery adaptor shall be replaced with a poppeted vapor recovery adaptor when the tank is replaced or upgraded.

(d)(1) Where vapor lines from the storage tanks are manifolded, poppeted vapor recovery adapters shall be used.

(2) No more than one (1) tank is to be loaded at a time if the manifold vapor lines have a nominal pipe size of less than three inches (3").

(3) If the manifold vapor lines have a nominal pipe size of three inches (3") or larger, then two (2) tanks at a time may be loaded.

(e) Vent lines on stationary storage tanks shall have pressure release valves or restrictors.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1209. Gasoline delivery vessels.**

(a) Gasoline delivery vessels shall be designed and maintained to be vapor-tight during loading and unloading operations and during transport.

(b) Gasoline delivery vessels shall be tested, no less than annually, on a schedule acceptable to the Director of the Division of Environmental Quality according to the test methods required herein.

(c) Gasoline delivery vessels shall sustain a pressure change of no more than seven hundred fifty (750) pascals (three inches (3") of H<sub>2</sub>O) in five (5) minutes when pressurized to a gauge pressure of four thousand five hundred (4,500) pascals (eighteen inches (18") of H<sub>2</sub>O) or evacuated to a gauge pressure of one thousand five hundred (1,500) pascals (six inches (6") of H<sub>2</sub>O) during testing.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1210. Owner/operator responsibility.**

(a) It shall be the responsibility of owners and operators of gasoline dispensing facilities and gasoline service stations to assure compliance with this subpart and to disallow the transfer from any delivery vessel that does not comply with those requirements of this subpart applicable to delivery vessels.

(b) It shall be the responsibility of owners, operators, and drivers of delivery vessels to

assure compliance with this subpart and to refuse to transfer from any delivery vessel that does not comply with those requirements of this subpart applicable to delivery vessels.

(c) It shall be the responsibility of owners and operators of gasoline dispensing facilities and gasoline service stations to properly maintain, repair, replace, modify, and test the vapor recovery system components of stationary storage tanks regulated herein.

(d) It shall be the responsibility of owners and operators of gasoline dispensing facilities, gasoline service stations, and gasoline delivery vehicles to repair and retest equipment within fifteen (15) days of a test that exceeds the limitations set forth herein.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1211. Test methods.**

(a) Test method for leak detection:

(1) Within four (4) hours prior to monitoring, the organic vapor analyzer or combustible gas detector shall be suitably calibrated in a manner and with the gas specified by the manufacturer for twenty percent (20%) of the lower explosive limit response, or calibrated with methane for a ten thousand parts per million (10,000 ppm) response;

(2) The probe inlet shall be two and one-half centimeters (2.5 cm) or less from the potential leak source when searching for leaks; and

(3)(A) The highest detector reading and location for each incident of detected leakage shall be recorded, along with the date, time, and name of the person performing the testing.

(B) If no gasoline vapor is detected, that fact shall be recorded.

(b)(1) Control efficiency of vapor recovery systems and vapor collection/processing systems shall be determined according to EPA Method 2A and either EPA Method 25A or 25B.

(2) EPA Method 2B shall be used for vapor incineration devices.

(c)(1) Vapor pressure of gasoline shall be determined using American Society for Testing and Materials (ASTM) Method D323-94 or ASTM Method D4953-93.

(2) Method D323-94 shall be used for gasoline either containing no oxygenates or MTBE (methyl ethyl butyl ether) as the sole oxygenate.

(3) Method D4953-93 shall be used for oxygenated gasoline.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1212. Effective date.**

(a) The requirements of this subpart shall be effective within nonattainment areas one (1) year after the designation by the United States Environmental Protection Agency of an area as a nonattainment area.

(b) In the case of an independent small business marketer with sales of fifty thousand gallons (50,000 gals.) or more per month, this subpart shall be phased in as follows:

(1) Thirty-three percent (33%) of facilities shall be in compliance at the end of the first year;

(2) Sixty-six percent (66%) at the end of the second year; and

(3) One hundred percent (100%) at the end of the third year.

**Authority.** Arkansas Code § 8-4-311.

**Subpart 13. [Reserved]**

**Subpart 14. Best Available Retrofit Technology**

**8 CAR § 41-1401. Purpose.**

This subpart establishes certain best available retrofit control technology requirements and compliance provisions pursuant to 40 C.F.R. § 51.308 as of June 22, 2007.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1402. Definitions.**

For purposes of this subpart, the definitions contained in 40 C.F.R. § 51.301, as in effect on June 22, 2007, are incorporated by reference.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1403. [Reserved.]**

**8 CAR § 41-1404. [Reserved.]**

**8 CAR § 41-1405. Best available retrofit technology requirements.**

(a) SWEPCO Flint Creek Power Plant (AFIN 04-00107) shall comply with best available retrofit technology requirements for particulate matter at SN-01 by meeting the existing permitted particulate matter emission limit as of October 15, 2007.

(b) [Reserved.]

(c) [Reserved.]

(d) [Reserved.]

(e) Entergy Arkansas, Inc. White Bluff (AFIN 35-00110) shall comply with best available retrofit technology requirements for particulate matter at Unit 1 (SN-01) and Unit 2 (SN-02) by meeting existing permitted particulate matter emission limits for the respective units as of October 15, 2007.

(f) [Reserved.]

(g) [Reserved.]

(h) [Reserved.]

(i) [Reserved.]

(j) [Reserved.]

(k) [Reserved.]

(l) Entergy Arkansas, Inc. Lake Catherine (AFIN 30-00011) shall comply with best available retrofit technology requirements for particulate matter when burning natural gas at Unit 4 Boiler (SN-03) by meeting the existing permitted particulate matter emission limit as of October 15, 2007.

**Authority.** Arkansas Code § 8-4-311.

**Codification Notes.** “SWEPCO” refers to Southwestern Electric Power Company.

**8 CAR § 41-1406. Compliance provisions.**

The owner or operator of each stationary source subject to 8 CAR § 41-1405 shall:

(1) Comply with the applicable emission limit as expeditiously as practicable, but in no event later than five (5) years after the United States Environmental Protection Agency approval of the emission limit into the Arkansas state implementation plan;

(2) Properly operate and maintain the control equipment necessary to comply with the applicable emission limitations set forth in 8 CAR § 41-1405;

(3) Establish and implement procedures to ensure that the control equipment necessary to comply with the applicable emission limitations set forth in 8 CAR § 41-1405 is properly operated and maintained; and

(4) Demonstrate compliance with the applicable emission limitations listed in 8 CAR § 41-1405 in accordance with the provisions of Subpart 6 of this part.

**Authority.** Arkansas Code § 8-4-311.

**Subpart 15. [Reserved]**

[REDACTED]

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subject to reopening to incorporate the applicable requirements of this subpart in accordance

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#### **Subpart 17. Effective Date**

##### **8 CAR § 41-1701. Effective date.**

This part is effective ten (10) days after filing with the:

- (1) Secretary of State;
- (2) Arkansas State Library; and
- (3) Bureau of Legislative Research.

**Authority.** Arkansas Code § 8-4-311.

# **ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**



**8 CAR pt. 41**

**APPENDIX A**

**INSIGNIFICANT ACTIVITIES LIST**

# **INSIGNIFICANT ACTIVITIES LIST**

## **APPENDIX A: INSIGNIFICANT ACTIVITIES LIST**

The following types of activities or emissions are deemed insignificant on the basis of size, emission rate, production rate, or activity. Certain of these listed activities include qualifying statements intended to exclude many similar activities. By such listing, the Division exempts certain sources or types of sources from the requirements to obtain a permit or plan under this rule. Listing in this part has no effect on any other law to which the activity may be subject. Any activity for which a state or federal applicable requirement applies (such as a new source performance standard, a national emission standard for hazardous air pollutants, or maximum achievable control technology) is not insignificant, even if this activity meets the criteria below.

### **Group A**

The following emission units, operations, or activities must either be listed as insignificant or included in the permit application as sources to be permitted. The ton-per-year applicability levels are for all sources listed in the categories (i.e., cumulative total).

1. Fuel burning equipment with a design rate less than ten (10) MMBtu per hour, provided that the aggregate air pollutant specific emissions from all such units listed as insignificant do not exceed five (5) tons per year of any combination of hazardous air pollutants, and ten (10) tons per year of any other air pollutant.
2. Storage tanks less than or equal to two hundred fifty (250) gallons storing organic liquids having a true vapor pressure less than or equal to three and one-half (3.5) pounds-force per square inch absolute, provided that the aggregate air pollutant specific emissions from all such liquid storage tanks listed as insignificant do not exceed five (5) tons per year of any combination of hazardous air pollutants and ten (10) tons per year of any other air pollutant.
3. Storage tanks less than or equal to ten thousand (10,000) gallons storing organic liquids having a true vapor pressure less than or equal to one-half (0.5) pounds-force per square inch absolute, provided that the aggregate air pollutant specific emissions from all such liquid storage tanks listed as insignificant do not exceed five (5) tons per year of any combination of hazardous air pollutants and ten (10) tons per year of any other air pollutant.



4. Caustic storage tanks that contain no volatile organic compounds.
5. Emissions from laboratory equipment/vents used exclusively for routine chemical or physical analysis for quality control or environmental monitoring purposes provided that the aggregate air pollutant specific emissions from all such equipment/vents considered insignificant do not exceed five (5) tons per year of any combination of hazardous air pollutants and ten (10) tons per year of any other air pollutant.
6. Non-commercial water washing operations of empty drums less than or equal to fifty-five (55) gallons with less than three percent (3%) of the maximum container volume of material.
7. Welding or cutting equipment related to manufacturing activities that do not result in aggregate emissions of hazardous air pollutants in excess of one-tenth (0.1) tons per year.
8. Containers of less than or equal to five (5) gallons in capacity that do not emit any detectable volatile organic compounds or hazardous air pollutants when closed. This includes filling, blending, or mixing of the contents of such containers by a retailer.
9. Equipment used for surface coating, painting, dipping, or spraying operations, provided the material used contains no more than four-tenths (0.4) lb/gal volatile organic compounds, no hexavalent chromium, and no more than one-tenth (0.1) tons per year of all other hazardous air pollutants.
10. Non-production equipment approved by the Division, used for waste treatability studies or other pollution prevention programs provided that the emissions are less than ten (10) tons per year of any air pollutant regulated under this rule or less than two (2) tons per year of a single hazardous air pollutant or five (5) tons per year of any combination of hazardous air pollutants.<sup>1</sup>
11. Operation of groundwater remediation wells, including emissions from the pumps and collection activities provided that the emissions are less than ten (10) tons per year of any air pollutant regulated under this rule or less than two (2) tons per year of a single hazardous air pollutant or five (5) tons per year of any combination of

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<sup>1</sup> The treatability study or pollution prevention program must be approved separately. The activity creating the emissions must also be determined to be insignificant as discussed in the introduction to this group.

hazardous air pollutants. This does not include emissions from air-stripping or storage.

12. Emergency use generators, boilers, or other fuel burning equipment that is of equal or smaller capacity than the primary operating unit, cannot be used in conjunction with the primary operating unit, and does not emit or have the potential to emit regulated air pollutants in excess of the primary operating unit and not operated more than ninety (90) days a year. This does not apply to generators that provide electricity to the distribution grid.
13. Other activities for which the facility demonstrates that no enforceable permit conditions are necessary to ensure compliance with any applicable law or rule provided that the emissions are less than one (1) ton per year of a single hazardous air pollutant or two and one-half (2.5) tons per year of any combination of hazardous air pollutants, or five (5) tons per year of any other air pollutant regulated under this rule. These emission limits apply to the sum of all activities listed under this group.

#### **Group B**

The following emission units, operations, or activities need not be included in a permit application:

1. Combustion emissions from propulsion of mobile sources and emissions from refueling these sources unless regulated by Title II and required to obtain a permit under Title V of the Clean Air Act, as amended. This does not include emissions from any transportable units, such as temporary compressors or boilers. This does not include emissions from loading racks or fueling operations covered under any applicable federal requirements.
2. Air conditioning and heating units used for comfort that do not have applicable requirements under Title VI of the Clean Air Act.
3. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process.
4. Non-commercial food preparation or food preparation at restaurants, cafeterias, or caterers, etc.
5. Consumer use of office equipment and products, not including commercial printers or business primarily involved in photographic reproduction.

