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REGULATIONS OF THE STATE IMPLEMENTATION PLAN DISCUSSION AID

When Arkansas submits a request for EPA to incorporate by reference particular State regulatory provisions into the state implementation plan (SIP), Arkansas only submits those provisions that pertain to the request. Other provisions are redacted or not included in the submission. The "Arkansas EPA Approved Programs" spreadsheet includes a list of the current SIP-approved regulatory and statutory provisions codified at 40 CFR 52 Subpart E. Both Regulation 19 and Regulation 26 c contain some provisions (Ex. Regulation 26, Chapter 7) that have not been submitted to EPA for inclusion in the SIP and are therefore not codified by reference into 40 CFR 52 Subpart E.

This document illustrates how ADEQ would redact provisions of Regulation 35 that would not be included in a SIP revision if APC&EC were to adopt the strawman draft of Regulation 35 V2. Provisions marked for redaction in this illustrative document are marked with a red outline and grey fill. (Example: This text is marked for redaction.) The redaction has not been applied so that you can view the text that would be redacted. If ADEQ were to include a consolidated regulation, the redactions would be applied and EPA would not be able to see the redacted text.

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Arkansas Pollution Control and Ecology Commission # 014.00-035

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

REGULATION NO. 35

ARKANSAS AIR QUALITY REGULATION V2.0



Mark-Up Draft

Submitted to the Commission in Month Year

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CHAPTER 1: GENERAL PROVISIONS

Reg. 35.101 Title

The following rules and regulations, adopted pursuant to Subchapter 2 of the Arkansas Water and Air Pollution Control Act (Ark. Code Ann. 8-4-101, *et seq.*) shall be referred to as the “Arkansas Air Quality Regulation” hereinafter “Regulation 35” or “this Regulation.”

Reg. 35.102 Applicability

(A) Regulation No. 35 is applicable to any stationary source that emits or has the potential to emit any federally-regulated air pollutant.

(B) Chapter 3 of Regulation 35 is applicable to any source that emits or has the potential to emit any air contaminant. Permits or permit conditions issued under Chapter 3 or enforcement issues arising from Chapter 3 shall not be federally enforceable.

Reg. 35.103 Intent and Construction

(A) Regulation 35 consists of those rules and regulations deemed necessary and desirable by the Arkansas Pollution Control and Ecology Commission

(1) For the control of air pollution pursuant to its rulemaking mandates under State law [Ark. Code Ann. § 8-4-311(b)(1) and § 8-1-203(b)(1)]; and

(2) To satisfy certain requirements of the Clean Air Act and the federal regulations stemming therefrom.

(B) Regulation 35 s hould be construed as consistent with the “Legislative Intent and Purpose” of air pollution control regulations set out in Ark. Code Ann. § 8-4-301 and § 8-4-302, as those provisions apply to the Department’s permitting, enforcement, and administrative functions (Ark. Code Ann. § 8-1-202) and the Arkansas Pollution Control and Ecology Commission’s rulemaking and adjudicatory functions (Ark. Code Ann. § 8-1-203).

(C) By the authority of the same State law, the Arkansas Pollution Control and Ecology Commission has consolidated and replaced the provisions formerly contained in

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Arkansas Air Pollution Control Code (Regulation 18), Regulations of the Arkansas Plan of Implementation for Air Pollution Control (Regulation 19), Regulations of the Arkansas Operating Air Permit Program (Regulation 26), and Nonattainment New Source Review Requirements (Regulation 31) with this Arkansas Air Quality Regulation (Regulation 35). The intent of Regulation 35 is to present the air regulations in a streamlined and clear format to improve understanding of the requirements.

- (D) Federal programs that the Department is responsible for administering include, but are not limited to:
- (1) Attainment and maintenance of the national ambient air quality standards (40 C.F.R. Part 50);
 - (2) Certain delegated subparts of the New Source Performance Standards (40 C.F.R. Part 60);
 - (3) Provisions designed for the Prevention of Significant Deterioration (40 C.F.R. 52.21);
 - (4) Minor new source review as described in Chapter 10 of this Regulation (40 C.F.R. Part 51); and
 - (5) Certain delegated subparts of the National Emission Standards for Hazardous Air Pollutants (40 C.F.R. Parts 61 and 63).
 - (6) Reg. 35.103(D) shall not limit the future delegation of federal programs to the Department for administration.
- (E) To the extent consistent with State law and efficient protection of the State's air quality, Regulation 35 shall be construed in a manner that promotes a streamlined permitting process, mitigation of regulatory costs, and flexibility in maintaining compliance with regulatory mandates. Any applicable documents (e.g. "White Papers", regulatory preambles, or interpretive memoranda) issued by the EPA or the Department that are consistent with this policy and the legislative intent of State laws governing air pollution control (Ark. Code Ann. §§ 8-4-301, *et seq.*) are aids for construing the requirements of Regulation 35. Any procedure applicable to major sources that promotes operational

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flexibility are presumed to be authorized by this Regulation unless manifestly inconsistent with its substantive terms.

- (F) The Arkansas Pollution Control and Ecology Commission intends Regulation 35 to limit the federal enforceability of this Regulation's requirements to only those mandated by federal law. The Arkansas Pollution Control and Ecology Commission intends Regulation 35 to facilitate a permit system for stationary sources within the State. Each permit shall designate the provisions that are federally enforceable and the provisions that are State enforceable.
- (G) Regulation 35 presumes a single-permit system, encompassing both federal and State requirements. A regulated facility that is subject to permitting under Regulation 35 shall be required to apply for and comply with only one permit, even though that permit may contain conditions derived from the federal mandates contained in Regulation 35, as well as conditions predicated solely on State law. Regulation 35, 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 Regulation 35. Permits or permit conditions issued under the authority of State law, or enforcement issues arising out of State law, shall not be federally enforceable.
- (H) Nothing in Regulation 35 shall be construed as curtailing the Department's or the Arkansas Pollution Control and Ecology Commission's authority under State law.

Reg. 35.104 Severability

If any provision of this Regulation, or the application of the provision to any person or circumstance, is held invalid, the remainder of this Regulation, or the application of the provision to persons or circumstances other than those that are held invalid, shall not be affected thereby.

Reg. 35.105

Pre-emption of Political Subdivisions

To avoid conflicting and overlapping jurisdiction, it is the intention of this Section to clarify the position that the State occupies the field of control and abatement of air pollution and contamination; and no political subdivision of this State shall enact or enforce laws, ordinances, resolutions, rules, or regulations in this field; unless the laws, ordinances, resolutions, rules, or

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regulations are for the purpose of prohibiting burning in the open or in a receptacle having no means for significantly controlling the fuel/air ratio.

Reg. 35.106 Effective Date

This Regulation is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

Reg. 35.107 Repealer

Arkansas Pollution Control and Ecology Commission Regulations 18, 19, 26, and 31 are repealed as of the effective date of Regulation 35.

Reg. 35.108 Continuation of the Effectiveness of Permitting Provisions

Notwithstanding any references to regulations that are no longer in effect, a person holding any permit issued prior to the effective date of this Regulation shall continue to operate in accordance with the conditions of that permit.

Reg. 35.109 Transition

- (A) The Department shall consider amendments to permits to correct citations to regulations that are no longer in effect an administrative permit amendment under Reg. 35.1008
- (B) The Department may initiate an administrative permit amendment under Reg. 35.1008 of its own accord for the purpose of correcting citations in permits to regulations that are no longer in effect.
- (C) A crosswalk for the location in Regulation 35 of provisions previously contained in Regulations 18, 19, 26, and 31 is provided in Appendix C of this Regulation.

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CHAPTER 2: DEFINITIONS

“**Acid rain source**” means “affected source” as defined in Title IV of the Clean Air Act.

“**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.

“**Administrator**” or “**EPA**” means the Administrator of the United States Environmental Protection Agency or his/her designee.

“**Affected states**” are all states:

- (A) Whose air quality may be affected and that are contiguous to the state where a Part 70 permit, permit modification or permit renewal is being proposed; or
- (B) That are within fifty (50) miles of the permitted source.

“**Air contaminant**” or “**air pollutant**” means any solid, liquid, gas, or combination thereof; other than water vapor, nitrogen (N₂), and oxygen (O₂).

“**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 limitations that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

- (A) The application standards set forth in 40 C.F.R. Part 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.

“**Ark. Code Ann.**” means the Arkansas Code Annotated 1987 as amended.

“**Business day**” means calendar day, excluding Saturdays, Sundays, and recognized public holidays.

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“**C.F.R.**” means the United States Code of Federal Regulations.

“**Clean Air Act**” means the federal Clean Air Act, as amended, 42 U.S.C. §§ 7401, *et seq.* and its implementing regulations.

“**CO₂e**” shall represent an amount of GHG emitted that is computed by multiplying the mass amount of emissions in tons per year, for each of the six (6) gases in GHG, by the gas’s associated global warming potential published at Table A-1 to Subpart A of 40 C.F.R. Part 98 “Global Warming Potentials” and summing the resultant value for each. Table A-1 to Subpart A of 40 C.F.R. Part 98 is incorporated by reference as of the effective date of the federal final rule published by EPA in the Federal Register on November 29, 2013 [78 FR 71948]).

“**Commence construction**” means, as applied to construction of a Part 70 major source, prevention of significant deterioration major source, nonattainment new source review major source, or major modification, 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 on-site construction of the source, to be completed within a reasonable time; or
- (B) Entered into binding agreements or contractual obligations, that 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.

“**Construction**” means fabrication, erection, installation, demolition, or modification of equipment. See also 40 C.F.R. 60.2, 40 C.F.R. 51.165, and 40 C.F.R. 52.21.

“**Control apparatus**” means any device that prevents, controls, detects, or records the emission of any federally-regulated air pollutant.

“**Department**” means the Arkansas Department of Environmental Quality, or its successor. When this Regulation makes reference to actions taken by or with reference to the Department, the reference is to the staff of the Department acting at the direction of the Director.

“**Designated representative**” shall have the meaning given to it in Clean Air Act § 402(26) and the regulations promulgated thereunder.

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“Direct PM_{2.5} emissions” means solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct PM_{2.5} emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).

“Director” means the Director of the Arkansas Department of Environmental Quality, or its successor, acting directly or through the staff of the Department.

“Draft permit” means the version of a permit that the Department offers for public participation, Administrator review, and affected state review.

“Emissions limitation” and **“emission standard”** mean a requirement established by the Department or the Administrator 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.

“Emissions allowable under the permit” means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limitation (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

“Emissions unit” means any article, machine, equipment, operation, or contrivance that emits or has the potential to emit any federally-regulated air pollutant. This term is not meant to alter or affect the definition of the term “Unit” for purposes of Title IV of the Clean Air Act.

“EPA” means the United States Environmental Protection Agency.

“Equipment” means any device, except equipment used for any mode of vehicular transportation, capable of causing the emission of an 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.

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“Federally enforceable” means all limitations and conditions that are enforceable by the Administrator, including those requirements developed pursuant to 40 C.F.R. Parts 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. Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.

“Federally-regulated air pollutant” means the following:

- (A) Nitrogen oxides or any volatile organic compounds;
- (B) Any pollutant that has a promulgated national ambient air quality standard;
- (C) Except as provided in Paragraph (E) of this definition, any pollutant that is subject to any standard promulgated under the Clean Air Act as of the effective date of this Regulation.
- (D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act.
- (E) GHG, except that GHG shall not be a federally-regulated air pollutant unless the GHG emissions are regulated under Chapter 11 of this Regulation.

“FR” means the United States Federal Register.

“Fugitive emissions” means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

“GHG” or **“greenhouse gases”** means the aggregate group of the following six (6) gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

“Hazardous air pollutant” means any pollutant listed pursuant to Clean Air Act § 112, as amended, as of the effective date of this Regulation.

“Initial permit” means the first Part 70 permit issued to a Part 70 source that is in existence on the effective date of this Regulation.

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“**MACT**” or “**maximum achievable control technology**” means generally, the best available control technology, taking into account cost and technical feasibility.

“**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:

- (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:
 - (1) Any change in the production rate, if the change does not exceed the permitted operating capacity of the source;
 - (2) Any change in the hours of operation, as long as it does not violate applicable air permit conditions; or
 - (3) The use of an alternative fuel or raw material, as long as it does not violate applicable air permit conditions.
- (C) *De Minimis* changes, as specified in Reg. 35.1007(C), and changes in ownership shall not be considered modifications.

“**National ambient air quality standard**” means those ambient air quality standards promulgated by the EPA in 40 C.F.R. Part 50 as of the effective date of the federal final rule published by EPA in the Federal Register on October 26, 2015 (80 FR 65292), as set forth in Appendix B of this Regulation.

“**NESHAP**” or “**National emission standard for hazardous air pollutants**” is a technology-based standard of performance prescribed for hazardous air pollutants from certain stationary source categories under § 112 of the Clean Air Act.

“**NSPS**” or “**New source performance standard**” is an emission standard prescribed under § 111 of the Clean Air Act for air contaminants that have a promulgated national ambient air quality standard and are emitted from certain stationary source categories.

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“Opacity” means the degree that air emissions reduce the transmission of light and obscure the view of an object in the background.

“Operator” means any person who leases, operates, controls, or supervises any equipment affected by this Regulation.

“Owner” means any person who has legal or equitable title to any source, facility, or equipment affected by this Regulation.

“Part 70” means 40 C.F.R. Part 70.

“Part 70 source” means any source subject to the permitting requirements of Chapter 12 of this Regulation.

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

“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. Part 60 Appendix A as of the effective date of the federal final rule published by EPA in the Federal Register on February 27, 2014 (79 FR 11257), or by a test method specified in this Regulation or any supplement thereto, with the exception of condensable particulate matter.

“Permit revision” means any permit modification or administrative permit amendment.

“Permitting authority” means either of the following:

- (A) The Arkansas Department of Environmental Quality; or
- (B) The Administrator, in the case of EPA-implemented programs.