6. Janitorial services and consumer use of janitorial products.
7. Internal combustion engines used for landscaping purposes.
8. Laundry activities, except for dry-cleaning and steam boilers.
9. Bathroom/toilet emissions.
10. Emergency (backup) electrical generators at residential locations.
11. Tobacco smoking rooms and areas.
12. Blacksmith forges.
13. Maintenance of grounds or buildings, including: lawn care, weed control, pest control, and water washing activities.
14. Repair, up-keep, maintenance, or construction activities not related to the source's primary business activity, and not otherwise triggering a permit modification. This may include, but is not limited to such activities as general repairs, cleaning, painting, welding, woodworking, plumbing, re-tarring roofs, installing insulation, paved/paving parking lots, miscellaneous solvent use, application of refractory, or insulation, brazing, soldering, the use of adhesives, grinding, and cutting.<sup>2</sup>
15. Surface-coating equipment during miscellaneous maintenance and construction activities. This activity specifically does not include any facility whose primary business activity is surface-coating or includes surface-coating or products.
16. Portable electrical generators that can be "moved by hand" from one location to another.<sup>3</sup>
17. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic.

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<sup>2</sup> Cleaning and painting activities qualify if they are not subject to volatile organic compounds or hazardous air pollutant control requirements. Asphalt batch plant owners/operators must get a permit.

<sup>3</sup> "Moved by hand" means that it can be moved by one person without assistance of any motorized or non-motorized vehicle, conveyance, or device.

18. Brazing or soldering equipment related to manufacturing activities that do not result in emission of hazardous air pollutants.<sup>4</sup>
19. Air compressors and pneumatically operated equipment, including hand tools.
20. Batteries and battery charging stations, except at battery manufacturing plants.
21. Storage tanks, vessels, and containers holding or storing liquid substances that do not contain any volatile organic compounds or hazardous air pollutants.<sup>55</sup>
22. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and no volatile aqueous salt solutions, provided appropriate lids and covers are used and appropriate odor control is achieved.
23. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions, provided appropriate lids and covers are used and appropriate odor control is achieved.
24. Drop hammers or presses for forging or metalworking.
25. Equipment used exclusively to slaughter animals, but not including other equipment at slaughter-houses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.
26. Vents from continuous emissions monitors and other analyzers.
27. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.
28. Hand-held applicator equipment for hot melt adhesives with no volatile organic compounds in the adhesive.
29. Lasers used only on metals and other materials that do not emit hazardous air pollutants in the process.

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<sup>4</sup> Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit hazardous air pollutant metals are more appropriate for treatment as insignificant activities based on size or production thresholds. Brazing, soldering, and welding equipment, and cutting torches related directly to plant maintenance and upkeep and repair or maintenance shop activities that emit hazardous air pollutant metals are treated as trivial and listed separately in this appendix.

<sup>5</sup> Exemptions for storage tanks containing petroleum liquids or other volatile organic liquids are based on size and limits including storage tank capacity and vapor pressure of liquids stored and are not appropriate for this list.

30. Consumer use of paper trimmers/binders.
31. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.
32. Salt baths using non-volatile salts that do not result in emissions of any air pollutant covered by this rule.
33. Laser trimmers using dust collection to prevent fugitive emissions.
34. Bench-scale laboratory equipment used for physical or chemical analysis not including lab fume hoods or vents.
35. Routine calibration and maintenance of laboratory equipment or other analytical instruments.
36. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.
37. Hydraulic and hydrostatic testing equipment.
38. Environmental chambers not using hazardous air pollutant gases.
39. Shock chambers, humidity chambers, and solar simulators.
40. Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.
41. Process water filtration systems and demineralizers.
42. Demineralized water tanks and demineralizer vents.
43. Boiler water treatment operations, not including cooling towers.
44. Emissions from storage or use of water treatment chemicals, except for hazardous air pollutants or pollutants listed under regulations promulgated pursuant to Section 112(r) of the Clean Air Act, for use in cooling towers, drinking water systems, and boiler water/feed systems.
45. Oxygen scavenging (de-aeration) of water.

46. Ozone generators.
47. Fire suppression systems.
48. Emergency road flares.
49. Steam vents and safety relief valves.
50. Steam leaks.
51. Steam cleaning operations.
52. Steam and microwave sterilizers.
53. Site assessment work to characterize waste disposal or remediation sites.
54. Miscellaneous additions or upgrades of instrumentation.
55. Emissions from combustion controllers or combustion shutoff devices but not combustion units itself.
56. Use of products for the purpose of maintaining motor vehicles operated by the facility, not including air cleaning units of such vehicles (i.e. antifreeze, fuel additives).
57. Stacks or vents to prevent escape of sanitary sewer gases through the plumbing traps.
58. Emissions from equipment lubricating systems (i.e. oil mist), not including storage tanks, unless otherwise exempt.
59. Residential wood heaters, cookstoves, or fireplaces.
60. Barbecue equipment or outdoor fireplaces used in connection with any residence or recreation.
61. Log wetting areas and log flumes.
62. Periodic use of pressurized air for cleanup.
63. Solid waste dumpsters.
64. Emissions of wet lime from lime mud tanks, lime mud washers, lime mud piles, lime mud filter and filtrate tanks, and lime mud slurry tanks.

65. Natural gas odoring activities unless the Division determines that emissions constitute air pollution.
66. Emissions from engine crankcase vents.
67. Storage tanks used for the temporary containment of materials resulting from an emergency reporting to an unanticipated release.
68. Equipment used exclusively to mill or grind coatings in roll grinding rebuilding, and molding compounds where all materials charged are in paste form.
69. Mixers, blenders, roll mills, or calendars for rubber or plastic for which no materials in powder form are added and in which no hazardous air pollutants, organic solvents, diluents, or thinners are used or emitted.
70. The storage, handling, and handling equipment for bark and wood residues not subject to fugitive dispersion offsite (this applies to the equipment only).
71. Maintenance dredging of pulp and paper mill surface impoundments and ditches containing cellulosic and cellulosic derived biosolids and inorganic materials such as lime, ash, or sand.
72. Tall oil soap storage, skimming, and loading.
73. Water heaters used strictly for domestic (non-process) purposes.
74. Facility roads and parking areas, unless necessary to control offsite fugitive emissions.
75. Agricultural operations, including onsite grain storage, not including internal combustion engines or grain elevators.
76. Natural gas and oil exploration and production site equipment not subject to a rule under 40 C.F.R. pts. 60, 61, or 63.

# **ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**



**8 CAR pt. 41**

**APPENDIX B**

**NATIONAL AMBIENT AIR QUALITY STANDARDS LIST**



## APPENDIX B: NATIONAL AMBIENT AIR QUALITY STANDARDS LIST

The national ambient air quality standards as adopted as of the effective date of this Rule are listed below.

Pollutant	Final Rule Cite	Final Rule Date	Primary / Secondary	Averaging Time	Level	Form	Applicable Chapters
Carbon Monoxide	76 FR 54294	August 31, 2011	Primary	Eight-hour	Nine (9) parts per million	Not to be exceeded more than once per year	All Chapters
				One-hour	Thirty-five (35) parts per million		All Chapters
Lead	73 FR 66964	November 12, 2008	Primary and secondary	Rolling three-month average	0.15 micrograms per cubic meter	Not to be exceeded	All Chapters
Nitrogen Dioxide	75 FR 6474	February 9, 2010	Primary	One-hour	One hundred (100) parts per billion	Ninety-eighth (98 <sup>th</sup> ) percentile, averaged over three (3) years	All Chapters
	61 FR 52852	October 8, 1996	Primary and secondary	Annual	Fifty-three (53) parts per billion	Annual Mean	All Chapters

Pollutant	Final Rule Cite	Final Rule Date	Primary / Secondary	Averaging Time	Level	Form	Applicable Chapters
Ozone	80 FR 65292	October 26, 2015	Primary and secondary	Eight-hour	0.070 parts per million	Annual fourth-highest daily maximum eight-hour concentration, averaged over three (3) years	All Chapters
Particle Pollution, PM <sub>2.5</sub>	78 FR 3085	January 15, 2013	Primary	Annual	Twelve (12) micrograms per cubic meter	Annual mean, averaged over three (3) years	All Chapters
	71 FR 61144	October 17, 2006	Secondary	Annual	Fifteen (15) micrograms per cubic meter		
			Primary and secondary	Twenty-four-hour	Thirty-five (35) micrograms per cubic meter	Ninety-eighth (98th) percentile, averaged over three (3) years	All Chapters

Pollutant	Final Rule Cite	Final Rule Date	Primary / Secondary	Averaging Time	Level	Form	Applicable Chapters
Particle Pollution, PM <sub>10</sub>	71 FR 61144	October 17, 2006	Primary and secondary	Twenty-four-hour	One-hundred fifty (150) micrograms per cubic meter	Not to be exceeded more than once per year on average over three (3) years	All Chapters
Sulfur Dioxide	75 FR 35520	June 22, 2010	Primary	One-hour	Seventy-five (75) parts per billion	Ninety-ninth (99th) percentile of one-hour daily maximum concentrations, averaged over three (3) years	All Chapters
	38 FR 25678	September 14, 1973	Secondary	Three-hour	0.5 parts per million	Not to be exceeded more than once per year	All Chapters

**Title 8. Environmental Law**

**Chapter I. Arkansas Pollution Control and Ecology Commission, Department of Energy and Environment**

**Subchapter D. Air Quality**

**Part 42. Rules of the Arkansas Operating Air Permit Program**

[REDACTED]

[REDACTED]

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## **Subpart 2. Requirement for a Permit — Applicability**

### **8 CAR § 42-201. Requirement for a permit.**

(a)(1) No part 70 source may operate unless it is operating in compliance with a part 70 permit, or unless it has filed a timely and complete application for an initial or renewal permit as required under this part.

(2) Existing part 70 sources shall submit initial applications according to the provisions of Subpart 3 of this part.

(3)(A) If a part 70 source submits a timely and complete application for an initial or renewal permit, the source's failure to have a part 70 permit is not a violation of this part until the Division of Environmental Quality takes final action on the permit application, except as noted in this section.

(B) This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit by the deadline specified in writing by the division any additional information identified as being needed to process the application.

(4) If the division fails to act in a timely way on a permit renewal, the Environmental Protection Agency may invoke its authority under Section 505(e) of the Act to terminate or revoke and reissue the permit.

(b) No proposed new part 70 source shall begin construction prior to obtaining a part 70 permit, unless the applicable permit application was submitted prior to the effective date of this part and the division's draft permitting decision for such source has already proceeded to public notice in accordance with 8 CAR pt. 41.

(c)(1)(A) No part 70 source shall begin construction of a new emissions unit or begin modifications to an existing emissions unit prior to obtaining a modified part 70 permit.

(B) This applies only to significant modifications and does not apply to modifications that qualify as minor modifications or changes allowed under the operational flexibility provisions of a part 70 permit.

(2) An existing part 70 source shall be subject to the permit modification procedures of 8 CAR pt. 41 until such time that an initial part 70 permit application is due from the source.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 42-202. Sources subject to permitting.**

The following sources shall be subject to permitting under this part unless exempted by 8 CAR § 42-203:

- (1) Any major source;
- (2)(A) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, i.e., New Source Performance Standards (NSPS) regulations.
  - (B) However, nonmajor sources subject to Section 111 of the Act are exempt from the obligation to obtain a part 70 permit until such time that the Administrator of the Environmental Protection Agency completes a rulemaking to determine how the program should be structured for nonmajor sources;
- (3) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, i.e., hazardous air pollutant regulations, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;
- (4) Any source subject to Subpart 8 of the Arkansas Pollution Control and Ecology Commission's Rules of the Arkansas Plan of Implementation for Air Pollution Control, 8 CAR pt. 41;
- (5) Any acid rain source, which shall be permitted in accordance with the provisions of the federal acid rain program; and
- (6) Any source in a source category designated by the Administrator of the Environmental Protection Agency pursuant to this section.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

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### **Subpart 3. Applications for Permits**

#### **8 CAR § 42-301. Duty to apply.**

For each source subject to 40 C.F.R. pt. 70, as promulgated June 3, 2010 (75 FR 31607), the owner or operator shall submit a timely and complete permit application on forms supplied by the Division of Environmental Quality in accordance with this section.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 42-302. Standard application form and required information.**

(a)(1) The Division of Environmental Quality shall provide a standard application form or forms and shall provide them to part 70 sources upon request.

(2) Information as described below for each emissions unit at a part 70 source shall be required by the application form and included by the applicant in the application.

(b)(1) A list of insignificant activities that are exempted because of size or production rate must be included in the application.

(2) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required by the Arkansas Pollution Control and Ecology Commission's Fee Regulation, 8 CAR pt. 12.

(c)(1) The division may use discretion in developing application forms that best meet program needs and administrative efficiency.

(2) The forms and attachments chosen, however, shall include the elements specified below:

(A) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact;

(B) A description of the source's processes and products (by Standard Industrial Classification Code or the North American Industry Classification System) including any associated with alternate scenario identified by the source;

(C) The following emission-related information:

(i)(a) A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under subdivision (b)(1) of this section.

(b) The division shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule in 8 CAR pt. 12;

(ii) Identification and description of all points of emissions described above in sufficient detail to establish the basis for fees and applicability of requirements of the Act;

(iii) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(iv) The following information to the extent it is needed to determine or regulate emissions:

(a) Fuels;

(b) Fuel use;

(c) Raw materials;

(d) Production rates; and

(e) Operating schedules;

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities;

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source;

(vii) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act; and

(viii) Calculations on which the information in subdivision (c)(2)(C) of this section is based;

(D) The following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement;

(E) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act, of this part, or to determine the applicability of such requirements;

(F) An explanation of any proposed exemptions from otherwise applicable requirements;

(G) Additional information as determined to be necessary by the division to define alternative operating scenarios identified by the source pursuant to 8 CAR § 42-601(i), or to define permit terms and conditions implementing 8 CAR § 42-702 or 8 CAR § 42-601(j);

(H) A compliance plan for all part 70 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements;

(ii) A description as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis; and

(c) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;

(iii) A compliance schedule as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(b)(1) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(2) A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement; and

(c)(1) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance.

(2) Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance.

(3) This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.

(4) Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

(iv) A schedule for submission of certified progress reports no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation; and

(v) The compliance plan content requirements specified in this subdivision (c)(2)(H)(v) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations;

(I) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with 8 CAR § 42-310 and Section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the division; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act; and

(J) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** “tpy” means tons per year.

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(a) To be deemed complete, an application must provide all information required by 8 CAR § 42-302, except that applications for permit revision need supply only that information related to the proposed change.

(b) Unless the Division of Environmental Quality determines that an application is not complete within sixty (60) days of receipt of the application, such application shall be deemed to be complete.

(c) If, while processing an application that has been determined or deemed to be complete, the division determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.



**8 CAR § 42-309. Applicant's duty to supplement or correct application.**

(a) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

(b) In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 42-310. Certification by responsible official.**

(a) Any application form, report, or compliance certification submitted pursuant to this part shall contain certification by a responsible official of truth, accuracy, and completeness.

(b) This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Subpart 4. Action on Applications**

**8 CAR § 42-401. Action on part 70 permit applications.**

A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(1) The Division of Environmental Quality has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(2) Except for modifications qualifying for minor permit modification procedures under Subpart 9 of this part, the division has complied with the requirements under Subpart 5 of this part, for public participation and for notifying and responding to affected states;

(3) The processing of the permit application and the conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(4) The Administrator of the Environmental Protection Agency has received a copy of the proposed permit and any notices required under Subpart 5 of this part, and has not objected to issuance of the permit within the time period specified therein.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 42-402. Final action on permit application.**

(a) The Division of Environmental Quality shall take final action on each permit application, including a request for permit modification or renewal, as expeditiously as practicable, but no later than eighteen (18) months after receiving a complete application, unless a different time period is provided for in this part, i.e., initial permitting of existing part 70 sources and minor permit modifications.

(b) Failure of the division to act upon an application shall not constitute approval of the permit application.

(c) An aggrieved applicant may seek relief from division inaction on a permit application in accordance with the procedures of Arkansas Code § 8-4-311(b)(10)(F).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

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**Subpart 5. Permit Review by the Public, Affected States, and the Environmental Protection Agency**

**8 CAR § 42-501. Applicability.**

All initial permits, renewal permits, and significant permit modifications shall meet the permit review requirements of this subpart.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 42-502. Public participation.**

(a) All initial permit issuances, significant modifications, minor modifications, and renewals shall afford the public the opportunity to comment.

(b) Public notice shall be given:

(1)(A) By publication of notice of application receipt by the Division of Environmental Quality in a newspaper of general circulation in the county in which the proposed facility or activity is to be located, in accordance with the Arkansas Pollution Control and Ecology Commission's Administrative Procedures, 8 CAR pt. 11.

(B) Minor permit modification applications are exempt from this requirement.

(C) In the event the local newspaper is unable or unwilling to publish the

notice, notice may be published in a newspaper in general circulation through the state;

(2) By the availability for public inspection in at least one (1) location in the area where the source is located and in the division's central offices of the permit application submitted by the owner or operator and the division's draft permitting decision and analysis of the effect of the proposed emissions on air quality;

(3)(A) By publication of a notice of the division's draft permitting decision in a newspaper of general circulation in the county in which the proposed facility or activity is to be located, in accordance with 8 CAR pt. 11.

(B) In the event the local newspaper is unable or unwilling to publish the notice, notice may be published in a newspaper in general circulation through the state;

(4) To the mayor of the community in which the source is located;

(5) To the county judge of the county in which the source is located;

(6) To persons on a mailing list developed by the division, including those who request in writing to be on the list; and

(7) By other means if necessary to ensure adequate notice to the affected public.

(c) The notice of subdivision (b)(3) of this section shall:

(1) Identify the affected facility;

(2) Identify the name and address of the permittee;

(3) Identify the name and address of the division;

(4) Identify the activity or activities involved in the permit action;

(5) Identify the emissions change involved in any permit modification;

(6) Identify the name, address, and telephone number of a person from whom interested persons may obtain additional information, including:

(A) Copies of the permit draft;

(B) The application;

(C) All relevant supporting materials; and

(D) All other materials available to the division that are relevant to the permit decision;

(7) Include a brief description of the comment procedures required by this part; and

(8) Include a statement of procedures to request a hearing.

(d) The division shall provide such notice and opportunity for participation by affected states as is provided for in this section.

(e) The division shall provide at least thirty (30) days for public comment on its draft permitting decision and shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

(f) The division shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator of the Environmental Protection Agency may fulfill his or her obligation under Section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and such records shall be available to the public.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 42-503. Transmission of permit information to the Administrator of the Environmental Protection Agency.**

(a)(1) The Division of Environmental Quality shall provide to the Administrator of the Environmental Protection Agency:

(A) A copy of each permit application, including any application for permit modification;

(B) Each proposed permit; and

(C) Each final part 70 permit.

(2) The applicant may be required by the division to provide a copy of the permit application, including the compliance plan, directly to the Administrator of the Environmental Protection Agency.

(3) Upon agreement with the Administrator of the Environmental Protection Agency, the division may submit to the Administrator of the Environmental Protection Agency a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan.

(b) The division shall keep for five (5) years such records and submit to the Administrator of the Environmental Protection Agency such information as the Administrator of the Environmental Protection Agency may reasonably require to ascertain whether the state program complies with the requirements of the Act or of 40 C.F.R. pt. 70, as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 42-504. Review of draft permit by affected states.**

(a) The Division of Environmental Quality shall give notice of each draft permit to any affected state on or before the time that the division provides this notice to the public, except to the extent that minor permit modification procedures require the timing of the notice to be different.

(b)(1) The division, as part of the submittal of the proposed permit to the Administrator of the Environmental Protection Agency, or as soon as possible after the submittal for minor permit modification procedures, shall notify the Administrator of the Environmental Protection Agency and any affected state in writing of any refusal by the division to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period.

(2) The notice shall include the division's reasons for not accepting any such recommendation.

(3) The division is not required to accept recommendations that are not based on applicable requirements or the requirements of 40 C.F.R. pt. 70, as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.



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Age Group	Percentage
18-24	10%
25-34	20%
35-44	30%
45-54	40%
55-64	50%
65-74	60%
75+	70%

**Figure 1.** The effect of the number of trials on the mean accuracy of the responses. The error bars represent the standard error of the mean. Asterisks indicate significant differences between the two conditions ( $p < .05$ , Wilcoxon signed rank test).

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**Title 8. Environmental Law**

**Chapter I. Arkansas Pollution Control and Ecology Commission, Department of Energy and Environment**

**Subchapter D. Air Quality**

**Part 43. Nonattainment New Source Review Requirements**

**Subpart 1. General Provisions**

**8 CAR § 43-101. Title.**

The following part, adopted in accordance with the provisions of Subchapter 2 of the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., shall be known as “Nonattainment New Source Review Requirements”, hereinafter referred to as “8 CAR pt. 43”.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-102. Applicability.**

(a) This part applies to any area in Arkansas designated nonattainment for any national ambient air quality standard under Subpart C of 40 C.F.R. pt. 81.

(b) This part shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under Section 107(d)(1)(A)(i) of the Clean Air Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

**8 CAR § 43-103. Severability.**

If any provision of this part, or the application of such provision to any person or circumstance is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-104. Definitions.**

(a) Terms and phrases used in this part which are not explicitly defined herein shall have the same meaning as those terms which are used in the federal Clean Air Act.

(b) For the purposes of this part:

(1) “Actual emissions” means: (A)(i) The actual rate of emissions of a regulated New Source Review (NSR) pollutant from an emissions unit, as determined in accordance with subdivisions (b)(1)(B) – (D) of this section, except that this definition shall not

apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limitation (PAL) under Subpart 7 of this part.

(ii) Instead, the definitions of “projected actual emissions” and “baseline actual emissions” shall apply for those purposes.

(B)(i) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four-month period which precedes the particular date and which is representative of normal source operation.

(ii) The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(iii) Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date;

(2) “Allowable emissions” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(A) The applicable standards set forth in 40 C.F.R. pt. 60 or 61;

(B) Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(C) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date;

(3)(A) “Baseline actual emissions” means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subdivisions (b)(3)(B) – (E) of this section.

(B)(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project.

(ii) The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(iii)(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(c)(1) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed.

(2) A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision (b)(3)(B)(iii)(b) of this section.

(C)(i) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority for a permit required either under this part or under a plan approved by the Administrator of the Environmental Protection Agency, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(ii) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(iii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iv)(a) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four-month period.

(b) However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator of the Environmental Protection Agency proposed or promulgated under 40 C.F.R. pt. 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 8 CAR § 43-305(h).

(v)(a) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed.

(b) A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(vi) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions (b)(3)(C)(iii) and (iv) of this section.

(D) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and

operation of such unit shall equal zero, and thereafter, for all other purposes, shall equal the unit's potential to emit.

(E) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for:

(i) Existing electric utility steam generating units in accordance with the procedures contained in subdivision (b)(3)(B) of this section;

(ii) Other existing emissions units in accordance with the procedures contained in subdivision (b)(3)(C) of this section;

(iii) A new emissions unit in accordance with the procedures contained in subdivision (b)(3)(D) of this section;

(4)(A) "Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature.

(B) Such activities include, but are not limited to:

(i) Installation of building supports and foundations;

(ii) Laying of underground pipework; and

(iii) Construction of permanent storage structures.

(C) With respect to a change in method of operating, this term refers to those onsite activities other than preparatory activities which mark the initiation of the change;

(5)(A) "Best available control technology (BACT)" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant.

(B) In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 C.F.R. pt. 60 or 61.

(C)(i) If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT.

(ii) Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results;

(6)(A) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel.

(B) Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group, i.e., which have the same two-digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the

1977 Supplement (United States Government Publishing Office stock numbers 4101-0065 and 003-005-00176-0, respectively);

(7) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990;

(8)(A) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of two billion five hundred million dollars (\$2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency.

(B) The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project;

(9) "Commence as applied to construction of a major stationary source or major modification" means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) Begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time; or

(B) Entered into binding agreements or contractual obligations which cannot be canceled or modified without substantial loss to the owner or operator to undertake a program of actual construction of the source to be completed within a reasonable time;

(10) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions;

(11) "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this part, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis;

(12) "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time;

(13) "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this part, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value or values on a continuous basis;

(14) "Director" means the Director of the Division of Environmental Quality, or its successor, acting directly or through the staff of the Division of Environmental Quality;

(15)(A) "Division" means the Division of Environmental Quality or its successor.

(B) When reference is made in this part to actions taken by or with reference to the Division of Environmental Quality, the reference is to the staff of the Division

of Environmental Quality acting at the direction of the Director of the Division of Environmental Quality;

(16)(A) "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (1/3) of its potential electric output capacity and more than twenty-five megawatts (25 MW) electrical output to any utility power distribution system for sale.

(B) Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility;

(17)(A) "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit as defined in this subpart.

(B)(i) For purposes of this part, there are two (2) types of emissions units as described in subdivisions (b)(17)(B)(ii) and (iii) of this section.

(ii) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two (2) years from the date such emissions unit first operated.

(iii)(a) An existing emissions unit is any emissions unit that does not meet the requirements in subdivision (b)(17)(B)(ii) of this section.

(b) A replacement unit, as defined in this subpart, is an existing emissions unit;

(18) "Federal Land Manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands;

(19) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator of the Environmental Protection Agency, including those requirements developed pursuant to 40 C.F.R. pts. 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 C.F.R. § 52.21 or under regulations approved pursuant to 40 C.F.R. pt. 51, Subpart I, including operating permits issued under an Environmental Protection Agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program;

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening;

(21) "Lowest achievable emission rate (LAER)" means, for any source, the more stringent rate of emissions based on the following:

(A) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(B)(i) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

(ii) This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or stationary source.