“Person” means any individual or other legal entity or their legal representative or assignee.

“PM_{2.5}” means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (2.5) micrometers as measured by a reference method based on Appendix L of 40 C.F.R. Part 50 as of the effective date of the federal final rule published by EPA in the

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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. Part 53.

“PM_{2.5} emissions” means PM_{2.5} emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. Part 51, Appendix M as of the effective date of the federal final rule published by EPA in the Federal Register on April 2, 2014 (79 FR 18452), or by a test method specified in this Regulation or any supplement thereto.

“PM₁₀” means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based upon Appendix J of 40 C.F.R. Part 50 as of the effective date of the federal final rule published by EPA in the Federal Register on August 7, 1987 (52 FR 29467), or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

“PM₁₀ emissions” means PM₁₀ emitted to the ambient air as measured by an applicable reference method, or by an equivalent or alternate method, specified in 40 C.F.R. Part 51, Appendix M as of the effective date of the federal final rule published by EPA in the Federal Register on April 2, 2014 (79 FR 18542), or by a test method specified in this Regulation or any supplement thereto.

“Potential to emit” means the maximum capacity of a stationary source to emit a federally-regulated air pollutant under its physical and operational design.

- (A) Any physical or operational limitation on the capacity of the source to emit a federally-regulated air pollutant, including, but not limited to:
 - (1) Air pollution control equipment; and
 - (2) Restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. These restrictions shall be treated as part of the stationary source’s 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.
- (B) Secondary emissions do not count in determining the potential to emit of a stationary source.

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- (C) This definition does not alter or affect the use of this term for any other purposes under the Clean Air Act, or the term “capacity factor” as used in Clean Air Act Title IV or the regulations promulgated thereunder.

“**Renewal**” means the process of reissuing a permit at the end of its term.

“**Responsible official**” means one 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 of the person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
- (1) 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
 - (2) The Department approves in advance the delegation of authority to the representative;
- (B) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
- (C) For a municipality, State, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Regulation, 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 EPA); or
- (D) For acid rain sources:
- (1) The designated representative in so far as actions, standards, requirements, or prohibitions under Clean Air Act Title IV or the regulations promulgated thereunder are concerned; and
 - (2) The designated representative for any other purposes under Part 70.

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“Secondary emissions” means those emissions of federally-regulated air pollutants that, although associated with a source, the source itself does not emit.

“Shutdown” means the cessation of operations of equipment.

“Startup” means the setting in operation of equipment.

“State” means:

- (A) Any non-federal permitting authority, including any local agency, interstate association, or statewide program; The term “state” also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
- (B) For the purposes of the Acid Rain Program, the term “state” shall be limited to authorities within the forty-eight (48) contiguous states and the District of Columbia as provided in Clean Air Act § 402(14).
- (C) When capitalized, “State” shall mean the government of the State of Arkansas.
- (D) Where the meaning is clear from the context, “state” shall have its conventional meaning.

“State implementation plan” means a plan that specifies measures to be used in the implementation of the State’s duties under the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, and that is developed by the Department and submitted to the EPA for review and approval.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any federally-regulated air pollutant.

“Title I modification” means any modification as defined under any regulation promulgated pursuant to Title I of the Clean Air Act. *De Minimis* changes under this Regulation, changes to State-only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications.

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

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- (A) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;
- (B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

“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.

“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.

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

- acetone;
- methane;
- ethane;
- methylene chloride (dichloromethane);
- 1,1,1-trichloroethane (methyl chloroform);
- tetrachloroethylene (perchloroethylene);
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
- trichlorofluoromethane (CFC-11);
- dichlorodifluoromethane (CFC-12);
- chlorodifluoromethane (HCFC-22);
- trifluoromethane (HFC-23);
- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114);
- chloropentafluoroethane (CFC-115);
- 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123);
- 1,1,1,2-tetrafluoroethane (HFC-134a);
- 1,1-dichloro-1-fluoroethane (HCFC-141b);
- 1-chloro-1,1-difluoroethane (HCFC-142b);
- 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);

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pentafluoroethane (HCFC-125);
1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1-trifluoroethane (HFC-143a);
1,1-difluoroethane (HFC-152a);
parachlorobenzotrifluoride (PCBTF);
cyclic, branched, or linear completely methylated siloxanes;
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
difluoromethane (HFC-32);
fluoroethane (ethyl fluoride or HFC-161);
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
1,1,2,2,3-pentafluoropropane (HFC-245ca);
1,1,2,3,3-pentafluoropropane (HFC-245ea);
1,1,1,2,3-pentafluoropropane (HFC-245eb);
1,1,1,3,3-pentafluoropropane (HFC-245fa);
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
1,1,1,3,3-pentafluorobutane (HFC-365mfc);
chlorofluoromethane (HCFC-31);
1-chloro-1-fluoroethane (HCFC-151a);
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($((CF_3)_2CFCF_2OCH_3)$);
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE 7200);
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($((CF_3)_2CFCF_2OC_2H_5)$);
methyl acetate;
1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ($n-C_3F_7OCH_3$ or 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);
methyl formate ($HCOOCH_3$)
1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
propylene carbonate;
dimethyl carbonate;
(1E)-1,3,3,3-tetrafluoroprop-1-ene (HFO-1234ze);

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HCF₂OCF₂H (HFE-134);
HCF₂OCF₂OCF₂H (HFE-236cal2);
HCF₂OCF₂CF₂OCF₂H (HFE-338pcc13);
HCF₂OCF₂OCF₂CF₂OCF₂H (H-Galden 1040x or H-Galden ZT 130 [or 150 or 180]);
(1*E*)-1-chloro-3,3,3-trifluoroprop-1-ene;
2,3,3,3-tetrafluoropropene;
2-amino-2-methyl-1-propanol;
t-butyl acetate;
cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mz-Z); and
perfluorocarbon compounds that fall into these classes:

- (1) Cyclic, branched, or linear completely fluorinated alkanes;
 - (2) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;
 - (3) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and
 - (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- (B) For purposes of determining compliance with emissions limitations, volatile organic compounds will be measured by the test methods in the approved state implementation plan or 40 C.F.R. Part 60, Appendix A, as of July 1, 1997, as applicable. If a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as volatile organic compounds if the amounts of these compounds are accurately quantified, and the Department approves the exclusion.
- (C) As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

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CHAPTER 3: ARKANSAS AIR POLLUTION CONTROL CODE

Subchapter 3.1: General Provisions

Reg. 35.3.101 Intent

- (A) It is the specific intent of Chapter 3 to preclude federal enforceability of Chapter 3 requirements. Permits or permit conditions issued under Chapter 3 or enforcement issues arising from Chapter 3 shall not be federally enforceable.
- (B) In all applications of Chapter 3, the Department and the Arkansas Pollution Control and Ecology Commission shall be guided to a resolution that categorically assures that:
 - (1) The least possible injury will be done to human, plant, or animal life, or to property;
 - (2) The public enjoyment of the State's air quality resources will be maintained; and
 - (3) The resolution is consistent with the economic and industrial well-being of the State.

Reg. 35.3.102 Applicability

This Chapter is applicable to any source that emits or has the potential to emit any air contaminant.

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Subchapter 3.2: Definitions

When used in this Chapter, the following definitions apply. Terms and phrases used in this Chapter that are not explicitly defined herein shall have the same meaning as those terms defined in Chapter 2 of this Regulation.

“Actual emissions” means the quantity of air contaminants emitted from a stationary source considering emissions control equipment and actual hours of source operation or amount of material processed.

“Air contaminant” means any solid, liquid, gas, or combination thereof. The following shall not be considered air contaminants: water vapor, nitrogen (N₂), and oxygen (O₂), carbon dioxide (CO₂), hydrogen (H₂) and inert gases.

“Air pollution” means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics, and of a duration that is materially injurious or can be reasonably expected to become materially injurious to human, plant, or animal life or to property, or that unreasonably interferes with enjoyment of life or use of property throughout the state or throughout the area of the state as shall be affected thereby.

“Conditions of air pollution” as distinguished from “air pollution” in a given area shall be deemed to exist if the Director finds that the national ambient air quality standards have been exceeded in the area, or if the Director finds that extraordinary measures are necessary to prevent them from being exceeded.

“Conditions of episodic air pollution” in a given area shall be deemed to exist when the Director finds that meteorological conditions are such as to minimize the normal dispersion of air contaminants and that the following levels are determined to exist in a given area and that the levels can be reasonably expected to persist for twelve (12) or more hours or increase unless control actions are taken where:

- (A) Sulfur dioxide (SO₂) of a concentration equal to or greater than 800 µg/m³ (1.3 ppm) for any 24-hour average (where µg/m³ means micrograms per cubic meter and where ppm means parts per million);

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- (B) Particulate matter (PM) of a concentration equal to or greater than $375 \mu\text{g}/\text{m}^3$ for any 24-hour average;
- (C) The coefficient of haze (COH) is equal to or greater than three (3.0) for any 24-hour average; or
- (D) The product of sulfur dioxide (SO_2) and particulate matter (PM) reported in $\mu\text{g}/\text{m}^3$ for any 24-hour average exceeds 65,000.

“Control apparatus” means any device that prevents, controls, detects, or records the emission of any air contaminant.

“Equipment” means any device, except equipment used for any mode of vehicular transportation, capable of causing the emission of an air contaminant into the open air, and any stack, conduit, flue, duct, vent, or similar device connected or attached to, or serving the equipment.

“Flue” or **“stack”** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct, but not including flares.

“Fuel burning equipment” means equipment for which the primary purpose is the production of thermal energy from the combustion of fuel by indirect heat transfer.

“Garbage” means rejected food waste including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in, or storage of meat, fish, fowl, fruit, or vegetable.

“Hazardous air pollutant” means any air contaminant listed pursuant to the Clean Air Act § 112 as of the effective date of this Regulation.

“Incinerator” means all devices that reduce in volume garbage, refuse, or other combustible material through a combustion process where the fuel/air ratio is or can be controlled so that the remaining solid residues contain little or no combustible material.

“Open burning” means a fire where a material is burned in the open or in a receptacle having no means for significantly controlling the fuel/air ratio.

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

“Potential to emit” means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design.

- (A) Any physical or operational limitation on the capacity of the source to emit an air contaminant, 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. These restrictions shall be treated as part of stationary source’s design only if the limitation or the effect it would have on emissions is practically enforceable.
- (B) Secondary emissions do not count in determining the potential to emit of a stationary source.

“Refuse” means any combustible waste material containing carbon in a free or combined state, other than liquid or gases.

“Salvage” means an operation conducted in whole or part for the reclaiming of any product or material.

“State ambient air quality standard” means the maximum amount of an air contaminant that is permissible in outdoor air.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any air contaminant.

“Trade waste” means any solid, liquid, or gaseous material resulting from construction of the prosecution of any business, trade or industry, or any demolition operation including, but not limited to, plastics, cardboard cartons, grease, oil, chemicals, and cinders.

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Subchapter 3.3: Open Burning

Reg. 35.3.301 Open Burning Prohibition

A person shall not cause or allow the open burning of refuse, garbage, trade waste, or other waste material, or conduct a salvage operation by open burning.

Reg. 35.3.302 Exemptions to Open Burning Prohibition

Reg. 35.3.301 does not apply to the following activities:

- (A) Fires used for the non-commercial cooking of food or for ceremonial or recreational purposes, including barbeques and outdoor fireplaces used in connection with any residence;
- (B) Open burning related to agricultural activities including, but not limited to, clearing previously uncultivated lands and burning of stubble and other debris on previously harvested fields; provided however, that this exemption shall not be extended to the disposal, by open burning, of waste products generated by cotton gins, or similar equipment used in a manufacturing process or to the disposal by open burning of fowls or animals;
- (C) Controlled fires used for purposes of forest and wildlife management, if the fires are used and burned when winds are blowing away from populated areas that might be affected;
- (D) Controlled fires used only for purposes of on-site land clearing operations;
- (E) Smokeless flares or safety flares from the combustion of waste gases, if the flares comply with all other applicable provisions of this Chapter;
- (F) Open burning at the site of origin of waste hydrocarbon products from oil exploration, development, or production, or from natural gas processing plants, or from materials spilled or lost from pipeline breaks, if, because of the isolated location, the waste products cannot be reclaimed, recovered, or disposed lawfully in any other manner;
- (G) Fires set or authorized by any public officer, board, council, or commission if the fire is set or permission to burn is given in the performance of the duty of the officer for the

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purpose of weed abatement, or the prevention or elimination of a fire hazard; or fires set for the purposes of the instruction in methods of firefighting or for civil defense instructions;

- (H) Open burning relating to on-site clean-up operations resulting from transportation accidents if, because of the isolated location, the material to be burned cannot be reclaimed or recovered, or if there is no other practical, safe, or lawful method of disposal; if:
 - (1) The Director is notified of the exact location, and the nature and quantities of materials to be burned prior to ignition;
 - (2) The Director approves in writing of the burning. In case of emergency, the Director may choose to deliver approval by telephone and later confirm the approval in writing; and
 - (3) The burning is conducted in accordance with the written approval of the Director; and
- (I) Open burning of any material not elsewhere specifically prohibited or exempted in this Subchapter and for which there is no practical, safe, or lawful means of disposal; except that a person shall not cause or allow open burning without first obtaining a letter of authorization for open burning from the Director in accordance with the provision as set forth in Reg. 35.3.305.
- (J) Opening burning of vegetative storm debris as authorized under Reg. 35.3.303.

Reg. 35.3.303 Open Burning of Storm Debris

County governments may dispose of vegetative storm debris in counties declared disaster areas by a county, state, or federal authority authorized to make such a declaration if the requirements of Reg. 35.3.303 (A)–(C) are met.

- (A) Pre-Authorization of Vegetative Storm Debris Open Burning Sites
 - (1) Prior to conducting open burning of vegetative storm debris, the county government may request pre-authorization from the Department of four (4) sites

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in the county designated by the county judge.

- (2) The county government shall make requests for pre-authorization on any forms as the Department may require.
- (3) The Department shall assess each site for which pre-authorization is requested to ensure that the site meets all applicable requirements
- (4) For sites that were previously authorized under this section and used for open burning of vegetative storm debris, The Department shall consider a maximum of four (4) sites to be pre-authorized for burning if the Department receives a letter from the county judge certifying that the open burning sites have not been materially altered since the initial request.

(B) Notification Required Prior to Open Burning of Vegetative Storm Debris

- (1) The county government shall notify the Department in writing three (3) days before the commencement of any open burning, unless the Director waives the notification. This notification shall include the date that the open burning is to occur, the location of the pre-authorized sites where the open burning is to occur, and a signed letter from the county judge certifying that the open burning sites preauthorized under Reg. 35.3.303(A) have not been materially altered since the initial request for preauthorization.
- (2) If the Director determines that the scope of the disaster warrants additional open burning sites, the Director may authorize additional open burning sites.
- (3) The Director may require that:
 - (a) A designated open burning site be relocated; or
 - (b) Any or all open burning allowed under Reg. 35.3.303 be stopped in response to actual or potential violations of State or federal air quality standards in the impacted areas.
- (4) The Department may recommend alternative methods of vegetative storm debris disposal including the use of air curtain incinerators or composting to the extent

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allowed under federal law.

(C) Requirements for Open Burning of Vegetative Storm Debris at Designated Sites

- (1) Open burning of storm debris is restricted solely to vegetative storm debris.
- (2) Open burning of nonvegetative storm debris, including, but not limited to, tires, lumber, construction debris; demolished structures, household wastes, and trade wastes is prohibited.
- (3) Open burning shall be performed during daylight hours on business days;
- (4) Open burning shall be completed within one hundred twenty (120) calendar days of the declaration of the county as a disaster area unless:
 - (a) At least ten (10) calendar days before expiration of the period of time under Reg. 35.3.303(C)(4), the county judge of the affected disaster area makes a written request to the Director for an extension;
 - (b) The Director determines that the scope of the disaster warrants an extension; and
 - (c) The total amount of time, including the extension, does not exceed two hundred forty (240) calendar days from the original declaration of the county as a disaster area;
- (5) Open burning shall be conducted in a manner so as not to create a nuisance to surrounding communities and citizenry;
- (6) The county shall ensure that adequate firefighting personnel are available to respond to an emergency at any designated open burning site at the time the open burning occurs;
- (7) Open burning shall not be conducted if:
 - (a) The site is within:
 - (i) Five hundred (500) feet of a residence unless the owner of

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the residence has given written permission for the open burning site; or

- (ii) One thousand (1000) feet of a school;
 - (b) The site is located in a county that is designated as a nonattainment area for any national ambient air quality standard; or
 - (c) A burn ban is in effect for the county where the site is located.
- (8) County governments performing open burning of vegetative storm debris under Reg. 35.3.303 shall comply with all other applicable federal, state, or local statutes, rules, regulations, ordinances, and orders.

Reg. 35.3.304 Conditions of Air Pollution

During conditions of air pollution, if declared by the Director to exist in any area of the State, all open burning in the declared area that is otherwise exempted under Reg. 35.3.302 shall be discontinued as set forth herein, except as specifically provided in the Director's public announcements.

- (A) During conditions of air pollution, open burning as provided in Reg. 35.3.302(B), (C), (F), and (H) shall be discontinued until the Director declares that the conditions have ceased to exist. The Department may limit the scope of the discontinuance to one or more of the activities as provided in Reg. 35.3.302(B), (C), (F), and (H) if it finds that the conditions of air pollution are primarily caused by the activity.
- (B) During conditions of episodic air pollution, open burning as provide in Reg. 35.3.302(B), (C), (F), and (G) shall be discontinued upon public announcement by the Director, until the Director declares that the conditions of episodic air pollution have ceased to exist. The Director may limit the scope of the discontinuance to one or more of the activities if he or she finds that the conditions of episodic air pollution are caused primarily by the activity.
- (C) The Director may allow open burning during the existence of a condition of air pollution under conditions described in Reg. 35.3.302(F), (G), and (H) if the Director determines,

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after consultation with public safety officials in the locality in question, that open burning is absolutely necessary, in the Director's opinion, to prevent danger to life or property.

- (D) The statutory authority of the Department to grant variances and permits is in no way limited by this Subchapter.

Reg. 35.3.304 Open Burning Authorizations

Upon receipt of application, the Department shall issue letters of authorization for open burning, if the applicant affirmatively demonstrates to the satisfaction of the Department, that there are no practicable, safe, and lawful alternative methods of disposal and that open burning is absolutely necessary and in the public interest and provided, further, that said applications contain any other information that the Department may reasonably require. Only letters of authorization issued by the Department satisfy this Subchapter. Local public officers, boards, councils, or commissions may also require open burning permits for safety or other purposes; however, those permits do not satisfy the requirement to obtain an authorization under this Subchapter.

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Subchapter 3.4: State Prohibitions

Reg. 35.3.401 Prohibition of Emissions of Air Contaminants Such as to Constitute Air Pollution

A person shall not cause or allow the emission of air contaminants, odors indicative of the release of an air contaminant, or water vapor if the emission constitutes air pollution.

Reg. 35.3.402 Fugitive Emissions Prohibitions

- (A) A person shall not cause or allow the handling, transporting, or storage of any material in a manner that allows or may allow unnecessary amounts of air contaminants to become airborne.
- (B) A person shall not cause or allow any building or its appurtenances to be constructed, altered, used, repaired, or demolished without applying all reasonable measures as may be required to prevent unnecessary amounts of particulate matter from becoming airborne.

Reg. 35.3.403 Circumvention

Unless the Director provides prior written approval, a person shall not build, erect, install, or use any article, machine, equipment, or other contrivance if its sole purpose is to dilute or conceal an emission without resulting in a reduction of the total amount of air contaminants emitted to the atmosphere. This rule does not apply to the control of odors or the installation of stacks if a permit has been issued as provided in this Chapter.

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Subchapter 3.5: Mobile Sources

Reg. 35.3.501 Emissions from Mobile Equipment

- (A) Any person owning or operating a motor vehicle including, but not limited to automobiles and trucks, incorporating a system for the control of the emissions from the crankcase or exhaust system, or for the control of evaporative emissions, shall maintain the system in good operable condition and shall use it at all times that the vehicle is operated. The operator of the vehicle shall not intentionally make the system inoperable and shall not remove it except to install a proper replacement.
- (B) A person shall not cause or allow the emission of an air contaminant from a motor vehicle including, but not limited to, automobiles and trucks, of a density exceeding thirty percent (30%) opacity, except during acceleration and gear shifting for periods not to exceed five (5) seconds. If the presence of uncombined water is the only reason for failure of a motor vehicle to comply herewith, Reg. 35.3.501(C) shall not apply.
- (C) Railroad locomotives shall be maintained and operated to minimize visible emissions.
- (D) This Subchapter shall not be applicable to the emission of air contaminants from motor exhaust of tractors, graders, earthmovers, or other mobile and portable equipment used exclusively in land clearing, agricultural, or road building operations; provided, however, that prime movers used for the transportation of said portable and mobile equipment shall not be exempt.

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Subchapter 3.6: Authority to Deal with Extraordinary Conditions

Reg. 35.3.601 Conditions of Air Pollution

- (A) Within areas of high source density or high receptor density and/or within areas affected by levels of air contaminants, which, due to their intensity and/or duration, threaten to constitute a significant departure from the national ambient air quality standards, the Department may prescribe air quality control requirements that are more restrictive and more extensive than those provided in the regulations of general application within said areas. These requirements may be kept in effect for a period that the Department deems necessary to adequately deal with the conditions.
- (B) If the Director finds the existence of a condition of air pollution or conditions of episodic air pollution or the Department imposes extraordinary air quality control requirements pursuant to Reg. 35.3.601(A), the Director shall summarize the conditions and the actions taken in response thereto and shall make the summary available to the news media and to the public. The Director shall continue to publish the summaries at regular intervals throughout the duration of said conditions and actions.

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Subchapter 3.7: Hydrogen Sulfide State Ambient Air Quality Standards

Reg. 35.3.701 Ambient Concentration Standard

- (A) Except as provided in Reg. 35.3.704, no person shall cause or allow emissions from any facility that result in predicted ambient hydrogen sulfide concentrations at any place beyond the facility's perimeter property boundary greater than eighty (80) parts per billion for any eight-hour averaging period for residential areas, or greater than one hundred (100) parts per billion for any eight-hour averaging period for nonresidential areas.
- (B) No person shall cause or allow emissions from any facility that result in actual ambient hydrogen sulfide concentrations at any place beyond the facility's perimeter property boundary greater than twenty (20) parts per million for any five-minute averaging period.

Reg. 35.3.702 Method of Prediction

All estimates of ambient concentrations required under this section shall be performed by the Department or performed by the facility and approved by the Department based on the facility's potential to emit hydrogen sulfide, the applicable air quality models, databases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993).

Reg. 35.3.703 Compliance Plan

- (A) In the event the standard is predicted to be exceeded, the facility or facilities whose emissions are found to contribute to the excess shall be given a reasonable period of time to undertake measures to demonstrate compliance, such as a site-specific risk assessment that demonstrates that the emissions do not pose a risk to human health at the nearest public receptor, ambient monitoring that demonstrates that the standard is not being exceeded, or undertaking emission reduction measures to reduce emissions of hydrogen sulfide so that the standard will not be exceeded.
- (B) The compliance measures and schedule of compliance shall be stated in an enforceable settlement agreement or permit modification or, if the facility does not have an existing permit, in an enforcement order.

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Reg. 35.3.704 Control Technology Requirements

(A) General Requirements

Rather than demonstrate compliance with the ambient limit contained in Reg. 35.3.701, a facility may elect to install and operate or continue to operate appropriate control technology that addresses hydrogen sulfide emissions for that source or source category.

(B) Determination of Appropriate Control Technology.

- (1) For purposes of this Subchapter, "appropriate hydrogen sulfide control technology" means control technology, operational practices, or some combination thereof, that will result in the lowest emissions of hydrogen sulfide that a particular facility is reasonably capable of meeting, considering technological and economic feasibility.
- (2) Compliance with all applicable portions of the following technology standards, in accordance with the schedule set forth in the standards, shall be deemed to be in compliance with appropriate hydrogen sulfide control technology:
 - (a) Maximum Achievable Control Technology Standards issued pursuant to Clean Air Act §112, promulgated at 40 C.F.R. Part 63, if compliance with such standards will reduce hydrogen sulfide emissions;
 - (b) The following Standards of Performance for New Stationary Sources, promulgated at 40 C.F.R. Part 60:
 - (i) Subpart J, Standards of Performance for Petroleum Refineries;
 - (ii) Subpart BB, Standards of Performance for Kraft Paper Mills;
 - (ii) Subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry;
 - (iii) Subpart GGG, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries;
 - (iv) Subpart KKK, Standards of Performance for Equipment Leaks of

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VOC from Onshore Natural Gas Processing Plants; or

- (v) Subpart LLL, Standards of Performance for Onshore Natural Gas Processing; or
 - (c) National Emission Standards for Hazardous Air Pollutants under Clean Air Act Title III and standards of performance promulgated pursuant to Clean Air Act §111(d) if compliance with the standards will reduce hydrogen sulfide emissions.
- (3) The owner or operator of a facility that is not subject to one of the technology limits listed in Reg. 35.3.704(B)(2) may apply to the Department for a determination of appropriateness of hydrogen sulfide control technology at any time, but no later than ninety (90) days after a determination that the state ambient air quality standard has been exceeded. The application shall be made on Department forms and contain information as the Department may require and shall include a reasonable time schedule for implementation. When making a determination of appropriateness, the Department shall follow the procedures used for making permitting decisions, including public participation requirements.
- (4) The hydrogen sulfide ambient air standard shall not apply to the following facilities:
- (a) Natural gas pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of four (4) parts per million;
 - (b) Natural gas gathering and production pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of thirty (30) parts per million;
 - (c) Brine pipelines that carry natural gas as a byproduct of the brine;
 - (d) Wastewater treatment facilities; and
 - (e) Oil and gas drilling and production operations and facilities from the wellhead to the custodial transfer meter as that term is defined by law.

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Subchapter 3.8: Visible Emissions

Reg. 35.3.801 Visible Emissions Limitations

- (A) A person shall not cause or allow visible emissions (other than uncombined water vapor) from equipment to exceed the limitation of this section except as specifically provided within this Chapter. In determining the emissions of a source for the purposes of demonstrating air pollution will not occur, the Department shall take into account any incremental increase in allowable emissions under these conditions.
- (1) For equipment installed on or before January 30, 1972, 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, if the emissions will not occur more than three (3) times during any twenty-four-hour period.
 - (2) For equipment installed or modified after January 30, 1972, emissions shall not exceed an opacity greater than twenty percent (20%) except as described in Reg. 35.3.801(A)(3).
 - (3) For wood-fired, coal, or oil-fired boilers installed or modified after January 30, 1972, 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, if the emissions will not occur more than three (3) times during any twenty-four-hour period.
 - (4) Wood fired boilers shall meet all visible emissions of this section except that visible emissions may exceed the permitted opacity for up to forty-five (45) minutes once in any consecutive eight-hour period, three (3) times in any consecutive twenty-four-hour period for soot blowing, grate cleaning, ash raking, and refiring necessary for proper operation of these units. This practice shall be scheduled for the same specific time each day and shall be recorded. The Department shall be notified in advance and in writing of the schedule or any changes. The process of soot blowing, grate cleaning, ash raking, and refiring or any part thereof is considered one activity and the time limit on this activity is forty-five (45) minutes.