(iii) In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance;

(22) "Major modification" means:

(A) Any physical change in, or change in the method of operation of, a major stationary source that would result in a significant:

(i) Emissions increase of a regulated NSR pollutant, as defined in this subpart; and

(ii) Net emissions increase of that pollutant from the major stationary source;

(B) Any significant emissions increase, as defined in this subpart, from any emissions units or net emissions increase, as defined in this subpart, at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone;

(C) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair, and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule Section 125 of the Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(a) Was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 C.F.R. § 52.21 or under regulations approved pursuant to 40 C.F.R. Subpart I or 40 C.F.R. § 51.166; or

(b) Is approved to use under any permit issued under regulations approved pursuant to 40 C.F.R. pt. 165;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 C.F.R. § 52.21 or regulations approved pursuant to 40 C.F.R. pt. 51, Subpart I or 40 C.F.R. § 51.166;

(vii) Any change in ownership at a stationary source;

(viii) [Reserved];

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The State Implementation Plan for the state in which the project is located; and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(D)(i) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under Subpart 7 of this part for a PAL for that pollutant.

(ii) Instead, the definition at 8 CAR § 43-702(b)(6) shall apply;

(E) For the purpose of applying the requirements of 8 CAR § 43-309 to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Subpart 2, Part D, Title I of the Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone;

(F) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Clean Air Act;

(23) "Major stationary source" means:

(A) [Reserved].

(i) Any stationary source of air pollutants which emits, or has the potential to emit one hundred (100) tons per year or more of any regulated NSR pollutant; or

(ii) Any physical change that would occur at a stationary source not qualifying under subdivision (b)(23)(A)(i) of this section as a major stationary source, if the change would constitute a major stationary source by itself;

(B) Any stationary source of air pollutants that:

(i) Emits, or has the potential to emit, one hundred (100) tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the Clean Air Act, according to subdivisions (b)(23)(B)(i)(a) – (f) of this section:

(a) Fifty (50) tons per year of volatile organic compounds in any serious ozone nonattainment area;

(b) Fifty (50) tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(c) Twenty-five (25) tons per year of volatile organic compounds in any severe ozone nonattainment area;

(d) Ten (10) tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(e) Fifty (50) tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator of the Environmental Protection Agency);

(f) Seventy (70) tons per year of PM<sub>10</sub> in any serious nonattainment area for PM<sub>10</sub>;

(ii) For the purposes of applying the requirements of 8 CAR § 43-309 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, one hundred (100) tons per year or more of nitrogen oxides emissions, except that the emission thresholds in subdivisions (b)(23)(B)(i)(a) – (f) of this section shall apply in areas subject to Subpart 2 of Part D, Title I of the Clean Air Act:

(a) One hundred (100) tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate;

(b) One hundred (100) tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region;

(c) One hundred (100) tons per year or more of nitrogen oxides in any area designated under Section 107(d) of the Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region;

(d) Fifty (50) tons per year or more of nitrogen oxides in any serious nonattainment area for ozone;

(e) Twenty-five (25) tons per year or more of nitrogen oxides in any severe nonattainment area for ozone

(f) Ten (10) tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(iii) Any physical change that would occur at a stationary source not qualifying under subdivisions (b)(23)(B)(i) and (ii) of this section as a major stationary source, if the change would constitute a major stationary source by itself;

(C) A major stationary source that is major for volatile organic compounds shall be considered major for ozone;

(D) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this subdivision (b)(23)(D) whether it is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);  
(xvi) Primary lead smelters;  
(xvii) Fuel conversion plants;  
(xviii) Sintering plants;  
(xix) Secondary metal production plants;  
(xx) Chemical process plants;  
(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour (250,000,000 BTUs/hr) heat input;  
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;  
(xxiii) Taconite ore processing plants;  
(xxiv) Glass fiber processing plants;  
(xxv) Charcoal production plants;  
(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour (250,000,000 BTUs/hr) heat input; and  
(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act;

(24) "Necessary preconstruction approvals or permits" means those federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan;

(25) "Net emissions increase" means:

(A) With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero (0):

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subpart 3 of this part; and

(ii)(a) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.

(b) Baseline actual emissions for calculating increases and decreases under this subdivision(b)(25)(A)(ii) shall be determined as provided in this subpart, except that subdivisions (b)(3)(B)(iii)(c) and (b)(3)(C)(v) of this section of baseline actual emissions shall not apply;

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(C) An increase or decrease in actual emissions is creditable only if:

(i) It occurs between:

(a) The date five (5) years before construction on the particular change commences; and

(b) The date that the increase from the particular change occurs;

(ii) The reviewing authority has not relied on it in issuing a permit for the source under this part, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) [Reserved];

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(E) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 C.F.R. pt. 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(v) [Reserved];

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant; and

(G) Subdivision (b)(25)(B) of this section of actual emissions shall not apply for determining creditable increases and decreases or after a change;

(26)(A) "Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the Administrator of the Environmental Protection Agency and incorporated into the plan to implement the requirements of 40 C.F.R. § 51.165, or a program that implements Part 51, Appendix S, Sections I – VI of that chapter.

(B) Any permit issued under such a program is a major NSR permit;

(27)(A) "Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal.

(B) It does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal;

(28)(A) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design.

(B) Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.

(C) Secondary emissions do not count in determining the potential to emit of a stationary source;

(29) "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis;

(30) "Prevention of significant deterioration (PSD) permit" means any permit that is issued under 8 CAR § 41-801 et seq. of the Rules of the Arkansas Plan of Implementation of Air Pollution Control, 8 CAR pt. 41;

(31)(A) "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one (1) of the five (5) years (twelve-month period) following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(B) In determining the projected actual emissions under subdivision (b)(31)(A) of this section before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to:

- (a) Historical operational data;
- (b) The company's own representations;
- (c) The company's expected business activity;
- (d) The company's highest projections of business activity;
- (e) The company's filings with the state or federal

regulatory authorities; and

(f) Compliance plans under the approved plan;

(ii) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four-month period used to establish the baseline actual emissions under this subpart and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in subdivisions (b)(31)(B)(i) – (iii) of this section, may elect to use the emissions unit's potential to emit, in tons per year, as defined in this subpart;

(32) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source;

(33) "Regulated NSR pollutant", for purposes of this part, means the following:

- (A) Nitrogen oxides or any volatile organic compounds;
- (B) Any pollutant for which a national ambient air quality standard has been promulgated; or

(C) Any pollutant that is a constituent or precursor of a general pollutant listed under subdivision (b)(33)(A) or (B) of this section, provided that a constituent or precursor pollutant may only be regulated under NSR as part of the regulation of the general pollutant;

(34)(A) "Replacement unit" means an emissions unit for which all the criteria listed in subdivisions (b)(34)(B)(ii) – (v) of this section are met.

(B)(i) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(ii) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. § 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(iii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iv) The replacement does not alter the basic design parameters of the process unit.

(v)(a) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter.

(b) If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit;

(35) "Reviewing authority" means the Division of Environmental Quality;

(36)(A) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself.

(B) For the purpose of this part, "secondary emissions" must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions.

(C) "Secondary emissions" include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source of major modification.

(D) "Secondary emissions" do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel;

(37)(A) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Ozone:	40 tpy of volatile organic compounds or NOx
Lead:	0.6 tpy

(B) Notwithstanding the significant emissions rate for ozone in subdivision (b)(37)(A) of this section, “significant” means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Clean Air Act, if such emissions increase of volatile organic compounds exceeds twenty-five (25) tons per year.

(C) For the purposes of applying the requirements of 8 CAR § 43-309 to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in subdivisions (b)(37)(A), (B), and (E) of this section shall apply to nitrogen oxides emissions.

(D) Notwithstanding the significant emissions rate for carbon monoxide under subdivision (b)(37)(A) of this section, “significant” means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds fifty (50) tons per year, provided the Administrator of the Environmental Protection Agency has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(E) Notwithstanding the significant emissions rates for ozone under subdivisions (b)(37)(A) and (B) of this section, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Clean Air Act shall be considered a significant net emissions increase;

(38) “Significant emissions increase” means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in this subpart) for that pollutant;

(39) “Stationary source” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant;

(40) “Temporary clean coal technology demonstration project” means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the State Implementation Plan for the state in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated; and

(41)(A) “Volatile organic compounds (VOC)” means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(B) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:

- (i) Acetone;
- (ii) Methane;
- (iii) Ethane;



- (iv) Methylene chloride (dichloromethane);
- (v) 1,1,1-trichloroethane (methyl chloroform);
- (vi) Perchloroethylene (tetrachloroethylene);
- (vii) 1,1,1 trichloro-2,2,2-trifluoroethane (CFC-113);
- (viii) Tichlorofluoromethane (CFC-11);
- (ix) Dichlorodifluoromethane (CFC-12);
- (x) Chlorodifluoromethane (HCFC-22);
- (xi) Trifluoromethane (HFC-23);
- (xii) 1,2-dichloro 1,1, 2, 2-tetrafluoroethane (CFC-114);
- (xiii) Chloropentafluoroethane (CFC-115);
- (xiv) 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- (xv) 1,1,1,2-tetrafluoroethane (HFC-134a);
- (xvi) 1,1-dichloro 1-fluoroethane (HCFC-141b);
- (xvii) 1-chloro 1,1-difluoroethane (HCFC-142b);
- (xviii) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
- (xix) Pentafluoroethane (HFC-125);
- (xx) 1,1,2,2-tetrafluoroethane (HFC-134);
- (xxi) 1,1,1-trifluoroethane (HFC-143a);
- (xxii) 1,1-difluoroethane (HFC-152a);
- (xxiii) Parachlorobenzotrifluoride (PCBTf);
- (xxiv) Cyclic, branched, or linear completely methylated siloxanes;
- (xxv) 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
- (xxvi) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
- (xxvii) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
- (xxviii) Difluoromethane (HFC-32);
- (xxix) Ethylfluoride (HFC-161);
- (xxx) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
- (xxxi) 1,1,2,2,3-pentafluoropropane (HFC-245ca);
- (xxxii) 1,1,2,3,3-pentafluoropropane (HFC 245ea);
- (xxxiii) 1,1,1,2,3-pentafluoropropane (HFC-245eb);
- (xxxiv) 1,1,1,3,3-pentafluoropropane (HFC-245fa);
- (xxxv) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
- (xxxvi) 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
- (xxxvii) Chlorofluoromethane (HCFC-31);
- (xxxviii) 1 chloro-1-fluoroethane (HCFC-151a);
- (xxxix) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
- (xl) 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub> or

HFE-7100);

- (xli) 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>);

- (xlii) 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> or

HFE-7200);

- (xlili) 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); and

(xiv) Methyl acetate 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C<sub>3</sub>F<sub>7</sub> OCH<sub>3</sub>, HFE-7000), 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500), 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea), and methyl formate (HCOOCH<sub>3</sub>), and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(C)(i) For purposes of determining compliance with emission limits, VOC will be measured by the test methods in the approved SIP or 40 C.F.R. pt. 60, Appendix A, as applicable.

(ii) Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Division of Environmental Quality.

(D) As a precondition to excluding these compounds as VOC or at any time thereafter, the Division of Environmental Quality may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Division of Environmental Quality, the amount of negligibly reactive compounds in the sources' emissions.

(E) The following compound is VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

The Energy Supply and Environmental Coordination Act of 1974, Pub. L. No. 93-319, is codified generally at 15 U.S.C. § 791 et seq.

The Federal Power Act is codified generally at 16 U.S.C. § 791 et seq.

“PAL” means plantwide applicability limitation.

“SIP” means State Implementation Plan.

## **Subpart 2. Preconstruction Review**

**8 CAR § 43-201. Requirement for a permit.**

(a) No major stationary source shall be constructed or modified in any nonattainment area if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, without first obtaining a permit which requires the proposed source to be constructed or modified in accordance with the requirements of this part.

(b)(1) The requirements in subsection (a) of this section apply only to major stationary sources of emissions that cause or contribute to concentrations of the pollutant for which the nonattainment area was designated as nonattainment.

(2) A major stationary source or major modification that is major for volatile organic compounds is also major for ozone.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-202. Required information.**

(a) **General.** Application for a permit shall be made on such forms and contain such information as the Division of Environmental Quality may reasonably require, including but not limited to:

(1) Information on the nature and amounts of federally regulated air pollutants to be emitted by the stationary source; and

(2) Such information on the location, design, construction, and operation of the stationary source as the division may reasonably require.

(b) **Duty to supplement submittal.** If, while processing an application that has been determined to be complete, the division determines that additional information is necessary to evaluate or take final action on that application, the division may request such information in writing and set a reasonable deadline for a response.

(c) **Duty to correct submittal.**

(1) Any owner/operator who fails to submit any relevant facts or who has submitted incorrect information shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

(2) In addition, an applicant shall provide additional information as necessary to address any relevant requirements that become applicable to the stationary source before final action is taken on its application.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-203. Approval criteria.**

No permit shall be granted or modified under this subpart unless:

(1) The owner/operator demonstrates to the reasonable satisfaction of the Division of Environmental Quality that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this part or without interfering with the attainment or maintenance of a national ambient air quality standard in the state in which the proposed source (or modification) is located or in a neighboring state;

(2) The Director of the Division of Environmental Quality determines that, by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the nonattainment area, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent reasonable further progress toward achievement of the national primary ambient air quality standards;

(3) The proposed source is required to comply with the lowest achievable emission rate;

(4) The owner or operator of the proposed source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in the state are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards; and

(5) An analysis of alternative sites, sizes, and production processes and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its:

- (A) Location;
- (B) Construction; or
- (C) Modification.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-204. Offsets.**

(a) The owner or operator of a new or modified major stationary source may comply with any offset requirement for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant or precursor of such air pollutant from the same source or other sources in the same nonattainment area.

(b) An owner or operator of a new or modified major stationary source may obtain such emission reductions in another nonattainment area if the other area has an equal or higher nonattainment classification than the area in which the source is located and emissions from such other area contribute to a violation of the national primary ambient air quality standard in the nonattainment area in which the source is located.

(c) Emissions reductions shall be, by the time a new or modified major stationary source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the relevant air pollutant from the new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

(d)(1) Emissions reductions required by the Clean Air Act shall not be creditable as emissions reductions for purposes of any such offset requirement.

(2) Incidental emission reductions which are not otherwise federally required shall be creditable as emissions reductions.

(e) For areas of Crittenden County outside zones targeted for economic development, the ratio of total emission reductions of volatile organic compounds and oxides of nitrogen to total increased emissions of such air pollutants shall be at least one and one-tenth to one (1.1:1).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

**8 CAR § 43-205. Zones targeted for economic development.**

(a) This part provides for management of any zone in Arkansas identified as a Zone Targeted for Economic Development pursuant to 173(a)(1)(B) of the Clean Air Act.

(b) There are established Targeted Economic Development Zone (TEDZ) Emissions by area in the amount of:

(1) **Crittenden County.**

(i) One thousand nine hundred (1,900) tons per year of VOC and three hundred (300) tons per year of nitrogen oxides beginning January 1, 2007; and

(ii) Three thousand seven hundred (3,700) tons per year of VOC and eight hundred (800) tons per year of nitrogen oxides beginning January 1, 2009.

(c)(1) In lieu of obtaining offsets as required in 8 CAR § 43-203(2) and 8 CAR § 43-204, a source locating in a TEDZ described in subsection (a) of this section may petition the Director of the Division of Environmental Quality to allocate TEDZ emissions established under subsection (b) of this section for offsets.

(2) A source must either obtain offsets as required in 8 CAR § 43-203(2) and 8 CAR § 43-204 or obtain growth allowance for the applicable TEDZ pursuant to this section.

(d) Any petition for an allocation of TEDZ emissions shall:

(1) Be made on such forms and contain such information as the director may reasonably require;

(2) Contain detailed information about the projected socioeconomic impact of the proposed project including, but not limited to:

(A) Impact of the project on low to moderate income individuals;

(B) Number of jobs to be created; and

(C) Median salary of employees;

(3) Contain a project schedule;

(4) Be separate and distinct from the permit application required under 8 CAR § 43-202; and

(5) Be submitted concurrently with the application required under 8 CAR § 43-202.

(e) Before taking final action on a petition for an allocation of TEDZ emissions, the director shall solicit input from the appropriate local governing body.

(f) The director shall not allocate any TEDZ emissions unless he or she is reasonably satisfied that:

(1) The project will achieve the economic impact described in the petition;

(2) The projected economic impact justifies the allocation of TEDZ emissions; and

(3) No other projects which do more to further the region's economic development goals will be preempted.

(g) If, while processing a petition, the director determines that additional information is necessary to evaluate or take final action on that petition, the director may request such information in writing and set a reasonable deadline for a response.

(h) Any petitioner who fails to submit any relevant facts or who has submitted incorrect information in a petition shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

(i)(1) If the director determines the requirements of subsection (f) of this section are met, he or she shall prepare a document announcing his or her intent to grant the allocation of TEDZ emissions.

(2) This document may contain such conditions as are necessary to ensure compliance with this part and that the project is completed as described in the petition.

(j)(1) No petition may be granted unless the public has first had an opportunity to comment.

(2) The opportunity to comment shall include:

(A)(i) The publication of a notice of the director's decision in a newspaper of general circulation in the county in which the proposed facility will be located.

(ii) In the event the local newspaper is unable or unwilling to publish notice, notice may be published in a newspaper of statewide circulation; and

(B) A thirty-day period for submittal of public comment, beginning on the date of the newspaper notice and ending on the date thirty (30) days later.

(k) The notice required under subsection (j) of this section may be issued concurrently with the notice required under 8 CAR § 43-209(c).

(l)(1) The director shall take final action on a petition after the close of the public comment period.

(2) The director shall notify in writing the owner/operator and any person that submitted a written comment of the director's final action and the director's reasons for his or her final action.

(m) A final decision on a petition by the director constitutes a final permitting decision under Arkansas Pollution Control and Ecology Commission, Administrative Procedures, 8 CAR pt. 11, for appeal purposes.

(n) The air permit application submitted concurrently with the petition for an allocation of TEDZ emissions shall not be considered complete until final action is taken on the petition.

(o) Any petition issued under this section is subject to revocation, suspension, or modification in whole or in part, for cause, including without limitation:

(1) Violation of any condition established by the director;

(2) Obtaining the allocations by misrepresentation or failure to disclose fully all relevant facts;

(3) Failure to complete the project within the time periods specified by the project schedule; or

(4) Failure to achieve the projected socioeconomic impacts.

(p)(1)(A) Petitions for allocations may be granted in whole, in part, or denied.

(B) If a petition for allocation is granted in part or denied, the applicant must obtain offsets in the required ratios under the Clean Air Act pursuant to 8 CAR § 43-203(2) and 8 CAR § 43-204.

(C) If a petition is granted, either in part or in whole, the applicant will be notified of the decision and the allocations granted will be subtracted from the overall EDZ allocation pool.

(2) A ten-percent reserve of allocations will be maintained in the pool, unless the director approves the disbursement of these safety factor allocations.

(q) The issuance of allocations does not convey any property rights to the owner/operator.

(r) In the event future changes in source operation and/or regulation renders all or some of the allocations unneeded, the surplus allocations shall be returned.

(s) Except as provided in this subpart, TEDZ emissions allocations shall be good for the life of the project.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

**8 CAR § 43-206. Control technology information.**

Control technology information from permits issued under this subpart shall be promptly submitted to the RACT/BACT/LAER clearinghouse for the benefit of other states and the general public.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** “RACT” means reasonably available control technology.

**8 CAR § 43-207. Approval to construct.**

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state, or federal law.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-208. Applicability to attainment or unclassifiable areas.**

(a) This part shall apply to any new major stationary source or major modification that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Clean Air Act, when it would cause or contribute to a violation of any national ambient air quality standard.

(b) A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Averaging Time (hours)				
	Annual	24	8	3	1
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>		25 µg/m <sup>3</sup>	
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>			
NO <sub>2</sub>	1.0 µg/m <sup>3</sup>				
CO			0.5µg/m <sup>3</sup>		2 mg/m <sup>3</sup>

(c)(1) A proposed major source or major modification subject to this section may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.

(2) In the absence of such emission reductions, the Director of the Division of Environmental Quality shall deny the proposed construction.

(d) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the Clean Air Act.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

**8 CAR § 43-209. Applicability of other rules.**

(a) The administrative requirements contained in the Arkansas Pollution Control and Ecology Commission, Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42, shall apply to permits issued under this part.

(b) The permit modification and administrative permit amendments procedures contained in the Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42, shall apply to permits issued under this part.

(c) The public notice requirements contained in the Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42, shall apply to permits issued under this part.

(d) All facilities subject to permitting under this part shall pay fees in accordance with Permit Fee Rules, 8 CAR pt. 12.

(e)(1) All major stationary sources subject to this part shall comply with all applicable provisions of the commission, Rules of the Arkansas Plan of Implementation for Air Pollution Control, 8 CAR pt. 41.

(2) This includes, but is not limited to, the stack height requirements contained in 8 CAR § 41-401 et seq., and the upset and emergency conditions contained in 8 CAR § 41-501 et seq.

(3) The requirements of 8 CAR § 41-801 et seq., do not apply to sources subject to this part.



(f)(1) All major stationary sources subject to this part shall comply with the provisions of 8 CAR pt. 42.

(2) This part in no way alters a source's responsibilities under 8 CAR pt. 42.

(g)(1) All major stationary sources subject to this part shall comply with the provisions of the commission, Arkansas Air Pollution Control Code, 8 CAR pt. 40.

(2) This part in no way alters a source's responsibilities under 8 CAR pt. 40.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

### **Subpart 3. Applicability Tests**

#### **8 CAR § 43-301. Actual-to-projected-actual applicability test.**

For projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in Subpart 1 of this part) and the baseline actual emissions (as defined in Subpart 1 of this part, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Subpart 1 of this part).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** "NSR" means new source review.

#### **8 CAR § 43-302. Actual-to-potential test.**

For projects that only involve construction of a new emissions unit, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in Subpart 1 of this part) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Subpart 1 of this part) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Subpart 1 of this part).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** "NSR" means new source review.

#### **8 CAR § 43-303. [Reserved].**

#### **8 CAR § 43-304. [Reserved].**

#### **8 CAR § 43-305. Emission baseline credits.**

(a) For sources and modifications subject to this part, the baseline for determining credit for emissions reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(1) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) The applicable State Implementation Plan does not contain an emissions limitation for that source or source category.

(b) Where the emissions limit under the applicable State Implementation Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

(c)(1) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed.

(2)(A) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date.

(B) The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

(d) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours:

(1)(A) May be generally credited for offsets if they meet the requirements in subdivisions (d)(1)(B) and (C) of this section.

(B) Such reductions are:

- (i) Surplus;
- (ii) Permanent;
- (iii) Quantifiable; and
- (iv) Federally enforceable.

(C)(i) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process.

(ii) For purposes of this subdivision (d)(1)(C), a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.

(iii) However, in no event may credit be given for shutdowns that occurred before August 7, 1977; and

(2) That do not meet the requirements in subdivision (d)(1)(C) of this section may be generally credited only if:

(A) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(B) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of subdivision (d)(1)(B) of this section.

(e) No emissions credit may be allowed for replacing one (1) hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of the Environmental Protection Agency's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

(f) All emission reductions claimed as offset credit shall be federally enforceable.

(g) Procedures relating to the permissible location of offsetting emissions are found in 8 CAR § 43-204.

(h) Credit for an emissions reduction can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 C.F.R. pt. 51, Subpart I, or the state has not relied on it in demonstration attainment or reasonable further progress.

(i) [Reserved].

(j) [Reserved].

(k) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification (as defined by Subpart 1 of this part) and the actual emissions before the modification (as defined in Subpart 1 of this part) for each emissions unit.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

#### **8 CAR § 43-306. Relaxation of limitations.**

At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this part shall apply to the source or modification as though construction had not yet commenced on the source or modification.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

#### **8 CAR § 43-307. Modification to existing units.**

(a) The following specific provisions apply to projects at existing emissions units at a major stationary source in circumstances where the owner or operator elects to use the method specified in 8 CAR § 43-104(b)(31)(B)(i) – (iii) of the definition of “projected actual emissions” for calculating projected actual emissions.

(b) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(1) A description of the project;

(2) Identification of the emissions unit or units whose emissions of a regulated NSR pollutant could be affected by the project; and

(3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under the definition of “projected actual emissions”, 8 CAR § 43-104(b)(31)(B)(iii), and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(c)(1) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subsection (b) of this section to the reviewing authority.

(2) Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

(d) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subdivision (b)(2) of this section, and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(e) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within sixty (60) days after the end of each year during which records must be generated under subdivision (d) of this section setting out the unit's annual emissions during the year that preceded submission of the report.

(f)(1) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in subsection (b) of this section, exceed the baseline actual emissions as documented and maintained pursuant to subdivision (b)(3) of this section, by a significant amount (as defined in Subpart 1 of this part) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision (b)(3) of this section.

(2) Such report shall be submitted to the reviewing authority within sixty (60) days after the end of such year.

(3) The report shall contain the following:

(A) The name, address, and telephone number of the major stationary source;

(B) The annual emissions as calculated pursuant to subsection (d) of this section; and

(C) Any other information that the owner or operator wishes to include in the report, (e.g., an explanation as to why the emissions differ from the preconstruction projection).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** “NSR” means new source review.

**8 CAR § 43-308. Public availability of information.**

(a) The owner or operator of the source shall make the information required to be documented and maintained pursuant to 8 CAR § 43-307 available for review upon a request for inspection by the reviewing authority or the general public, except for information entitled to confidential treatment.