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- (B) Opacity of visible emissions shall be determined using EPA Method 9 (40 C.F.R. Part 60, Appendix A).
- (C) The Department may impose more stringent limitations on individual pieces of equipment due to control requirements or control apparatus, corresponding emissions limitations, and/or applicable national standards.
- (D) Petitions for Less Stringent Emission Limitations
 - (1) The owner or operator of equipment may petition the Director for an emission limitation less stringent than that provided in Reg. 35.3.801(A) provided that:
 - (a) The petition is filed not more than six (6) months after commencement of operation of equipment for which a permit has been issued by the Director; and
 - (b) The equipment is in compliance with all provisions of this Chapter except those of Reg. 35.3.801(A).
 - (2) Any petition under Reg. 35.3.801(D) shall contain information as the Director may reasonably require.
 - (3) Upon review of the petition and any other evidence, the Director may require additional information; grant the relief sought in the petition; or establish an emission limitation other than that sought by the petitioner; if the Director affirmatively finds full compliance with all other provisions of this Chapter, and that full compliance with provisions of this section is technically or economically infeasible. The Department shall notify the petitioner of the Director's decision within a reasonable time.
- (E) The emissions limitations of this section shall not apply to the following conditions and activities:
 - (1) The start-up of a new fire in an incinerator used exclusively for the disposal of wood waste or the waste from cotton gins, if start-up does not exceed thirty minutes and there is only one such start-up per day;

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- (2) The application of fertilizers, pesticides, and defoliants;
- (3) The use of mobile and portable equipment in the cleaning, grading, or plowing of land;
- (4) The application of base or surface materials to roads, runways, parking lots, and similar facilities;
- (5) The use of agricultural equipment in the planting, cultivating, or harvesting of crops, or in the feeding of animals or fowls;
- (6) The non-commercial preparation of food and the use of outdoor fireplaces used in connection with any residence;
- (7) The use of incinerators and heating equipment used in connection with residences used exclusively as dwellings for not more than four families; and
- (8) The use of portable incinerators used for the disposal of debris from demolition and land clearing operations.

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Subchapter 3.9: Other Procedures and Requirements Applicable to Stationary Sources of Air Contaminants

Reg. 35.3.901 Sampling, Monitoring, Notice, Recordkeeping and Reporting Requirements

- (A) The requirements of Reg. 35.701–Reg. 35.703 and Reg. 35.705–Reg. 35.706 shall also apply to sources subject permitting under this Chapter except that alternative methods approved by the Department shall not require the concurrence of EPA.
- (B) The Department reserves the right to require additional sampling, monitoring, and reporting requirements not already required in federal regulations.
- (C) Any stationary source subject to this Regulation shall, upon request by the Department, maintain records of any information deemed necessary by the Department to determine whether the source is in compliance with applicable emissions limitations or other control measures.

Reg. 35.3.902 Upset and Emergency Conditions

The procedures and requirements of Chapter 5 of this Regulation shall also apply to sources subject to permitting under this Chapter.

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Subchapter 3.10: Air Code Permitting Requirements

Reg. 35.3.1001 Applicability

(A) General Applicability

A person shall not cause or allow the operation, construction, or modification of a stationary source without first obtaining a permit from the Department if the source actually emits:

- (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) Twenty-five (25) tons per year or more of particulate matter;
- (6) Ten (10) tons per year or more of direct PM_{2.5};
- (7) Fifteen (15) tons per year or more of PM₁₀;
- (8) One-half (0.5) ton per year or more of lead;
- (9) Two (2) tons per year or more of any single hazardous air pollutant;
- (10) Five (5) tons per year or more of any combination of hazardous air pollutants; or
- (11) Twenty-five (25) tons per year or more of any other air contaminant.

(B) Special Applicability

Except as provided for by law or regulation, the following stationary sources are required to obtain a permit under this Subchapter regardless of emissions:

- (1) Any stationary source that the Director determines should obtain a permit to protect the public health and welfare or to assist in the abatement or control of air pollution;

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- (2) Any class of stationary sources for which the Director has determined that the intrinsic nature of the source's operation and/or actual emissions indicates that a permit is necessary for the protection of public health and welfare or to assist in the abatement or control of air pollution. The stationary source classes include but are not limited to:
 - (a) Medical waste incinerators;
 - (b) Rendering plants;
 - (c) Pathological waste incinerators, including crematories;
 - (d) Chemical process plants;
 - (e) Hazardous waste treatment storage or disposal facilities;
 - (f) Sour gas process plants;
 - (g) Lead acid battery recycling facilities; and
 - (h) Charcoal plants; and
- (3) Any stationary source subject to the requirements of a rule promulgated under 40 C.F.R. Part 60, Part 61, or Part 63 as of June 27, 2008, except for:
 - (a) 40 C.F.R. Part 60, Subpart AAA (Wood Stoves);
 - (b) 40 C.F.R. Part 60, Subpart JJJ (Petroleum Dry Cleaners);
 - (c) 40 C.F.R. Part 63, Subpart M (Perchloroethylene Dry Cleaners);
 - (d) 40 C.F.R. Part 63, Subpart Q (Industrial Cooling Towers);
 - (e) Sources subject to 40 C.F.R. Part 60, Subpart Dc (Steam Generating Units) that only burn gas;
 - (f) 40 C.F.R. Part 63, Subpart ZZZZ (Stationary Reciprocating Internal Combustion Engines) for non-Part 70 sources (minor sources);

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- (g) 40 C.F.R. Part 63, Subpart WWWW (Hospital Ethylene Oxide Sterilizers);
- (h) 40 C.F.R. Part 63, Subpart CCCCC (Gasoline Dispensing Facilities);
- (i) 40 C.F.R. Part 60, Subpart IIII (Stationary Compression Ignition Internal Combustion Engines) for engines with a displacement of less than thirty (30) liters per cylinder;
- (j) 40 C.F.R. Part 60, Subpart JJJJ (Stationary Spark Ignition Internal Combustion Engines);
- (k) 40 C.F.R. Part 63, Subpart HHHHH (Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources);
- (l) 40 C.F.R. Part 63, Subpart BBBBB (National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities with a throughput less than twenty thousand [20,000] gallons per day of gasoline); and (m) 40 C.F.R. Part 63, Subpart OOOOO (National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources).

Reg. 35.3.1002 Registration

- (A) A person shall not cause or allow the operation, construction, or modification of a stationary source, without first having registered the source with the Department, if the actual emissions are:
 - (1) Forty (40) tons per year or more but less than seventy-five (75) tons per year of carbon monoxide;
 - (2) Twenty-five (25) tons per year or more but less than forty (40) tons per year of nitrogen oxides;
 - (3) Twenty-five (25) tons per year or more but less than forty (40) tons per year of sulfur dioxide;

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- (4) Twenty-five (25) tons per year or more but less than forty (40) tons per year of volatile organic compounds;
 - (5) Fifteen (15) tons per year or more but less than twenty-five (25) tons per year of particulate matter;
 - (6) Ten (10) tons per year or more but less than fifteen (15) tons per year of PM₁₀;
 - (7) One (1) ton per year or more but less than two (2) tons per year of any single hazardous air pollutant; or
 - (8) Three (3) tons per year or more but less than five (5) tons per year of a combination of hazardous air pollutants.
- (B) For the purpose of Reg. 35.3.1002(A), “modification” shall mean any physical change in or change in the method of operation of a stationary source that increases the emission rates of any air contaminant, specified above, previously registered with the Department or results in the emission of an air contaminant not previously emitted and registered with the Department.
- (C) The registration shall be made on Department forms and contain information as the Department may reasonably require, including but not limited to:
 - (1) The name and address of the facility;
 - (2) An estimate of emissions from the facility; and
 - (3) An explanation of how the emissions estimate was determined.
- (D) Registration does not affect the responsibility of the owner or operator to comply with applicable portions of this Regulation.
- (E) The owner or operator may construct, operate, or modify a source subject to registration under Reg. 35.3.1002 immediately upon submittal of the registration.
- (F) The owner or operator of a source registered under Reg. 35.3.1002 shall pay an annual fee of two hundred dollars (\$200). The requirements of Chapter 3 (Permit Fee Payment)

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of the Arkansas Pollution Control and Ecology Commission's Regulation 9, Fee Regulation shall apply to fees collected under this Subchapter.

- (G) The owner or operator currently holding a permit for a source with actual emissions that fall within the ranges specified under Reg. 35.3.1002(A) may elect to continue to operate under their existing permit or they may submit a registration and request that the Department void their permit. The permit shall remain in effect until voided. If the owner or operator of the source takes no action, the permit will remain in effect.
- (H) The owner or operator of a source otherwise required to register under this section may instead choose to operate under a permit issued in accordance with Reg. 35.3.1003. Registration with the Department is not equivalent to a permit.

Reg. 35.3.1003 Permit Approval Criteria

The Department shall not grant or modify a permit under this Subchapter unless the owner or operator demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this Regulation and without causing air pollution.

Reg. 35.3.1004 Owner or Operator's Responsibilities

Issuance of a permit by the Department does not affect the responsibility of the owner or operator to comply with applicable portions of this Regulation.

Reg. 35.3.1005 Required Information

- (A) Application of a permit shall be made on Department forms and contain information as the Department may reasonably require, including but not limited to:
 - (1) Information on the nature and amounts of air contaminants to be emitted by the stationary source;
 - (2) Information on the location, design, and operation of the stationary source as the Department may reasonably require; and
 - (3) Information on the nature and amounts of air contaminants to be emitted by mobile sources associated with the stationary source.

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- (B) The requirements of Reg. 35.1005(B) and (C) applicable to stationary sources of federally regulated air pollutants shall also apply to stationary sources of air contaminants subject to permitting under this Subchapter.

Reg. 35.3.1006 Action on Application

(A) Technical Review

The Department will review the application submitted under this Subchapter 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 EPA pursuant to Clean Air Act §§ 111, 112, and 114;
- (3) The stationary source will be constructed or modified to operate without resulting in a violation of any applicable provisions of this Regulation;
- (4) The stationary source will be constructed or modified to operate without causing air pollution;
- (5) The stationary source will be constructed or modified to incorporate the appropriate control technology, if any, developed for the kind and amount of federally-regulated air pollutant emitted by the facility;
- (6) The emission rate calculations are complete and accurate; and
- (7) 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 calculations are translated into enforceable limits on operational parameters rather than emissions.

(B) Proposed and Final Action on Permit Applications

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The procedures of Reg. 35.1006(B) and (C) shall also apply to sources subject to permitting under this Subchapter.

Reg. 35.3.1007 Public Participation

(A) General

The Department shall not issue, deny, or modify a permit unless the public has first had an opportunity to comment on the information submitted by the owner or operator and the Department's analysis, as demonstrated by the permit record, of the effect of construction or modification on ambient air quality, including the Department's proposed approval or disapproval of the permit.

(B) Public Availability of Information

Information on applications received, draft and final permits shall be made available to the public in accordance with Arkansas Pollution Control and Ecology Commission Regulation 8, Chapter 2 Permits.

Reg. 35.3.1008 Permit Amendments

The procedures and requirements set forth in Reg. 35.1008 shall also apply to sources subject to permitting under this Subchapter.

Reg. 35.3.1009 Permit Revocation and Cancellation

The procedures and requirements set forth in Reg. 35.1009 shall also apply to sources subject to permitting under this Subchapter.

Reg. 35.3.1010 General Permits

(A) General Authority

The Department may, after notice and opportunity for public participation provided under this Subchapter, issue a general permit under this Subchapter covering numerous similar sources. Any general permit shall comply with all requirements applicable to other permits and shall identify criteria whereby sources may qualify for the general permit. To sources that qualify, the Department shall grant the conditions and terms of the general permit. The source shall be

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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

The Department shall process applications for a general permit in accordance with Arkansas Pollution Control and Ecology Commission Regulation 8.

Reg. 35.3.1011 Operational Flexibility, Changes Resulting in No Emissions Increase, and Permit Flexibility

The procedures and requirements set forth in Reg. 35.1011 through Reg. 35.1013 shall also apply to sources subject to permitting under this Subchapter.

Reg. 35.3.1012 Exemption from Permitting

(A) Insignificant Activities

The Department shall consider stationary sources and activities listed in Appendix A of this Regulation to be insignificant. These sources and activities do not require a permit under this Subchapter and are not required to be included in a source's permit unless the source is a Part 70 source subject to Chapter 12.

(B) Grandfathering

Stationary sources operating prior to July 30, 1969, and have not been modified since, are not required to obtain a permit under this Subchapter.

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CHAPTER 4: GENERAL EMISSIONS LIMITATIONS APPLICABLE TO EQUIPMENT

Reg. 35.401 Purpose

The purpose of this Chapter is to define the general federally-regulated air pollutant emissions limitations applicable to all equipment subject to this Regulation. Stricter specific limitations may be required in applicable permits if stricter limitations are necessary to comply with federal law or regulations that are in effect as of the effective date of this Regulation.

Reg. 35.402 Applicability

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

Reg. 35.403 General Regulation

A person shall not cause or allow the construction or modification of equipment that would cause or allow the following standards or limitations to be exceeded:

- (A) Any national ambient air quality standard;
- (B) Any ambient air increment (as listed in 40 C.F.R. 52.21);
- (C) Any applicable emissions limitation promulgated by the EPA; or
- (D) Any applicable emissions limitation promulgated by the Department in this Regulation.

Reg. 35.404 Visible Emission Regulations

- (A) A person shall not cause or allow visible emissions (other than uncombined water vapor) from incinerators, fuel burning equipment, or manufacturing process equipment in excess of twenty percent (20%) opacity or any applicable visible emission limitations of the New Source Performance Standards promulgated by the EPA, except as allowed in Reg. 35.601(B) and (C). Opacity shall be determined as specified in Reg. 35.601(D).
- (B) For incinerators and fuel burning equipment, exclusively, emissions greater than twenty percent (20%) opacity but not exceeding sixty percent (60%) opacity will be allowed for

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not more than six (6) minutes in the aggregate in any consecutive sixty-minute period, if the emissions will not occur more than three (3) times during any twenty-four-hour period.