(b) The contents of a permit shall not be entitled to confidential treatment.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-309. Applicability to nitrogen oxides.**

The requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator of the Environmental Protection Agency has granted an NO<sub>x</sub> waiver applying the standards set forth under Section 182(f) of the Clean Air Act and the waiver continues to apply.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

**8 CAR § 43-310. Offset requirements.**

(a) In meeting the emissions offset requirements of 8 CAR § 43-305 for ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(1) In any marginal nonattainment area for ozone, at least one and one-tenth to one (1.1:1);

(2) In any moderate nonattainment area for ozone, at least one and fifteen-hundredths to one (1.15:1);

(3) In any serious nonattainment area for ozone, at least one and two-tenths to one (1.2:1);

(4) In any severe nonattainment area for ozone, at least one and three-tenths to one (1.3:1) (except that the ratio may be at least one and two-tenths to one (1.2:1) if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) In any extreme nonattainment area for ozone, at least one and five-tenths to one (1.5:1) (except that the ratio may be at least one and two-tenths to one (1.2:1) if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC).

(b) Notwithstanding the requirements of subsection (a) of this section for meeting the requirements of 8 CAR § 43-305, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least one and fifteen-hundredths to one (1.15:1) for all areas within an ozone transport region that is subject to Subpart 2, Part D, Title I of the Clean

Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Clean Air Act.

(c) In meeting the emissions offset requirements of 8 CAR § 43-305 for ozone nonattainment areas that are subject to Subpart 1, Part D, Title I of the Clean Air Act (but are not subject to Subpart 2, Part D, Title I of the Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 C.F.R. § 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least one to one (1:1).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

**8 CAR § 43-311. PM<sub>10</sub> precursors.**

The requirements of this part applicable to major stationary sources and major modifications of PM<sub>10</sub> shall also apply to major stationary sources and major modifications of PM<sub>10</sub> precursors, except where the Administrator of the Environmental Protection Agency determines that such sources do not contribute significantly to PM<sub>10</sub> levels that exceed the PM<sub>10</sub> ambient standards in the area.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** "PM<sub>10</sub>" means particulate matter that is generally ten (10) micrometers in diameter and smaller.

**Subpart 4. [Reserved]**

**Subpart 5. [Reserved]**

**Subpart 6. [Reserved]**

**Subpart 7. Actual PALs**

**8 CAR § 43-701. Applicability.**

(a)(1) The reviewing authority may approve the use of an actuals PAL for any existing major stationary source (except as provided in subsection (b) of this section) if the PAL meets the requirements in this subpart.

(2) The term "PAL" shall mean "actuals PAL" throughout this subpart.

(b) The reviewing authority shall not allow an actuals PAL for VOC or NO<sub>x</sub> for any major stationary source located in an extreme ozone nonattainment area.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in this subpart, and complies with the PAL permit:

(1) Is not a major modification for the PAL pollutant;

(2) Does not have to be approved through the plan's nonattainment major NSR program; and

(3) Is not subject to the provisions in 8 CAR § 43-306 (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

(d) Except as provided under subdivision (c)(3) of this section, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** "NSR" means new source review.

**8 CAR § 43-702. Definitions.**

(a) For purposes of this subpart, the following definitions apply.

(b) When a term is not defined in this subpart, it shall have the meaning given in Subpart 1 of this part or in the federal Clean Air Act:

(1) "Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions (as defined in Subpart 1 of this part) of all emissions units (as defined in Subpart 1 of this part) at the source, that emit or have the potential to emit the PAL pollutant;

(2)(A) "Allowable emissions" means "allowable emissions" as defined in Subpart 1 of this part, except as this definition is modified according to subdivisions (b)(2)(B) and (C) of this section.

(B) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(C) An emissions unit's potential to emit shall be determined using the definition in Subpart 1 of this part, except that the words "or enforceable as a practical matter" should be added after "federally enforceable";

(3) "Major emissions unit" means any emissions unit that emits or has the potential to emit:

(A) One hundred (100) tons per year or more of the PAL pollutant in an attainment area; or

(B)(i) The PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas.

(ii) For example, in accordance with the definition of major stationary source in Section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit fifty (50) or more tons of VOC per year;

(4)(A) "PAL effective date" means the date of issuance of the PAL permit.

(B) However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant;

(5) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later;

(6) "PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase contained in Subpart 1 of this part, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL;

(7) "PAL permit" means the major NSR permit, the minor NSR permit, or the state operating permit under a program that is approved into the plan, or the Title V permit issued by the reviewing authority that establishes a PAL for a major stationary source;

(8) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source;

(9) "Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year for a pollutant at a major stationary source that is enforceable as a practical matter and established source-wide in accordance with this subpart;

(10) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subpart 1 of this part or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subdivision (b)(3) of this section; and

(11) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subpart 1 of this part or in the Clean Air Act, whichever is lower.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

"NSR" means new source review.

#### **8 CAR § 43-703. Permit application requirements.**

As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the reviewing authority for approval:

(1)(A) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit.

(B) In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit;

(2)(A) Calculations of the baseline actual emissions with supporting documentation.



(B) Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction; and

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve-month rolling total for each month as required by 8 CAR § 43-714(a).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-704. General requirements for establishing PALs.**

(a) The plan allows the reviewing authority to establish a PAL at a major stationary source, provided that at a minimum, the requirements in subdivisions (a)(1) – (7) of this section are met:

(1)(A) The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire major stationary source.

(B) For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL (a twelve-month average, rolled monthly).

(C) For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in 8 CAR § 43-705;

(3) The PAL permit shall contain all the requirements of 8 CAR § 43-707;

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(5) Each PAL shall regulate emissions of only one (1) pollutant;

(6) Each PAL shall have a PAL effective period of ten (10) years; and

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in 8 CAR §§ 43-713 – 43-715 for each emissions unit under the PAL through the PAL effective period;

(b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 8 CAR § 43-305(b) – (k) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-705. Public participation requirement for PALs.**

(a) PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with Subpart 2 of this part.

(b)(1) This includes the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a thirty-day period for submittal of public comment.

(2) The reviewing authority must address all material comments before taking final action on the permit.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-706. Setting the ten-year actuals PAL level.**

(a)(1) Except as provided in subsection (b) of this section, the plan shall provide that the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in Subpart 1 of this part) of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant under Subpart 1 of this part or under the Clean Air Act, whichever is lower.

(2)(A) When establishing the actuals PAL level for a PAL pollutant, only one (1) consecutive twenty-four-month period must be used to determine the baseline actual emissions for all existing emissions units.

(B) However, a different consecutive twenty-four-month period may be used for each different PAL pollutant.

(C) Emissions associated with units that were permanently shut down after this twenty-four-month period must be subtracted from the PAL level.

(3)(A) The reviewing authority shall specify a reduced PAL level (in tons/year) in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement or requirements that the reviewing authority is aware of prior to issuance of the PAL permit.

(B) For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of sixty (60) ppm NO<sub>x</sub> to a new rule limit of thirty (30) ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit.

(b) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the twenty-four-month period, in lieu of adding the baseline actual emissions as specified in subsection (a) of this section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the unit.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** The Clean Air Act, Pub. L. No. 101-549, is codified at 42 U.S.C. § 7401 et seq.

“ppm” means parts per million.

**8 CAR § 43-707. Contents of the PAL permit.**

Any PAL permit issued under this subpart shall contain the following information:

- (1) The PAL pollutant and the applicable source-wide emission limitation in tons per year;
- (2) The PAL permit effective date and the expiration date of the PAL (PAL effective period);
- (3)(A) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with 8 CAR § 43-711 before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period.
  - (B) It shall remain in effect until a revised PAL permit is issued by the reviewing authority;
- (4) A requirement that emission calculations for compliance purposes include emissions from:
  - (A) Startups;
  - (B) Shutdowns; and
  - (C) Malfunctions;
- (5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of 8 CAR § 43-710;
- (6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve-month rolling total for each month as required by 8 CAR § 43-714(a);
- (7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under 8 CAR § 43-713;
- (8)(A) A requirement to retain the records required under 8 CAR § 43-714 on site.
  - (B) Such records may be retained in an electronic format;
- (9) A requirement to submit the reports required under 8 CAR § 43-715 by the required deadlines; and
- (10) Any other requirements that the reviewing authority deems necessary to implement and enforce the PAL.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-708. Reopening of the PAL permit.**

- (a) During the PAL effective period, the PAL permit shall be reopened to:
  - (1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;
  - (2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 8 CAR § 43-305(b) – (k);
  - (3) Revise the PAL to reflect an increase in the PAL as provided under 8 CAR § 43-712.
- (b) The PAL permit may be reopened to:
  - (1) Reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(2) Reduce the PAL consistent with any other requirement that is enforceable as a practical matter and that the state may impose on the major stationary source under the plan;

(3) Reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(c) Except for the permit reopening in subdivision (a)(1) of this section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of 8 CAR § 43-705.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** “NAAQS” means National Ambient Air Quality Standards.

“NSPS” means New Source Performance Standards.

**8 CAR § 43-709. PAL effective period.**

A PAL shall have an effective period of ten (10) years.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**8 CAR § 43-710. Expiration of a PAL.**

(a) Any PAL which is not renewed in accordance with the procedures in 8 CAR § 43-711 shall expire at the end of the PAL effective period, and the requirements in subsections (b) – (f) of this section shall apply.

(b)(1) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in subdivisions (b)(2) and (3) of this section.

(2)(A) Within the time frame specified for PAL renewals in 8 CAR § 43-711(b), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the reviewing authority) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

(B) If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under 8 CAR § 43-711(e), such distribution shall be made as if the PAL had been adjusted.

(3) The reviewing authority shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the reviewing authority determines is appropriate.

(c)(1) Each emissions unit or units shall comply with the allowable emission limitation on a twelve-month rolling basis.

(2) The reviewing authority may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(d) Until the reviewing authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision (b)(2) of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(e) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in Subpart 1 of this part.

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 8 CAR § 43-306, but were eliminated by the PAL in accordance with the provisions in 8 CAR § 43-701(c)(3).

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** “NSPS” means New Source Performance Standards.

“NSR” means new source review.

#### **8 CAR § 43-711. Renewal of a PAL.**

(a)(1) The reviewing authority shall follow the procedures specified in 8 CAR § 43-705 in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment.

(2) During such public review, any person may propose a PAL level for the source for consideration by the reviewing authority.

##### **(b) Application deadline.**

(1)(A) A major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL.

(B) A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration.

(C) This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed.

(2) If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

##### **(c) Application requirements.** The application to renew a PAL permit shall contain:

- (1) The information required in subdivisions (c)(2) – (5) of this section;
- (2) The information required in 8 CAR § 43-703(1) – (3);
- (3) A proposed PAL level;

(4) The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

(5) Any other information the owner or operator wishes the reviewing authority to consider in determining the appropriate level for renewing the PAL.

**(d) PAL adjustment.**

(1)(A) In determining whether and how to adjust the PAL, the reviewing authority shall consider the options outlined in subdivisions (d)(2)(A) and (B) of this section.

(B) However, in no case may any such adjustment fail to comply with subdivision (d)(2)(C) of this section.

(2) If the emissions level calculated in accordance with 8 CAR § 43-706 is equal to or greater than eighty percent (80%) of the PAL level, the reviewing authority may:

(A) Renew the PAL at the same level without considering the factors set forth in subdivision (d)(2)(B) of this section; or

(B) Set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area;

(iv) Desire to reward or encourage the source's voluntary emissions reductions; or

(v) Other factors as specifically identified by the reviewing authority in its written rationale.

(C) Notwithstanding subdivision (d)(2)(A) and (B) of this section, if the potential to emit of the major stationary source is less than the PAL, the reviewing authority shall:

(i) Adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) Not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of 8 CAR § 43-712 (increasing a PAL).

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the reviewing authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** Title V refers to Title V of the Clean Air Act, Pub. L. No. 101-549, which is codified at 42 U.S.C. § 7401 et seq.

**8 CAR § 43-712. Increasing a PAL during the PAL effective period.**

(a)(1) The reviewing authority may increase a PAL emission limitation only if the major stationary source complies with the provisions in subdivisions (a)(2) – (5) of this section.

(2)(A) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification.

(B) Such application shall identify the emissions unit or units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(3)(A) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit or units, exceeds the PAL.

(B) The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

(C) In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(4)(A) The owner or operator obtains a major NSR permit for all emissions units identified in subdivision (a)(2) of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply).

(B) These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER) even though they have also become subject to the PAL or continue to be subject to the PAL.

(5) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The reviewing authority shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision (a)(3) of this section), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of 8 CAR § 43-705.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** “NSR” means new source review.

### **8 CAR § 43-713. Monitoring requirements for PALs.**

#### **(a) General requirements.**

(1)(A) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time.

(B) Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation.

(C) Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must:

(A) Employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in subdivisions (b)(1) – (4) of this section; and

(B) Be approved by the reviewing authority.

(3) Notwithstanding subdivision (a)(2) of this section, an owner or operator may also employ an alternative monitoring approach that meets subdivision(a)(1) of this section if approved by the reviewing authority.

(4) Failure to use a monitoring system that meets the requirements of this subpart renders the PAL invalid.

(b) **Minimum performance requirements for approved monitoring approaches.** The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) – (i) of this section:

(1) Mass balance calculations for activities using coatings or solvents;

(2) CEMS;

(3) CPMS or PEMS; and

(4) Emission factors.

(c) **Mass balance calculations.** An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall meet the following requirements:

(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the reviewing authority determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) **CEMS.** An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) CEMS must comply with applicable Performance Specifications found in 40 C.F.R. pt. 60, Appendix B; and

(2) CEMS must sample, analyze and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) **CPMS or PEMS.** An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:



(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter or parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

(2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the reviewing authority, while the emissions unit is operating.

(f) **Emission factors.** An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance, unless the reviewing authority determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subsections (c) – (g) of this section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter or parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the reviewing authority shall, at the time of permit issuance:

(1) Establish default value or values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point or points; or

(2) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter or parameters and the PAL pollutant emissions is a violation of the PAL.

(i) **Revalidation.**

(1) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the reviewing authority.

(2) Such testing must occur at least once every five (5) years after issuance of the PAL.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

#### **8 CAR § 43-714. Recordkeeping requirements.**

(a) An owner or operator shall retain a copy of all records necessary to determine compliance with any requirement of this subpart and of the PAL, including a determination of each emissions unit's twelve-month rolling total emissions, for five (5) years from the date of such record.

(b) An owner or operator shall retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

(1) A copy of the PAL permit application and any applications for revisions to the PAL; and

(2) Each annual certification of compliance pursuant to Title V and the data relied on in certifying the compliance.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** Title V refers to Title V of the Clean Air Act, Pub. L. No. 101-549, which is codified at 42 U.S.C. § 7401 et seq.

**8 CAR § 43-715. Reporting and notification requirements.**

(a)(1) The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the reviewing authority in accordance with the applicable Title V operating permit program.

(2) The reports shall meet the requirements in subsections (b) – (d) of this section.

**(b) Semiannual report.**

(1) The semiannual report shall be submitted to the reviewing authority within thirty (30) days of the end of each reporting period.

(2) This report shall contain the information required in subdivisions (b)(2)(A) – (G) of this section:

(A) The identification of owner and operator and the permit number;

(B) Total annual emissions (tons/year) based on a twelve-month rolling total for each month in the reporting period recorded pursuant to 8 CAR § 43-714(a);

(C) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

(D) A list of any emissions units modified or added to the major stationary source during the preceding six-month period;

(E) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;

(F) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by 8 CAR § 43-713(g); and

(G) A signed statement by the responsible official (as defined by the applicable Title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

**(c) Deviation report.**

(1) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available.

(2)(A) A report submitted pursuant to 8 CAR § 42-601(3)(C)(ii) of Arkansas Pollution Control and Ecology Commission, Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42, shall satisfy this reporting requirement.

(B) The deviation reports shall be submitted within the time limits prescribed by 8 CAR § 42-601(3)(C)(i).

(3) The reports shall contain the following information:

(A) The identification of owner and operator and the permit number;

(B) The PAL requirement that experienced the deviation or that was exceeded;

(C) Emissions resulting from the deviation or the exceedance; and

(D) A signed statement by the responsible official (as defined by the applicable Title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(d) **Revalidation results.** The owner or operator shall submit to the reviewing authority the results of any revalidation test or method within three (3) months after completion of such test or method.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Codification Notes.** Title V refers to Title V of the Clean Air Act, Pub. L. No. 101-549, which is codified at 42 U.S.C. § 7401 et seq.

#### **8 CAR § 43-716. Transition requirements.**

(a) The reviewing authority may supersede any PAL which was established prior to the date of approval of this part with a PAL that complies with the requirements of this subpart.

(b) No reviewing authority may issue a PAL that does not comply with the requirements of this subpart after the Administrator of the Environmental Protection Agency has approved regulations incorporating these requirements into a plan.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

### **Subpart 8. Effective Date**

#### **8 CAR § 43-801. Effective date.**

This part is effective ten (10) days after filing with the:

(1) Secretary of State;

(2) Arkansas State Library; and

(3) Bureau of Legislative Research.

**Authority.** Arkansas Code §§ 8-1-203, 8-4-311.

**Title 8. Environmental Law**

**Chapter I. Arkansas Pollution Control and Ecology Commission, Department of Energy and Environment**

**Subchapter B. Administration**

**Part 12. Permit Fee Rules**

**Subpart 1. General Provisions**

**8 CAR § 12-101. Title.**

This part shall be known by and may be cited by the short title 8 CAR pt. 12, Permit Fee Rules.

**Authority.** Arkansas Code §§ 8-1-203, 8-2-204, 8-4-202, 8-4-203, 8-6-207.

**8 CAR § 12-102. Purpose.**

(a) It is the purpose of this part to develop and implement a system of fees for permits issued by the Division of Environmental Quality pursuant to the provisions of the Arkansas Water and Air Pollution Control Act, Acts 1949, No. 472, as amended, Arkansas Code § 8-4-101 et seq., or the Arkansas Solid Waste Management Act, Acts 1971, No. 237, as amended, Arkansas Code § 8-6-201 et seq., Acts 1983, No. 817, as amended, Acts 1993, No. 1254, as amended, and Acts 1999, No. 1052, Arkansas Code § 8-1-101 et seq., which authorize the collection and enforcement of these fees and authorize their use to defray the costs of operating the division.

(b) It is also the purpose of this part to assess reasonable fees to establish and to administer the State Environmental Laboratory Certification Program Act, Acts 1985, No. 876, as amended, Environmental Laboratory Accreditation Program Act, Arkansas Code § 8-2-201 et seq.

**Authority.** Arkansas Code §§ 8-1-203, 8-2-204, 8-4-202, 8-4-203, 8-6-207.

**8 CAR § 12-103. Definitions.**

(a) All terms used in this part shall have their usual meaning unless the context otherwise requires or unless specifically defined in the enabling legislation or in federal regulations adopted by reference for program management.

(b) In addition, for purposes of this part, the following definitions apply:

(1)(A)(i) “Administrative permit amendment” means a minor change or permit revision that is not typically considered a permit modification, as defined by applicable statutes or rules, or a minor modification that does not require public notice and opportunity for comment.

(ii) For example, typographical corrections or revisions, or other changes initiated by the Division of Environmental Quality, might be considered administrative permit amendments.

(iii) Some minor changes requested by the permittee may also qualify as administrative permit amendments.

(B) For purposes of Subpart 4 of this part, administrative permit amendments are defined in 8 CAR pt. 40, 8 CAR pt. 41, and 8 CAR pt. 42.

(C) The Director of the Division of Environmental Quality, in his or her discretion, may decide whether a revision would be considered an administrative amendment.

(D) No fee will be charged for administrative permit amendments;

(2) “Annual fee” means the fee required to be submitted upon the facility-specific annual invoice date for a permit issued pursuant to the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., as amended, or the Arkansas Solid Waste Management Act, Arkansas Code § 8-6-201 et seq., as amended;

(3) “Category” means one (1) type of laboratory test or group of laboratory tests for similar materials or classes of materials or that use similar methods or related methods;

(4)(A) "Certificate" means the annual document showing those parameters for which a laboratory has received certification.

(B) The annual period begins at receipt of fee payments or at the expiration of a current certificate;

(5) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(6) "Confined animal operation" means any lot or facility where livestock or fowl have been, are, or will be stabled or confined and fed or maintained, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any significant portion of the lot or facility;

(7) "Director" means the Director of the Division of Environmental Quality or his or her designated representative;

(8)(A) "Discretionary major facility" means an industrial facility discharging wastewater under the terms of a National Pollutant Discharge Elimination System (NPDES) permit that does not meet the numerical rating criteria as an NPDES nonmunicipal major facility, but is designated as a major permittee by the Division of Environmental Quality or the United States Environmental Protection Agency.

(B) Such facilities are assigned a major rating code (MRAT) greater than five hundred (500);

(9) "Division" means the Division of Environmental Quality or its successor;

(10) "EPA" means the United States Environmental Protection Agency;

(11) "Evaluation" means a review of the quality control and quality assurance procedures, records keeping, reporting procedures, methodology, and analytical techniques of a laboratory for measuring or establishing specific parameters;

(12)(A)(i) "Facility" means an activity or operation within a specific geographical location including property contiguous thereto.

(ii) A facility may consist of several manufacturing, treatment, storage, or disposal operational units.

(B)(i) For purposes of this part, a facility shall be considered to be all property, facilities, or operations owned, leased, or operated by a single entity, whether a municipal, county, or state government, corporation, partnership, or proprietorship in the same geographical area, forming an integral part of the same activity or operation, whether or not such activity lies within the boundaries of the city or county.

(ii) For purposes of permit fee assessment only, such property, facilities, or operations shall be considered as a single facility if they are regulated by a common state or federal permit within each permit category, or in the future such consolidation of multiple permits can be realized within the scope of applicable permitting regulations, and the facilities or operations are under the supervision of a single plant manager/superintendent;

(13) "Initial fee" means the fee that is required by law to be submitted with all applications for permits issued pursuant to the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., as amended, and the Arkansas Solid Waste Management Act, Arkansas Code § 8-6-201 et seq., as amended, and that must be received by the Division of Environmental Quality before a permit is issued;

(14) "Issue date" means the date the Division of Environmental Quality signed the permit;

(15) "Laboratory" means any facility that performs:

(A) Analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, soil, or subsoil materials; or

(B) Any other analyses related to environmental quality evaluations;

(16) "Major municipal facility" means a publicly owned treatment works (POTW) with a design flow or daily average flow of one million (1,000,000) gallons per day (mgd) or greater, or a POTW designated as a major facility by the Division of Environmental Quality or United States

Environmental Protection Agency;

(17)(A) "Modification fee" means that fee required by law to be submitted for modification of any existing or future permit required by the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., as amended, or the Arkansas Solid Waste Management Act, Arkansas Code § 8-6-201 et seq., as amended, such modification being either at the request of the permittee or as required by law or rule.

(B) The fee may vary if the permit modification or renewal is considered to be a minor or major modification, as defined in applicable statutes or rules, or otherwise determined by the Director of the Division of Environmental Quality;

(18)(A) "Nonmunicipal major facility" means a facility subject to the National Pollution Discharge Elimination System (NPDES) whose status is determined following completion of an NPDES Permit Rating Worksheet (current version) in which points are allocated on the basis of:

- (i) Toxic pollutant potential;
- (ii) Permitted flow or the ratio of wastewater to stream flow volume;
- (iii) Conventional pollutants mass loadings;
- (iv) Public health impacts (including proximity to drinking water supplies and potential for human health toxicity); and
- (v) Water quality factors.

(B) Additional points can be assessed for certain steam electric power plants or for separate storm sewers serving a population greater than one hundred thousand (100,000).

(C)(i) The total points accumulated is known as the major rating code, or MRAT, which is the numeric total of ranking points assigned to nonmunicipal facilities and used to delineate them as a major or minor facility.

(ii) Currently, a facility with an MRAT of eighty (80) points or more is designated as a "nonmunicipal major facility".

(iii) Additionally, the United States Environmental Protection Agency or the Division of Environmental Quality may designate an NPDES permittee as a "discretionary major facility".

(D) Once an MRAT for a major facility is calculated and approved by the United States Environmental Protection Agency, the Division of Environmental Quality may recommend increases or decreases to an MRAT, but only the United States Environmental Protection Agency is authorized to change an individual permittee's MRAT or designation as a "major" facility;

(19) "Non-Part 70 permit" means an air permit that is issued pursuant to a regulation other than Part 70 of Title 40 of the Code of Federal Regulations, 40 C.F.R. pt. 70;

(20) "Parameter" means the characteristic or characteristics of a laboratory sample determined by an analytic laboratory testing procedure;

(21) "Part 70 permit" means an air permit that is issued pursuant to 40 C.F.R. pt. 70;

(22) "Program" means the Environmental Laboratory Accreditation Program;

(23) "Q" or "quantity" means the permitted flow expressed in one million (1,000,000) gallons per day (mgd), as used in formulas for calculating water permit fees under Subpart 3 of this part; and

(24)(A) "Renewal permit" means a permit issued to a facility upon expiration of an existing permit.

(B) A modification fee may be assessed, depending upon whether the renewal is considered to be a minor or major modification, as defined in applicable statutes or rules, or otherwise determined by the Director of the Division of Environmental Quality.