- (C) For equipment installed and operated, or permitted by the Department, on or before January 30, 1972, emissions shall not exceed forty (40%) opacity, except that emissions greater than forty (40%) opacity will be allowed for not more than six (6) minutes in the aggregate in any consecutive sixty-minute period, if the emissions will not occur more than three (3) times during any twenty-four-hour period.
- (D) Opacity of visible emissions shall be determined using EPA Method 9 (40 C.F.R. Part 60, Appendix A).

Reg. 35.405 Stack Height/Dispersion Regulations

The stack height provisions of 40 C.F.R. 51.118 are incorporated by reference. The definitions of “stack,” “a stack in existence,” “dispersion technique,” “good engineering practice,” “nearby,” and “excessive concentration” contained in 40 C.F.R. 51.100 (ff) through (kk) are incorporated into this Chapter by reference as of September 12, 1986.

Reg. 35.406 Revised Emission Limitations

- (A) The emissions limitations and reporting procedures of this Chapter may be amended as described below:
 - (1) In accordance with the Clean Air Act and the federal regulations promulgated thereunder, the emissions limitations and reporting procedures of this Chapter or any applicable permits may be further amended and made more restrictive if the Director finds more restrictive measures are necessary to assure maintenance of the national ambient air quality standards; and
 - (2) Any person subject to the emissions limitations contained in this Regulation 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. The Director shall not approve a less stringent limitation if it would cause a violation of the national ambient air quality

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standards. 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.

- (B) The Director shall take into account the following factors when making a determination to revise an emissions limitation:
- (1) The process, fuels, and raw materials available and to be employed in the facility involved;
 - (2) The engineering aspects of the application of various types of control techniques that have been adequately demonstrated;
 - (3) Process and fuel changes;
 - (4) The respective costs of the application of all control techniques, process changes, alternative fuels, etcetera; and
 - (5) Locational and siting considerations.
- (C) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

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CHAPTER 5: UPSET AND EMERGENCY CONDITIONS

Reg. 35.501 Upset Conditions

For purposes of this Chapter, “upset condition” means exceedances of applicable emissions limitations lasting thirty (30) or more minutes, in the aggregate, during a twenty-four-hour period, unless otherwise specified in an applicable permit or regulation. All upset conditions, resulting in violation of an applicable permit or regulation, shall be reported to the Department. Any source exceeding an emissions limitation established by Regulation 35 or applicable permit shall be deemed in violation of said requirements or permit and shall be subject to enforcement action. The Department may forego enforcement action given that the person responsible for the source of the excess emissions does the following:

- (A) Demonstrates to the satisfaction of the Department that the upset condition resulted from:
 - (1) Equipment malfunction or upset and are not the result of negligence or improper maintenance; or
 - (2) Physical constraints on the ability of a source to comply with the emission standard, limitation, or rate during startup or shutdown;
- (B) All reasonable measures have been taken to immediately minimize or eliminate excess emissions;
- (C) Reports the upset condition to the Department by the end of the next business day after the discovery of the occurrence; and
- (D) Submits to the Department, upon request, a full report of the upset condition, including:
 - (1) The identification and location of the process and control equipment involved in the upset;
 - (2) A statement of all known causes; and
 - (3) The scheduling and nature of the actions to be taken to eliminate future occurrences or to minimize the amount and length of time that limitations are exceeded.

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Reg. 35.502 Emergency Conditions

- (A) An “emergency” means any situation arising from the sudden and reasonably unforeseeable events beyond the control of the source, including natural disasters, that situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emissions limitation under the permit, due to unavoidable increases in emissions attributable to the upset condition. An emergency shall not include non-compliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.
- (B) An emergency constitutes a complete affirmative defense to an action brought for non-compliance with technology-based limitations if the conditions of Reg. 35.502(B)(1) through (4) are met. The permittee shall demonstrate the affirmative defense of emergency through properly signed contemporaneous operating logs, or any other relevant evidence that:
 - (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
 - (2) The permitted facility was at the time being properly operated;
 - (3) During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 - (4) The permittee submitted notice of the upset to the Department by the end of the next business day after the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

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CHAPTER 6: PROTECTION OF NATIONAL AMBIENT AIR QUALITY STANDARDS

Reg. 35.601 Purpose

The purpose of this Chapter is to state the responsibilities of the Department and regulated sources in meeting and maintaining the national ambient air quality standards. If any area of the state is determined to be in violation of the national ambient air quality standards, the Department shall meet all applicable requirements contained in the Clean Air Act and all regulations promulgated thereunder.

Reg. 35.602 Department Responsibilities to Prevent National Ambient Air Quality Standards Exceedances

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

- (A) Ambient air monitoring in any area that can reasonably be expected to be in excess of the national ambient air quality standards; and
- (B) Computer modeling of federally-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 pollutants that is the subject of the requirements of Regulation 35. All computer modeling shall be performed using EPA-approved models, and using averaging times commensurate with averaging times stated in the national ambient air quality standards.

Reg. 35.603 Regulated Sources Responsibilities to Prevent National Ambient Air Quality Standards Exceedances

Any stationary source of federally-regulated air pollutants subject to Regulation 35 shall be responsible for taking the following precautions to prevent the national ambient air quality standards from being exceeded:

- (A) If required by law or this Regulation, obtaining a permit from the Department prior to construction of a new source of federally-regulated air pollutant emissions or prior to the

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modification of an existing source of federally-regulated air pollutants;

- (B) Operating equipment in a manner as to meet any applicable permit requirement or any applicable regulations; and
- (C) Repairing malfunctioning equipment and pollution control equipment as quickly as possible. 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 it is repaired.

Reg. 35.604 Delegated Federal Programs

Sources subject to this Regulation shall also comply with all federal programs that the Department is responsible for administering including delegated subparts of the New Source Performance Standards (40 C.F.R. Part 60), provisions designed for the Prevention of Significant Deterioration (40 C.F.R. 52.21), and certain delegated subparts of the National Emissions Standards for Hazardous Air Pollutants (40 C.F.R. Parts 61 and 63).

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CHAPTER 7: SAMPLING, MONITORING, AND REPORTING REQUIREMENTS

Reg. 35.701 Purpose

The purpose of this Chapter is to generally define the powers of the Department in requiring sampling, monitoring, and reporting requirements at stationary sources. The Department shall enforce all properly incorporated and delegated federal testing requirements at a minimum. The Department may use any credible evidence based on sampling, monitoring, and reporting to determine violations of applicable emissions limitations.

Reg. 35.702 Air Emissions Sampling

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

- (A) To provide any sampling ports, at the request of the Department, required for emissions sampling, including safe and easy access to the ports;
- (B) To conduct emissions sampling, at the request of the Department, to determine the rate, opacity, composition, and/or contaminant concentration of the emissions. All compliance testing shall be done at the expense of the permittee by an independent firm, unless otherwise approved by the Department. Sampling shall not be required for those federally regulated air pollutants with continuous emissions monitors;
- (C) All compliance testing averaging times shall be consistent with the averaging times of the applicable emissions limitations stated in the applicable permit, but in no case shall be greater than the minimum averaging times of the applicable national ambient air quality standard;
- (D) Unless otherwise approved by the Department, emissions sampling shall be performed with the equipment being tested operating at least at ninety percent (90%) of its permitted capacity. Emissions results shall be extrapolated to correlate with one hundred percent (100%) of permitted capacity to determine compliance;
- (E) Any equipment that is to be tested, at the request of the Department, shall be tested in accordance with the following time frames;

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- (1) 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
 - (2) Equipment already operating shall be tested according to the time frames set forth by the Department.
- (F) Except as provided in Reg. 35.702(G), The Department shall require that all applicable testing be performed using the methods described in:
 - (1) 40 C.F.R. Part 51, Appendix M, as of the effective date of the federal final rule published by EPA in the Federal Register on April 2, 2014 (79 FR 18452);
 - (2) 40 C.F.R. Part 60, Appendix A, as of the effective date of the federal final rule published by EPA in the Federal Register on February 27, 2014 (79 FR 11257);
 - (3) 40 C.F.R. Part 61, Appendix B, as of the effective date of the federal final rule published by EPA in the Federal Register on October 17, 2000 (65 FR 62161); and
 - (4) 40 C.F.R. Part 63, Appendix A, as of the effective date of the federal final rule published by EPA in the Federal Register on December 29, 1992 (57 FR 62002).
- (G) The Department, with the concurrence of the EPA, may approve, at its discretion, alternate sampling methods that are equivalent to the methods specified in Reg. 35.702(F).
- (H) The owner or operator of the equipment shall
 - (1) Submit the results of equipment tests to the Department within the time frames and on forms required by the Department and federal regulations;
 - (2) Retain the results of the tests for at least five (5) years; and
 - (3) Make the results available to any agents of the Department or the EPA during regular business hours.

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Reg. 35.703 Continuous Emissions Monitoring

The owner or operator of any stationary source subject to this Regulation shall, as required by federal law and upon request by the Department:

- (A) Install, calibrate, operate, and maintain equipment or continuously monitor emissions in accordance with:
 - (1) Applicable performance specifications in 40 C.F.R. Part 60, Appendix B as of the effective date of the federal final rule published by the EPA in the Federal Register on February 27, 2014 (79 FR 11271);
 - (2) Quality assurance procedures in 40 C.F.R. Part 60, Appendix F as of the effective date of the federal final rule published by the EPA in the Federal Register on February 27, 2014 (79 FR 11274); or
 - (3) Other methods and conditions that the Department, with the concurrence of the EPA, shall prescribe.
 - (4) The owner or operator of any source listed in a category in 40 C.F.R. Part 51, Appendix P as of the effective date of the federal final rule published by the EPA in the Federal Register on November 7, 1986 (51 FR 40675), or 40 C.F.R. Part 60 as of August 30, 1992, shall adhere to all continuous emissions monitoring or alternative continuous emission monitoring requirements stated therein, if applicable; and
- (B) Report the data collected by the monitoring equipment to the Department at intervals and on forms as the Department shall prescribe, in accordance with 40 C.F.R. Part 51, Appendix P, § 4.0 (Minimum Data Requirements) as of the effective date of the federal final rule published by the EPA in the Federal Register on November 7, 1986 (51 FR 40675), and any other applicable reporting requirements promulgated by the EPA.

Reg. 35.704 Notice of Completion

For equipment requiring a new permit or a major permit modification, the Department shall be notified in writing within thirty (30) days of the following events:

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- (A) The date of commencement of construction or modification; and
- (B) The date of commencement of operation of a piece of equipment.

Reg. 35.705 Recordkeeping and Requirements

- (A) The owner or operator of any stationary source subject to this Regulation shall, upon request by the Department:
 - (1) Maintain records on the nature and amounts of emissions by the equipment in question.
 - (2) Retain all records, including compliance status reports and excess emissions measurements, for at least five (5) years, and make the records available to the Department or the EPA during regular business hours;
 - (3) Supply the following information, correlated in units of the applicable emissions limitations, to the Department:
 - (a) General process information related to the emissions; and
 - (b) Emissions data obtained through sampling or continuous emissions monitoring.
- (B) A responsible official shall submit information and data to the Department on forms and at time intervals as prescribed by applicable federal regulations or the Department.
- (C) Each emission inventory is to be accompanied by a certifying statement, signed by the owner or operator and attesting that the information contained in the inventory is true and accurate to the best knowledge of the certifying official. The certification shall include the full name, title, signature, date of signature, and telephone number of the certifying official.

Reg. 35.706 Public Availability of Emissions Data

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

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CHAPTER 8: 111(D) DESIGNATED FACILITIES

Reg. 35.801 Purpose

The purpose of this Chapter is to establish regulations for pollutants emitted from designated facilities in accordance with Clean Air Act § 111(d).

Reg. 35.802 Permit Emissions Limitations

A person shall not cause or allow emissions limitations from equipment located at facilities described in this Chapter to be exceeded. Future permit conditions may place more stringent emissions limitations on the equipment that shall supersede the limitations of this Chapter.

Reg. 35.803 Kraft Pulp Mills (Total Reduced Sulfur)

- (A) Reg. 35.803(B) and (C) and the emissions limitations in Table 35.8.1 are applicable to equipment located at the following kraft pulp mills:
- (1) Evergreen Packaging (AFIN 35-00016);
 - (2) Green Bay Packaging, Arkansas Kraft Division (AFIN 15-00001);
 - (3) Mondi Pine Bluff (AFIN 35-00017);
 - (4) Georgia-Pacific Corporation (AFIN 02-00013);
 - (5) Domtar A.W. (AFIN 41-00002); and
 - (6) Clearwater Paper Corporation (AFIN 21-00036).
- (B) The owner or operator of designated equipment in Table 35.10.1 shall test compliance with total reduced sulfur emissions limitations using EPA Method 16 at intervals of no longer than five (5) years following the previous compliance test. Data reduction shall be performed as set forth in 40 C.F.R. 60.8 as of the effective date of the federal final rule published by EPA in the Federal Register on February 27, 2014 (79 FR 11241). Compliance testing at five-year intervals will not be required for equipment with a continuous total reduced sulfur emissions monitor.

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- (C) The owner or operator of any equipment located at the above designated facilities shall conduct total reduced sulfur continuous monitoring in accordance with the requirements of 40 C.F.R. 60.284 (date of installation notwithstanding). The continuous monitoring systems shall be operated according to the provisions of 40 C.F.R. 60.284 by April 1, 1993, except that continuous emissions monitors for affected lime kilns shall be installed and certified by January 1, 1994.

Table 35.8.1 Kraft Pulp Mill Total Reduced Sulfur Emissions Limitations			
AFIN	Facility	Equipment	Total Reduced Sulfur Concentration
35-00016	Evergreen Packaging	recovery furnace	40 ppm
		lime kiln	40 ppm
		smelt dissolving tank	0.0168 g/kg
15-00001	Green Bay Packaging, Arkansas Kraft Division	recovery furnace	40 ppm
		lime kiln	40 ppm
		smelt dissolving tank	0.0168 g/kg
35-00017	Mondi Pine Bluff	recovery furnace	100 ppm
		lime kiln	40 ppm
		smelt dissolving tank	0.0168 g/kg
02-00013	Georgia Pacific Corporation	recovery furnace	5 ppm
		lime kiln	8 ppm
		smelt dissolving tank	0.0168 g/kg

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Table 35.8.1 Kraft Pulp Mill Total Reduced Sulfur Emissions Limitations			
AFIN	Facility	Equipment	Total Reduced Sulfur Concentration
41-00002	Domtar A.W.	recovery furnace	5 ppm
		lime kiln	8 ppm
		smelt dissolving tank	0.0168 g/kg
21-00036	Clearwater Corporation	recovery furnace	5 ppm
		lime kiln	20 ppm
		smelt dissolving tank	0.0168 g/kg

Recovery Furnaces – measured as hydrogen sulfide (H₂S) on a dry basis and on a twelve (12) hour average, corrected to eight percent (8%) by volume oxygen.

Lime Kilns – measured as H₂S on a dry basis and on a twelve (12) hour average, corrected to ten percent (10%) volume oxygen.

Smelt Dissolving Tanks – measured as grams H₂S/kilogram black liquor solids on a twelve (12) hour average.

Digesters and Evaporators – efficient incineration of non-condensable gases (at least one thousand two hundred degrees Fahrenheit [1,200 °F] for at least five-tenths [0.5] seconds).

g/kg – grams per kilogram

ppm – parts per million

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CHAPTER 9: CONFIDENTIALITY

Reg. 35.901 Confidentiality of Trade Secrets

- (A) Information that constitutes a “Trade Secret” shall be held confidential and segregated from the public files of the Department if requested in writing and the information meets the following requirements:
- (1) The applicant derives independent economic value (actual or potential) from the information 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;
 - (2) The information claimed as confidential is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
 - (3) The applicant submits a sworn affidavit to the Department 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 Reg. 35.901(A)(1) and (2); and
 - (4) This affidavit submitted to the Department recites the following:

“The applicant agrees to act as an indispensable party and to exercise extraordinary diligence in any legal action arising from the Department’s denial of public access to the documents or information claimed herein to be a trade secret.”
- (B) If an applicant anticipates numerous permit modifications that may involve regulatory review of trade secrets, the applicant may submit an omnibus affidavit establishing the prerequisites of Reg. 35.901(A)(3) and (4), and reference this document in future confidentiality claims.
- (C) Confidentiality claims shall be afforded interim protected status until the Department determines whether the requirements of Reg. 35.901(A) are satisfied. The Department shall make the determination prior to the issuance of any permit or publication of any

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draft permit. If the Department does not make the determination prior to permit issuance, the information shall be deemed confidential until a request is made. If a third party request to review information claimed as confidential is received before the Department provides its written determination concerning the claim, the Department shall not release the information before notifying the applicant of the request. The Department shall notify the applicant of the request and the Department'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.

- (D) For any permit application submitted subject to a claim of trade secret, the applicant shall provide two (2) copies of the application: one prominently marked as confidential and another that is subject to public review with confidential information excised. The Department will not accept applications that are deemed totally confidential except under extraordinary circumstances guaranteeing future disclosure at a meaningful time for public review.

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CHAPTER 10: MINOR NEW SOURCE REVIEW PERMITS

Reg. 35.1001 Applicability

A person shall not cause or allow the operation, construction, or modification of a stationary source, without first obtaining a permit from the Department if the source has actual emissions of:

- (A) Seventy-five (75) tons per year or more of carbon monoxide;
- (B) Forty (40) tons per year or more of nitrogen oxides;
- (C) Forty (40) tons per year or more of sulfur dioxide;
- (D) Forty (40) tons per year or more of volatile organic compounds;
- (E) Ten (10) tons per year or more of direct PM_{2.5};
- (F) Fifteen (15) tons per year or more of PM₁₀;
- (G) One-half (0.5) ton per year or more of lead;
- (H) Two (2) tons per year or more of any single hazardous air pollutant; or
- (I) Five (5) tons per year or more of any combination of hazardous air pollutants.

Reg. 35.1002 Registration

- (A) Owners or operators of currently permitted sources that have emissions below the permitting thresholds in Reg. 35.1001 and above the registration thresholds under Reg. 35.3.1002 may elect to continue to operate under their existing permit or they may submit a registration and request that the Department void their permit. The permit shall remain in effect until voided. If the owner or operator of the source takes no action, the permit shall remain in effect.
- (B) The owner or operator of a source otherwise required to register under Reg. 35.3.1002 may instead choose to operate under a permit issued in accordance with Reg. 35.1001.

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Reg. 35.1003 Permit Approval Criteria

- (A) The Department shall not grant or modify a permit under this Chapter unless the owner or operator demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate:
 - (1) Without resulting in a violation of applicable portions of this Regulation; and
 - (2) Without interfering with the attainment or maintenance of a national ambient air quality standard.
- (B) The Department shall not grant or modify a permit for commercial medical waste incinerators unless the owner or operator demonstrates to the reasonable satisfaction of the Department that the stationary sources will be constructed or modified to operate in accordance with Ark. Code Ann. §§ 8-6-1301 *et seq.*

Reg. 35.1004 Owner's or Operator's Responsibilities

Issuance of a permit by the Department does not affect the responsibility of the owner or operator to comply with applicable portions of this Regulation.

Reg. 35.1005 Required Information

(A) General

Application of a permit shall be made on Department forms and contain information as the Department 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) Information on the location, design, and operation of the stationary source as the Department may reasonably require.

(B) Duty to Supplement Submittal

If, while processing an application that has been determined to be complete, the Department determines that additional information is necessary to evaluate or take final action on that

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application, the Department may request the information in writing and set a reasonable deadline for a response.

(C) Duty to Correct Submittal

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

Reg. 35.1006 Action on Application

(A) Technical Review

The Department will review the application submitted under this Chapter to ensure to its 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 EPA pursuant to the Clean Air Act §§ 111, 112, and 114;
- (3) The stationary source will be constructed or modified to operate without resulting in a violation of any applicable provisions of this Regulation;
- (4) The emission rate calculations are complete and accurate; and
- (5) If the applicant wishes to measure and/or monitor operating parameters rather than actual emissions, the application describes a process that will be used to ensure calculations are translated into enforceable limits on operational parameters rather than emissions.

(B) Proposed Action

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- (1) If the Department initially determines the requirements of Reg. 35.1006(A) are met, it shall prepare a draft permit that:
 - (a) Contains conditions as are necessary to comply with this Regulation;
 - (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 or as specifically provided for in Reg. 35.1006(B)(1)(c); and
 - (c) Establishes BACT-permitted emission rates, emissions limitations or other enforceable conditions for GHG emissions pursuant to Chapter 11 of this Regulation, if applicable. Draft permits for facilities not subject to a BACT determination in regard to GHG emissions pursuant to the provisions at Chapter 11 of this Regulation shall not contain permitted emission rates, emissions limitations or other enforceable conditions related to GHG emissions. However, the applicant may request that the Department include permitted emission rates, emissions limitations or other enforceable conditions related to GHG emissions in the draft permit to set enforceable limits for the purpose of establishing synthetic minor status. If any provision of Regulation 35 is found to be in conflict with this Section Reg. 35.1006(B)(1), this Section shall take precedence.
- (2) If the Department initially determines the requirements of this Chapter are not met, it shall prepare a notice of intent to deny. This notice will state the reasons for the Department's denial of the applicant's submittal.
- (3) Except as provided in Reg. 35.1008, the public shall have an opportunity to comment on the Department's draft permit decision in accordance with Reg. 35.1007.
- (4) Within ninety (90) days of receipt by the Department of an initial permit application, or an application for a major modification that contains the information as required by the Department (unless the period is extended by mutual agreement between the Department and the applicant), the Department shall notify the applicant in writing of its draft permitting decision. If the

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Department fails to take action on the application within the prescribed time frames, the aggrieved applicant may petition the Arkansas Pollution Control and Ecology Commission for relief from Department inaction. The Arkansas Pollution Control and Ecology Commission shall either grant or deny the petition within forty-five (45) days of its submittal.

(C) Final Action

The Department shall take final action on a permit application after the close of the public comment period. The Department shall notify in writing the owner or operator and any person that submitted a written comment, of the Department's final action and the Department's reasons for its final action.

Reg. 35.1007 Public Participation

(A) General

The Department shall not issue, deny, or modify a permit unless the public has first had an opportunity to comment on the information submitted by the owner or operator and the Department's analysis, as demonstrated by the permit record, of the effect of construction or modification on ambient air quality, including the Department's proposed approval or disapproval of the permit.

(B) Public Availability of Information

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

- (1) Availability for the public inspection in at least one location in the area where the source is located, or proposes to locate, and in the Department's central offices of the Department's draft decision, information submitted by the owner or operator, and any information developed by the Department in support of its draft permit decision;
- (2) 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);

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- (3) 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. The notice shall, at a minimum, describe the locations where the information submitted by the owner or operator and the Department's analysis of this information, may be inspected and the procedure for submitting public comment;
- (4) A copy of the notice, required pursuant to this subsection, shall be sent to the owner or operator and to the:
 - (a) Regional Administrator of the EPA;
 - (b) Mayor of the community where the stationary source is proposed to be constructed or modified;
 - (c) County judge of the county where the equipment is proposed to be constructed or modified; and
 - (d) Appropriate air pollution control agencies of adjoining states if the construction or modification of the source will impact air quality in adjoining states.
- (5) The Department shall consider public comments addressing the technical merits of the permit application and the Department's analysis of the effect of the proposed emissions on air quality submitted in accordance with procedures in the public notice prior to taking final action on the permit application.

Reg. 35.1008 Permit Amendments

- (A) Administrative Permit Amendments
 - (1) An administrative permit amendment is a permit revision that:
 - (a) Corrects a typographical error;

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- (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 at 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 Department shall revise the permit as practicable and may incorporate the 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 Chapter shall remain freely transferable, provided the applicant for the transfer:
 - (a) Notifies the Director at least thirty (30) days in advance of the proposed transfer date on the forms the Director may reasonably require; and
 - (b) Submits a written disclosure statement and other documents as required by the Department.
 - (i) The disclosure statement shall include, but is not limited to the following information:
 - (aa) The full name, business address, and social security number or tax i.d. number of the applicant and all affiliated persons;
 - (bb) 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

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subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state;

- (cc) 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;
 - (dd) A listing and explanation of civil or criminal legal actions by government 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 administrative enforcement actions resulting in the imposition of sanctions, permit or license revocations or denials issued by any state or federal authority, actions that resulted in a finding or a settlement of a violation and actions that are pending;
 - (ee) 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
 - (ff) Any other information the Director may require that relates to the competency, reliability or responsibility of the applicant and affiliated persons.
- (ii) Deliberate falsification or omission of relevant information from disclosure statements shall be ground for civil or criminal enforcement action or administrative denial of a permit, license, certification, or operational authorization.
 - (iii) The following governmental entities are not required to file a disclosure statement:

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- (aa) Subdivisions or agencies of the federal government;
 - (bb) Agencies of the state government;
 - (cc) Counties;
 - (dd) Municipalities; and
 - (ee) Duly authorized regional solid waste authorities.
 - (ff) This exemption shall not extend to improvement districts or any other subdivision of government that is not specifically instituted by an act of the Arkansas General Assembly.
 - (iv) Nothing in this section, including the exemptions in Reg. 35.1008(iii), shall be construed as a limitation upon the authority of the Director to deny a permit based upon a history of noncompliance by any applicant or for other just cause.
 - (v) If the applicant is a publically held company required to file periodic reports under the Security and Exchange Act of 1934, or a wholly owned subsidiary of a publically held company, the applicant shall not be required to submit a disclosure statement. Instead, the applicant shall submit the most recent annual and quarterly reports required by the Securities and Exchange that provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit any other information the Director may require that relates to competency, reliability, or responsibility of the applicant and affiliated persons.
- (2) 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, if:
- (a) The applicant has a history of non-compliance with the environmental laws or regulations of this State or any other jurisdiction;

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- (b) An applicant that 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 regulations of this State; or
 - (c) A person with a history of noncompliance with environmental laws or regulations 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.
- (3) Public notice requirements shall not apply to changes in ownership or changes in name.

(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 emissions increase, based on the differences between the sum of the proposed permitted rates for all emission 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 nitrogen dioxide, sulfur dioxide, or volatile organic compounds;
 - (iii) One-half (0.5) ton per year of lead;
 - (iv) Twenty-five (25) tons per year of particulate matter;

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(v) Ten (10) tons per year of direct PM_{2.5}; and

(vi) Fifteen (15) tons per year of PM₁₀ emissions;

(b) Or, 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 _{2.5}	Two (2) micrograms per cubic meter	Twenty-four-hour
PM ₁₀	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) microgram per cubic meter	Three-month

(3) The following changes shall 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;

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- (c) Any change seeking to change a case-by-case determination of an emissions limitation established pursuant to BACT under Clean Air Act § 112(g), § 112(i)(5), § 112(j), or § 111(d);
 - (d) Any change that would result in a violation of any provision of this Regulation;
 - (e) Any change in a permit term, condition, or limitation 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.
- (4) The owner or operator of a source shall 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. The Department shall require multiple applications be processed as a permit modification with public notice and reconstruction requirements. Deliberate misrepresentation may be grounds for permit revocation.
 - (5) The applicant may implement *De Minimis* changes immediately upon receipt of written notification by the Department.
 - (6) The Department shall revise the permit as practicable and may incorporate the *De Minimis* changes without providing notice to the public.

Reg. 35.1009 Permit Revocation and Cancellation

(A) Revocation

Any permit issued under this Chapter is subject to revocation, suspension, or modification in whole or in part, for cause, including without limitation:

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- (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 regulation or change in any pre-existing 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 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.