**Authority.** Arkansas Code §§ 8-1-203, 8-2-204, 8-4-202, 8-4-203, 8-6-207.

**8 CAR § 12-104. Applicability.**

(a) Permit fees established by this part shall be applicable to:

(1) All water permits, including no-discharge and closed system permits, issued under the provisions of the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., as amended;

(2) All air permits issued under the Arkansas Water and Air Pollution Control Act, as amended;

(3) Any federal water or air permit program where permitting authority has been delegated to the Division of Environmental Quality (unless fees for such a program are otherwise provided by law); and

(4) All solid waste disposal permits issued under the provisions of the Arkansas Solid Waste Management Act, Arkansas Code § 8-6-201 et seq., as amended, and the Solid Waste Management Rules, 8 CAR pt. 60.

(b) Facilities operating under the provisions of the "Permits by Rule" or "Authorization by Rule" are exempt from this part until such time that the facility submits an application for an individual permit within each applicable permit category.

(c)(1) Laboratory certification fees established by this part shall be applicable to all laboratories certified by the division.

(2) The fees include, but are not limited to, the reasonable costs of administering the provisions of the program and the reasonable administrative costs of initial issuance, initial certificate, renewed certificates, and the expenses associated with conducting evaluations.

**Authority.** Arkansas Code §§ 8-1-203, 8-2-204, 8-4-202, 8-4-203, 8-6-207.

**Codification Notes.** Permits by rule are authorized by Arkansas Code § 8-4-203. Provisions pertaining to permits by rule or authorization by rule are also included in 8 CAR pt. 25 and 8 CAR pt. 27, State Water Permit Rule.

#### **8 CAR § 12-105. Severability.**

If any provision of this part or the application thereof to any person or circumstance is held invalid, its invalidity shall not affect other provisions or applications of this part that can be given effect without the invalid portion or application, and to this end the provisions of this part are declared to be severable.

**Authority.** Arkansas Code §§ 8-1-203, 8-2-204, 8-4-202, 8-4-203, 8-6-207.

### **Subpart 2. Permit Fee Payment**

#### **8 CAR § 12-201. Permit fee payment.**

(a) **Fee calculation.** The applicant may calculate the initial permit application fee or permit modification fee and include it with the permit application, or the applicant may request that the Division of Environmental Quality calculate the fee after reviewing the application and forward an invoice to the applicant for payment.

(b) **Fee payment.**

(1) Applicable permit fees shall be paid by check or money order payable to the division for deposit in the State Treasury.

(2) The permit shall not be issued until the fee is received by the division.

(c) **Annual fee payment.**

(1) Annual fees shall be due forty-five (45) days after the first day of the month that the permittee is billed for the required annual fee.

(2) Failure to receive this bill does not relieve the permittee from liability for the annual fee, but late charges shall not be assessed until forty-five (45) days after the permittee has been notified that the annual fee is due.

(3) The Director of the Division of Environmental Quality may waive annual fees or a portion thereof for new facilities that are not in operation unless the waiver is otherwise prohibited by state or federal law.

**(d) Failure to pay annual fees.**

(1) A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in this part.

(2) Continued failure or refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the division that may result in revocation of the permit.

(3) When payment of fees is made by check that is subsequently returned due to insufficient funds, all review work on the particular application shall immediately cease until the fee is paid in cash or by money order.

**(e) First annual fee payment.**

(1) The annual fee shall be assessed upon the facility-specific annual invoice date.

(2) The division shall credit the first annual fee on a prorated basis if the initial fee for the permit was assessed within twelve (12) months of the first annual fee for the permit.

(3) The division may credit the annual fee on a prorated basis if a modification fee for the permit was assessed within twelve (12) months of the annual fee for the permit.

**(f) Annual fee late payment charge.**

(1) A late payment charge shall be assessed to facilities failing to pay the annual fee within forty-five (45) days of the billing date and shall be assessed at the rate of ten percent (10%) of the annual fee.

(2) Late payment charge equals ten percent (10%) of annual fee.

**Authority.** Arkansas Code §§ 8-1-203, 8-2-204, 8-4-202, 8-4-203, 8-6-207.

**8 CAR § 12-202. Refunds.**

(a) Except for pre-site investigation fees and interim authority or variance application fees as described in Subparts 5 and 6 of this part, up to forty percent (40%) of a fee submitted pursuant to this part is refundable if the request for the permit action for which the fee was submitted is withdrawn by the applicant before the final permit decision.

(b) The Director of the Division of Environmental Quality has the discretion to retain as much of the above-cited forty percent (40%) as he or she determines is necessary to cover the reasonable administrative and technical review costs incurred in the review process.

**Authority.** Arkansas Code §§ 8-1-203, 8-2-204, 8-4-202, 8-4-203, 8-6-207.

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#### **Subpart 4. Air Permit Fees**

##### **8 CAR § 12-401. Applicability.**

The air permit fees contained in this section are applicable to:

- (1) Non-Part 70 permits;
- (2) Part 70 permits; and
- (3) General permits.

**Authority.** Arkansas Code §§ 8-1-103, 8-4-311.

##### **8 CAR § 12-402. Terms used in fee formulas.**

(a)(1) The \$/ton factor is sixteen dollars per ton (\$16/ton) until September, 1994, after which time it shall be increased annually by the percentage, if any, by which the federal consumer price index exceeds that of the previous year.

(2) The Director of the Division of Environmental Quality may, after considering the factors contained in 8 CAR § 12-801, decide not to increase the \$/ton factor in a year when the fee fund has a balance greater than one hundred fifty percent (150%) of the amount of money expended from that fund in the previous year.

(b)(1) Tons/year predominant air contaminant is the permitted emission rate of the most predominant air contaminant (other than carbon monoxide, carbon dioxide and methane).

(2) The maximum value shall be no greater than four thousand (4,000) tons/year per facility.

(c)(1) Tons/year chargeable emissions is the sum of the permitted emission rates of all air contaminants (other than carbon monoxide, carbon dioxide and methane).

(2) The maximum value per air contaminant shall not exceed four thousand (4,000) tons/year per facility.

**Authority.** Arkansas Code §§ 8-1-103, 8-4-311.

##### **8 CAR § 12-403. Initial fees.**

(a) Initial fees shall be assessed according to the following formulas.

(b)(1) Non-Part 70 permits:

**Initial fee = \$/ton factor x tons/year predominant air contaminant**

(2) Provided, however, no initial fee shall be less than five hundred dollars (\$500) except for general permits issued to Non-Part 70 sources.

(c) **Part 70 permits.**

(1)(A) Permits issued to Part 70 sources already holding an active air permit not issued pursuant to 8 CAR pt. 42:

**Initial fee = [\$/ton factor x tons/year chargeable emissions] – amount of last annual air permit fee invoice**

(B) Provided, however, that no initial fee shall be less than one thousand dollars(\$1,000).

(2)(A) Permits issued to Part 70 sources that do not hold an active air permit:

**Initial fee = \$/ton factor x tons/year chargeable emissions**

(B) Provided, however, that no initial fee shall be less than the \$/ton factor x 100.

**Authority.** Arkansas Code §§ 8-1-103, 8-4-311.

##### **8 CAR § 12-404. Annual fees.**

(a) Annual fees shall be assessed according to the following formulas:

(b)(1) Non-Part 70 permits:

**Annual fee = \$/ton factor x tons/year predominant air contaminant**

(2) Provided, however, that no annual fee shall be charged for a permit in which the tons/year predominant air contaminant is less than ten (10) tons/year.

(c)(1) Part 70 permits:

**Annual fee = \$/ton factor x tons/year chargeable emissions**

(2) Provided, however, that no annual fee shall be less than the \$/ton factor x 100.

**Authority.** Arkansas Code §§ 8-1-103, 8-4-311.

**8 CAR § 12-405. Modification fees.**

(a) Modification and renewal fees for air permits shall be assessed according to the following formulas.

(b)(1) Non-Part 70 permits:

**Modification fee = \$/ton factor x tons/year net emissions  
increase of predominant air contaminant**

(2) However, no modification fee shall be less than four hundred dollars (\$400), or more than the \$/ton factor x by 4,000.

(c) **Part 70 permits.**

(1)(A) For each nonminor permit modification or each renewal permit involving a nonminor permit modification:

**Fee = \$/ton factor x tons/year net emission increase of chargeable  
emissions**

(B) However, no fee shall be less than one thousand dollars (\$1,000) or more than the \$/ton factor x by 4,000.

(2) A fee of five hundred dollars (\$500) for each minor permit modification or each renewal permit involving only a minor permit modification.

**Authority.** Arkansas Code §§ 8-1-103, 8-4-311.

**8 CAR § 12-406. Administrative permit amendments and renewal permits.**

There shall be no fee charged for administrative permit amendments or renewal permits not involving a permit modification, as such are defined in 8 CAR pt. 42, Arkansas Operating Air Permit Program, 8 CAR pt. 41, State Implementation Plan for Air Pollution Control, or 8 CAR pt. 40, Arkansas Air Pollution Control Code, as applicable.

**Authority.** Arkansas Code §§ 8-1-103, 8-4-311.

**8 CAR § 12-407. General permits.**

(a)(1) In lieu of the fees schedules in this subpart, and except as provided in subsection (b) of this section, sources that qualify for a general air permit issued pursuant to 8 CAR pt. 40, 8 CAR pt. 41, or 8 CAR pt. 42 shall be subject to an initial fee and annual fee as described below.

(2) The initial fee of two hundred dollars (\$200) shall be remitted with the notice of intent (NOI) for coverage under the applicable general permit.

(3) Until a notice of termination (NOT) is submitted and approved by the Division of Environmental Quality, the permittee shall be billed two hundred dollars (\$200) annually thereafter on the anniversary date of coverage.

(4) When general permits are revised, no additional initial fee shall be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.

(b) The following general permit holders shall not be assessed or billed an annual fee:

(1) Non-Part 70 general permits in which the tons/year predominant air contaminant is less than ten (10) tons per year.

**Authority.** Arkansas Code §§ 8-1-103, 8-4-311.

**8 CAR § 12-408. Permit fees for certain small business subject to Part 70 permitting requirements.**

(a) For purposes of this section, the term “small business stationary source” means a stationary source that is:

- (1) Owned or operated by a person that employs one hundred (100) or fewer individuals;
- (2) A small business concern as defined in the federal Small Business Act (www.sba.gov);
- (3) Not a major stationary source;
- (4) Permitted to emit less than fifty (50) tons per year of any regulated pollutant; and
- (5) Permitted to emit less than seventy-five (75) tons per year of all regulated pollutants.

(b) Upon written request, the Director of the Division of Environmental Quality may reduce the Part 70 initial, Part 70 annual, or Part 70 modification fee for a small business stationary source if the source demonstrates to the satisfaction of the director that they do not have the financial resources to pay the fee as calculated.

(c) When reducing permit fees in accordance with subsection (b) of this section, the director shall calculate the fee as if the source is a non-Part 70 source.

**Authority.** Arkansas Code §§ 8-1-103, 8-4-311.

**Codification Notes.** The Small Business Act was enacted in Pub. L. No. 85-536.

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**Subpart 8. Administrative Procedures**

**8 CAR § 12-801. Division review of fees.**

(a) The Division of Environmental Quality shall undertake a biennial reevaluation of the permit fee schedule as contained in this part within sixty (60) days of receiving its approved budget for the next biennium.

(b) The evaluation shall reflect:

- (1) The current needs of the division to perform essential permitting, compliance, enforcement, and monitoring activities;
- (2) The resources available;
- (3) The balance of the permit fee fund from the previous biennium;
- (4) Anticipated state and federal appropriations;
- (5) Status of delegation of federal programs; and
- (6) Any other factors deemed relevant to the study by the division.

**Authority.** Arkansas Code §§ 8-1-103, 8-2-204, 8-4-202, 8-4-311, 8-6-207.

**8 CAR § 12-802. Appeals.**

If any applicant/permittee disagrees with the Division of Environmental Quality's decision on an assessment of fees, the applicant/permittee may appeal the decision in accordance with the applicable provisions of the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., the Arkansas Solid Waste Management Act, Arkansas Code § 8-6-201 et seq., the Environmental Laboratory Accreditation Program Act, Arkansas Code § 8-2-201 et seq., and 8 CAR pt. 11, Administrative Procedures.

**Authority.** Arkansas Code §§ 8-1-103, 8-2-204, 8-4-202, 8-4-311, 8-6-207.

**8 CAR § 12-803. Effective date.**

This rule is effective ten (10) days after filing with the:

- (1) Secretary of State;
- (2) Arkansas State Library; and
- (3) Bureau of Legislative Research.

**Authority.** Arkansas Code §§ 8-1-103, 8-2-204, 8-4-202, 8-4-311, 8-6-207.