Reg. 35.1010 General Permits

(A) General Authority

The Department may, after notice and opportunity for public participation provided under this Chapter, issue a general permit covering numerous similar sources. The criteria for the review and approval of permits under this Chapter shall be used for general permits as well. Any general permit shall comply with all requirements applicable to other permits and shall identify criteria whereby sources may qualify for the general permit. They shall also include enforceable emissions 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 Regulation. To sources that qualify, the Department shall grant the conditions and terms of the general permit. 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

The owner or operator of a source that would qualify for a general permit must apply to the Department for coverage under the terms of the general permit or must apply for permit consistent with this Chapter. The Department may grant a request for authorization to operate

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under a general permit, but the grant shall not be a final permit action for purposes of judicial review.

- (1) When any application for the issuance of a new permit or a modification of an existing permit is filed with the Department, the Department shall cause notice of the application to be published in a newspaper of general circulation in the county where the proposed facility is to be located.
- (2) The notice required by Reg. 35.1010(B)(1) shall advise that any interested person may request a public hearing on the permit application by giving the Department a written request within ten (10) days of the publication of the notice.
- (3) If the Department determines a hearing is necessary, or in the event the Department desires a hearing, the Department 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.

Reg. 35.1011 Operational Flexibility

The permit applicant shall apply for any reasonably anticipated alternative facility operating scenarios at the time of permit application. The Department shall include approved alternative operating scenarios in the permit. The permittee may implement any operating scenario allowed in a permit without the need for any permit revision or any notification to the Department.

Reg. 35.1012 Changes Resulting in No Emissions Increases

- (A) The permittee may make changes at a permitted source that contravene permit terms without a permit revision if the changes:
 - (1) Are not modifications under any provision of Title I of the Clean Air Act;
 - (2) Do not exceed emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions);
 - (3) Do not violate applicable requirements; and

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- (4) Do not contravene 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 Department at least seven (7) days prior to implementing the proposed changes, or within a shorter time frame that the Department allows for emergencies. The permittee and the Department shall attach each notice to their copy of the relevant permit. For each change, the written notice shall include a brief description of the change within the permitted facility, the date that the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

Reg. 35.1013 Permit Flexibility

- (A) The Department may grant an extension to any testing, compliance or other dates in the permit. No extensions shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:
 - (1) The permittee of the facility makes the request in writing at least fifteen (15) days in advance of the deadline specified in the facility's permit;
 - (2) The extension does not violate a federal requirement;
 - (3) The permittee of the facility demonstrates the need for the extension; and
 - (4) The permittee of the facility documents that all reasonable measures have been taken to meet the current deadline and documents reasons the current deadline cannot be met.
- (B) The Department may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limitation in a facility's permit. Requested activities shall not be authorized until the permittee of the facility receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:

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- (1) The permittee of the facility makes the request in writing at least thirty (30) days in advance of the date that temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement, or other limitation in a facility's permit;
 - (2) The request does not violate a federal requirement;
 - (3) The request is temporary in nature;
 - (4) The request will not result in a condition of air pollution;
 - (5) The request contains the information necessary for the Department to evaluate the request, including but not limited to, quantification of the emissions and the date and time the emissions will occur;
 - (6) The request will result in increased emissions less than five (5) tons of any individual federally-regulated air pollutant for which a national ambient air quality standard has been adopted under Chapter 2 of this Regulation, one (1) ton of any single hazardous air pollutant and two and five-tenths (2.5) tons of total hazardous air pollutants; and
 - (7) The permittee of the facility maintains records of the dates and results of the temporary emissions and/or testing.
- (C) The Department may grant a request to allow an alternative to the monitoring specified in a facility's operating permit. These activities shall not be authorized until the permittee of the facility receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:
- (1) The permittee of the facility makes the request in writing at least thirty (30) days in advance of the first date that the monitoring alternative will be used at the facility;
 - (2) The request does not violate a federal requirement;
 - (3) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the facility's operating permit; and

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- (4) Any request, if approved by the Department, is incorporated into the next permit modification application by the permittee of the facility.

Reg. 35.1014 Part 70 Source Permitting Procedures

The Department shall process permit applications for stationary sources subject to Chapter 12 of this Regulation in accordance with the procedures contained in Chapter 12, which are hereby incorporated by reference.

Reg. 35.1015 Exemption from Permitting

(A) Insignificant Activities

The Department shall consider stationary sources and activities listed in Appendix A of this Regulation insignificant and shall not require a permit under this Chapter for insignificant activities. The Department shall not require inclusion of insignificant activities in a source's permit unless a list of insignificant activities is required pursuant to Chapter 12.

(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 Chapter.

Reg. 35.1016 Dispersion Modeling

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

(A) General

All applications of air quality modeling involved in this Chapter shall be based on the applicable models, databases, and other requirements specified in Appendix W of 40 C.F.R. Part 51 (Guideline on Air Quality Models) as of the effective date of the federal final rule published by EPA in the Federal Register on November 9, 2005 (70 FR 68228).

(B) Substitution

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If an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Modification or substitution of a model may be made on a case-by-case basis or, if appropriate, on a generic basis for a specific pollutant or type of stationary source. Written approval of the Administrator of the EPA must be obtained for any modification or substitution.

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CHAPTER 11: PREVENTION OF SIGNIFICANT DETERIORATION

Reg. 35.1101 Purpose

Promulgation and enforcement of this Chapter is intended to further the purposes of the state implementation plan and this Regulation, including, but not limited to, acceptance of delegation by the EPA of authority for enforcement of regulations governing the prevention of significant deterioration of air quality and regulations governing the protection of visibility in mandatory Class I federal areas.

Reg. 35.1102 Definitions

- (A) **"Advance notification"** (of a permit application) means any written communication that establishes the applicant's intention to construct, and that provides the Department with sufficient information to determine that the proposed source may constitute a new major source or major modification, and that the source may affect any mandatory Class I federal area, including, but not limited to, submittal of a draft or partial permit application, a Prevention of Significant Deterioration monitoring plan, or a sufficiently detailed letter. "Advance notification" does not include general inquiries about the Department's regulations.
- (B) **"Regulated NSR Pollutant"** for the purposes of this Chapter means:
 - (1) Any federally-regulated air pollutant for which a national ambient air quality standard has been adopted under Chapter 2 of this Regulation and any federally-regulated air pollutant identified under Reg. 35.1102(B)(1)(a) through (d) as a constituent or precursor. Precursors identified by the Department 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_{2.5} in all attainment and unclassifiable areas.

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- (c) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless Arkansas demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.
 - (d) Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment and unclassifiable area, unless Arkansas demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.
- (2) Any federally-regulated air pollutant that is subject to a standard promulgated under Clean Air Act § 111 as of July 27, 2012;
 - (3) Any Class I or II substance subject to a standard promulgated under or established by Clean Air Act Title VI as amended as of July 1, 1997;
 - (4) Any federally-regulated air pollutant that otherwise is subject to regulation under the Clean Air Act;
 - (5) Notwithstanding Reg. 35.1502(B)(1) through (4), the term *regulated NSR pollutant* shall not include any or all hazardous air pollutants either listed in Clean Air Act § 112, or added to the list pursuant to Clean Air Act § 112(b)(2), and which has not been delisted pursuant to Clean Air Act § 112(b)(3), unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a federally-regulated air pollutant listed under Clean Air Act § 108; and
 - (6) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source of activity that condense to form particulate matter at ambient temperatures. As of the effective date of the federal final rule published by EPA in the Federal Register on Thursday, October 25, 2012 (77 FR 65017) the condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the

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terms and conditions of the permit or the applicable state implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this Chapter.

- (C) For the purpose of this Chapter, **“subject to regulation”** means, for any federally-regulated air pollutant, that the federally-regulated air pollutant is subject to either a provision of the Clean Air Act, or a nationally-applicable regulation codified by the Administrator pursuant to 40 C.F.R. Chapter 1, Subchapter C and adopted herein, that requires actual control of the quantity of emissions of that federally-regulated air pollutant and that a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that federally-regulated air pollutant released from the regulated activity.
- (D) All other terms used herein shall have the same meaning as set forth in Chapter 2 of Regulation 35 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 Reg. 35.1103, unless manifestly inconsistent with the context where they are used. Wherever there is a difference between the definitions in Chapter 2 of Regulation 35 and those listed in 40 C.F.R. 52.21(b) and C.F.R. 51.301, the federal definitions as listed in 40 C.F.R. 52.21(b), as adopted in Reg. 35.1504 and Reg. 35.1502(A), (B) and (C), and 40 C.F.R. 51.301 as of October 20, 2010, shall apply.
- (E) The definition for “routine maintenance, repair and replacement” in 40 C.F.R. 52.21(b)(2)(iii)(a) is not incorporated.

Reg. 35.1103 Adoption of Regulations

- (A) 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 Reg. 35.1103(B) through (G), the Department shall have those responsibilities and that authority, with reference to the State of Arkansas, granted by the Administrator under 40 C.F.R. 52.21(a)(2) through (bb), as in effect on November 29, 2005, which are hereby incorporated by reference, with the exception of:
 - (1) 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.

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52.21(b)(49) is referenced. In those instances, paragraph (G) of Reg. 35.1603 shall apply;

- (2) 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 EPA in the Federal Register on December 21, 2007 (72 FR 72607);
 - (3) 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;
 - (4) 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
 - (5) 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.
 - (6) In the absence of a specific imposition of responsibility or grant of authority, the Department has that responsibility and authority necessary to attain the purposes of the state implementation plan, this Chapter, and the applicable federal regulations, as incorporated by reference.
- (B) 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. Submission of this Regulation 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 shall also apply:
- (1) If air quality impact analyses required under this part indicate that the issuance of a permit for any major source or for any major modification would result in the consumption of more than fifty percent (50%) of any available annual increment

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or eighty percent (80%) of any short-term increment, the person applying for a permit shall submit to the Department 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 the consumption, including alternative siting of the proposed source or portions thereof.
 - (2) The assessment required under Reg. 35.1103(C)(1) 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 Reg. 35.1103(C)(1) 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.
 - (4) The assessment required under Reg. 35.1103(C)(1) may be made effective if a proposed source would cause an increment consumption less than that specified in Reg. 35.1103(C)(1) if the Director finds that unusual circumstances exist in the area of the proposed source that warrant this assessment. The Director shall notify the applicant in writing of those circumstances that warrant this assessment. 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 this 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:
- Impacts on mandatory Class I federal areas include impacts on visibility. The Department shall make the preliminary determination that a source may affect air quality or visibility in a mandatory Class I federal area based on screening criteria agreed upon by the Department and the Federal Land Manager.
- (E) In all instances wherein 40 C.F.R. 51.301 and 40 C.F.R. 52.21 refer to the Administrator or the EPA, the reference, for the purposes of Reg. 35.1103(A), shall mean the

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Department, 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(l)(2).
- (F) Redesignation of air quality areas in Arkansas shall comply with Ark. Code Ann. §§ 8-3-101, et seq.
- (G) For the purpose of the regulation of GHG, only the standards and requirements promulgated by EPA as of June 3, 2010, related to the permitting of GHG emissions shall apply to the requirements of 40 C.F.R. 52.21, as of November 29, 2005, incorporated by reference at Reg. 35.1103(A). The following requirements shall also apply:
- (1) GHG shall not be subject to regulation except as provided in Reg. 35.1603(G)(3), and shall not be subject to regulation if the stationary source:
 - (a) Maintains its total source-wide emissions below the GHG plant-wide applicability limitation level;
 - (b) Meets the requirements in 40 C.F.R. 52.21(aa)(1) through (15) as outlined in Reg. 35.1603(A)(1); and
 - (c) Complies with the plantwide applicability limitation permit containing the GHG plantwide applicability limitation.
 - (2) The term “emissions increase” as used in Reg. 35.1603(G)(3) shall mean 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. For GHG, an emissions increase shall be based on tons per year CO₂e, and “significant” is defined as

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seventy-five thousand (75,000) tons per year CO₂e instead of applying the value in 40 C.F.R. 52.21(b)(23)(ii), as of November 29, 2005.

- (3) Beginning January 2, 2011, GHG is subject to regulation if:
- (a) The stationary source is a new major source for a regulated NSR pollutant that is not GHG, and also will emit or will have the potential to emit GHG at seventy-five thousand (75,000) tons per year CO₂e or more; or
 - (b) The stationary source is an existing major source for a regulated NSR pollutant that is not GHG, and also will have a significant emissions increase of a regulated NSR pollutant, and an emissions increase of GHG of seventy-five thousand (75,000) tons per year CO₂e or more.

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CHAPTER 12: PART 70 OPERATING PERMITS

Subchapter 12.1: Purpose

Reg. 35.12.101 Purpose

Promulgation and enforcement of this Chapter is intended to meet the requirements of Title V of the Clean Air Act and 40 C.F.R. Part 70, as promulgated July 21, 1992 and last modified November 27, 2001, by establishing a comprehensive state air quality permitting program for major sources of air contaminant emissions. Permits issued under this program will address all applicable air contaminant emissions and regulatory requirements in a single document.

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Subchapter 12.2: Definitions

When used in this Chapter, the following definitions apply. Terms and phrases used in this Chapter that are not explicitly defined herein shall have the same meaning as those terms used in Chapter 2 of this Regulation.

“**Affected states**” are all states:

- (A) Whose air quality may be affected and that are contiguous to the state where a Part 70 permit, permit modification or permit renewal is being proposed; or
- (B) That are within fifty (50) miles of the permitted source.

“**Applicable requirement**” means all of the following as they apply to emissions units in a Part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

- (A) Any standard or other requirement in the applicable state implementation plan approved or promulgated by EPA through rulemaking under Title I of the Clean Air Act that implements the relevant requirements of the Clean Air Act, including any revisions to that plan promulgated in 40 C.F.R. Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the Clean Air Act;
- (C) Any standard or other requirement under the Clean Air Act § 111, including § 111(d);
- (D) Any standard or other requirement under the Clean Air Act § 112, including any requirement concerning accident prevention under the Clean Air Act § 112(r)(7);
- (E) Any standard or other requirement of the Acid Rain Program under Title IV of the Clean Air Act or the regulations promulgated thereunder;
- (F) Any requirements established pursuant to the Clean Air Act § 504(b) or § 114(a)(3);
- (G) Any standard or other requirement governing solid waste incineration, under the Clean Air Act § 129;

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- (H) Any standard or other requirement for consumer and commercial products, under Clean Air Act § 183(e);
- (I) Any standard or other requirement for tank vessels, under Clean Air Act § 183(f);
- (J) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Clean Air Act § 328;
- (K) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Clean Air Act, unless the Administrator has determined that the requirements need not be contained in a Title V permit; and
- (L) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Clean Air Act, but only as it would apply to temporary sources permitted pursuant to the Clean Air Act § 504(e).

“Existing Part 70 source” means a Part 70 source that is in operation on the effective date of this Regulation.

“Final permit” means the version of a Part 70 permit issued by the Department that has completed all review procedures required by this Chapter.

“Initial permit” means the first Part 70 permit issued to a Part 70 source that is in existence on the effective date of this Regulation.

“Part 70 major source” means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person [or persons under common control]) belonging to a single major industrial grouping and that are described in Paragraphs (A), (B), or (C) of this definition. For the purposes of defining “Part 70 major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant-emitting activities at the source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

- (A) A major source under Clean Air Act § 112, is defined as:

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- (1) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of any hazardous air pollutant that has been listed pursuant to Clean Air Act § 112(b), twenty-five (25) tons per year or more of any combination of hazardous air pollutants, or any lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources; or
 - (2) For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.
- (B) A major source of air pollutants, as defined in Clean Air Act § 302, that directly emits, or has the potential to emit, one hundred (100) tons per year or more of any federally-regulated air pollutant (including any major source of fugitive emissions of any federally-regulated air pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source for the purposes of Clean Air Act § 302(j), unless the source belongs to one of the following categories of stationary source:
- (1) Coal cleaning plants (with thermal dryers);
 - (2) Kraft pulp mills;
 - (3) Portland cement plants;
 - (4) Primary zinc smelters;
 - (5) Iron and steel mills;
 - (6) Primary aluminum ore reduction plants;
 - (7) Primary copper smelters;

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- (8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plant;
- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) Chemical process plants;
- (21) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units (250 MMBtu) per hour heat input;
- (22) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;
- (23) Taconite ore processing plants;
- (24) Glass fiber processing plants;
- (25) Charcoal Production Plants;

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- (26) Fossil-fuel-fired steam electric plants or more than two hundred fifty million British thermal units (250 MMBtu) per hours heat input; or
 - (27) Any other stationary source category, that as of August 7, 1980, is being regulated under Clean Air Act § 111 or § 112.
- (C) A major stationary source as defined in Clean Air Act Title I, Part D, including:
- (1) For ozone nonattainment areas, sources with the potential to emit:
 - (a) One hundred (100) tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as “marginal” or “moderate;”
 - (b) Fifty (50) tons per year or more in areas classified as “serious;”
 - (c) Twenty-five (25) tons per year or more in areas classified as “severe;” and
 - (d) Ten (10) tons per year or more in areas classified as “extreme.”
 - (e) The references in Paragraph (C)(1)(a)–(d) of this definition to one hundred (100), fifty (50), twenty-five (25), and (10) tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding under Clean Air Act § 182(f)(1) or (2) that requirements under Clean Air Act § 182(f) do not apply;
 - (2) For ozone transport regions established pursuant to Clean Air Act § 184, sources with the potential to emit fifty (50) tons per year or more of volatile organic compounds;
 - (3) For carbon monoxide nonattainment areas that are classified as “serious” and where stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential emit fifty (50) tons per year or more of carbon monoxide; and
 - (4) For PM₁₀ nonattainment areas classified as “serious”, sources with the potential to emit seventy (70) tons per year or more of PM₁₀.

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“Part 70 permit” means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

“Part 70 program” means a program approved by the Administrator under 40 C.F.R. Part 70.

“Permit modification” means a revision to a Part 70 permit that meets the requirements of Subchapter 12.10 of this Chapter.

“Recognized air contaminant emissions” means those air contaminant emissions that may reasonably be assumed to be present according to mass balance calculations or applicable published literature on air contaminant emissions or those air contaminant emissions that cause or present a threat of harm to human health or the environment due to their characteristics, toxicity, rate and quantity of emissions, or duration of their presence in the atmosphere.

“Renewal permit” means a Part 70 permit that is reissued at the end of its term.

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Subchapter 12.3: Requirement for a Part 70 Permit, Applicability

Reg. 35.12.301 Requirement for a Part 70 Permit

- (A) A Part 70 source shall not operate unless it is operating in compliance with a Part 70 permit, or unless the owner or operator of the Part 70 source has filed a timely and complete application for an initial or renewal Part 70 permit as required under this Chapter. The owner or operator of an existing Part 70 source shall submit initial applications in accordance with Subchapter 12.3 of this Chapter. If the owner or operator of a Part 70 source submits a timely and complete application for an initial or renewal Part 70 permit, the source's failure to have a Part 70 permit is not a violation of this Chapter until the Department takes final action on the Part 70 permit application, except as noted in this Subchapter. 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 Department any additional information identified as necessary to process the application. If the Department fails to act in a timely way on a Part 70 permit renewal, EPA may invoke its authority under the Clean Air Act § 505(e) to terminate or revoke and reissue the Part 70 permit.
- (B) Construction shall not begin on a proposed new Part 70 source prior to obtaining a Part 70 permit, unless the applicable Part 70 permit application was submitted prior to the effective date of this Regulation or former Arkansas Pollution Control and Ecology Commission Regulation 26 and the Department's draft permitting decision for the source has already proceeded to public notice in accordance with Reg. 35.1007.
- (C) Construction of a new emissions unit or modification to an existing emissions unit shall not begin at a Part 70 source prior to obtaining a modified Part 70 permit. 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. An existing Part 70 source shall be subject to the permit modification procedures of Chapter 10 of this Regulation until an initial Part 70 permit application is due from the source.

Reg. 35.12.302 Sources Subject to Permitting

Unless exempted by Reg. 35.12.303, the following sources shall be subject to permitting under

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this Chapter:

- (A) Any Part 70 major source;
- (B) Any source, including an area source, subject to a standard, limitation, or other requirement under Clean Air Act § 111. However, non-major sources subject to Clean Air Act § 111 are exempt from the obligation to obtain a Part 70 permit until the Administrator completes a rulemaking to determine how the program should be structured for non-major sources;
- (C) Any source, including an area source, subject to a standard or other requirement under Clean Air Act § 112, except that a source is not required to obtain a Part 70 permit solely because it is subject to regulations or requirements under Clean Air Act § 112(r);
- (D) Any source subject to Chapter 11 of this Regulation.
- (E) Any acid rain source (which shall be permitted in accordance with the provisions of the federal Acid Rain Program); and
- (F) Any source in a source category designated by the Administrator pursuant to this Chapter.

Reg. 35.12.303 Sources Category Exemptions

The following source categories are exempted from the obligation to obtain a Part 70 permit:

- (A) All sources listed in Reg. 35.12.202 that are not Part 70 major sources, acid rain sources, or solid waste incineration units required to obtain a permit pursuant to Clean Air Act § 129(e), are exempted from the obligation to obtain a Part 70 permit until the Administrator completes a rulemaking to determine how the program should be structured for non-major sources;
- (B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters as of July 23, 1993;

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(C) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation as of July 23, 1993; and

(D) Any other non-major sources subject to a standard or other requirement under Clean Air Act § 111 or § 112 exempted by the Administrator.

Reg. 35.12.304 Emissions Units Subject to Permitting

The Department shall include in the Part 70 permit all applicable requirements for all relevant emissions units in the Part 70 source. Some equipment with very small emission rates is exempt from permitting requirements as per Chapter 10 and Appendix A of this Regulation.

Reg. 35.12.305 Emissions Subject to Permitting

All federally-regulated air pollutant emissions and recognized air contaminant emissions from a Part 70 source shall be included in a Part 70 permit, except that GHG emissions shall not be included in a Part 70 permit unless the Part 70 source undertakes a physical change or change in the method of operation that will result in an emissions increase subject to regulation under Reg. 35.1103(G)(3). Only federally-regulated air pollutants may trigger the need for a Part 70 permit or a Part 70 permit modification process. A Part 70 permit modification involving only air contaminants other than federally-regulated air pollutants shall be permitted according to the procedure of Chapter 3 of this Regulation. These permits shall be incorporated into the Part 70 permit by administrative permit amendment.

Reg. 35.12.306 Fugitive Emissions Subject to Permitting

Fugitive emissions from a Part 70 source shall be included in the Part 70 permit application and the Part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of Part 70 major source.

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Subchapter 12.4: Applications for Part 70 Permits

Reg. 35.12.401 Duty to Apply

For each source subject to 40 C.F.R. Part 70, the owner or operator shall submit a timely and complete Part 70 permit application (on forms supplied by the Department) in accordance with this Subchapter.

Reg. 35.12.402 Standard Application Form and Required Information

- (A) The Department shall provide a standard application form or forms. The Department may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments to the forms shall include the following elements:
- (1) A list of insignificant activities that are exempted because of size or production rate;
 - (2) 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;
 - (3) 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 any alternate scenario identified for the source;
 - (4) The following emissions-related information:
 - (a) All federally-regulated air pollutant emissions from any emissions unit, except for those units included in the insignificant activities list pursuant to Reg. 35.12.402(A)(1);
 - (b) Any additional information related to air pollutant emissions sufficient to verify requirements that are applicable to the source and any other information necessary to collect any permit fees owed under the fee schedule in Arkansas Pollution Control and Ecology Commission's Regulation. 9;

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- (c) Identification and description of all points of emissions described in Reg. 19.12.402(A)(4)(a) and (b) in sufficient detail to establish the basis for fees and applicability of requirements of the Clean Air Act;
 - (d) Emissions rates in tons per year and in any other terms as are necessary to establish compliance consistent with the applicable standard reference test method;
 - (e) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules;
 - (e) Identification and description of air pollution control equipment and compliance monitoring devices or activities;
 - (f) Limitations on source operations affecting emissions or any work practice standards, as applicable, for all regulated pollutants at the Part 70 source;
 - (g) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to the Clean Air Act § 123); and
 - (h) Calculations used to determine the information provided under Reg. 35.12.402(A)(4);
- (5) The following air pollution control requirements:
- (a) Citation and description of all applicable requirements; and
 - (b) Description of or reference to any applicable test method for determining compliance with each applicable requirement;
- (6) Other specific information that may be necessary to implement and enforce other applicable requirements of the Clean Air Act or of this Subchapter or to determine the applicability of the requirements;

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- (7) An explanation of any proposed exemptions from otherwise applicable requirements;
- (8) Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to Reg. 35.12.701(I) or to define Part 70 permit terms and conditions implementing Reg. 35.12.802 or Reg. 35.12.701(J);
- (9) A compliance plan for all Part 70 sources that contains the following:
 - (a) A description of the compliance status of the Part 70 source with respect to all applicable requirements;
 - (b) A description as follows:
 - (i) For applicable requirements with which the Part 70 source is in compliance, a statement that the Part 70 source will continue to comply with the requirements;
 - (ii) For applicable requirements that will become effective during the Part 70 permit term, a statement that the Part 70 source will meet the requirements on a timely basis; and
 - (iii) For requirements with which the Part 70 source is not in compliance at the time of Part 70 permit issuance, a narrative description of how the Part 70 source will achieve compliance with the requirements;
 - (c) A compliance schedule as follows:
 - (i) For applicable requirements with which the Part 70 source is in compliance, a statement that the Part 70 source will continue to comply with the requirements;
 - (ii) For applicable requirements that will become effective during the Part 70 permit term, a statement that the Part 70 source will meet the requirements on a timely basis. A statement that the Part 70

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source will meet in a timely manner applicable requirements that become effective during the Part 70 permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement; and

(iii) A schedule of compliance for Part 70 sources that are not in compliance with all applicable requirements at the time of Part 70 permit issuance. This 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 Part 70 source will be in noncompliance at the time of Part 70 permit issuance. 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 Part 70 source is subject. Any schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

(d) A schedule for submission of certified progress reports no less frequently than every six (6) months for Part 70 sources required to have a schedule of compliance to remedy a violation; and

(e) The compliance plan content requirements specified in Reg. 35.12.402(A)(10) shall apply and be included in the acid rain portion of a compliance plan for an affected Part 70 source, except as specifically superseded by regulations promulgated under Clean Air Act Title IV with regard to the schedule and method(s) the Part 70 source will use to achieve compliance with the acid rain emissions limitations;

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

(a) A certification of compliance with all applicable requirements by a responsible official consistent with Reg. 35.12.410 and Clean Air Act § 114(a)(3);

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- (b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - (c) A schedule for submission of compliance certifications during the Part 70 permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department; and
 - (d) A statement indicating the Part 70 source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Clean Air Act; and
- (11) Nationally standardized forms for acid rain portions of Part 70 permit applications and compliance plans, as required by regulations promulgated under Clean Air Act Title IV.
- (B) The applicant shall include in the Part 70 permit application the information specified in Reg. 35.12.402(A) for each emissions unit at a Part 70 source. The applicant shall 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 Regulation 9, Fee Regulation.

Reg. 35.12.403 Initial Applications from Existing Part 70 Sources

A timely application for an initial Part 70 permit for an existing Part 70 source is one that is submitted within twelve (12) months after the source becomes subject to the Part 70 permit program or on or before an earlier date as the Department may establish. The earliest that the Department may require an initial application from an existing Part 70 source is six (6) months after the Department notifies the source in writing of its duty to apply for an initial Part 70 permit.

Reg. 35.12.404 Applications for Proposed New Part 70 Sources

The owner or operator proposing to construct a new Part 70 source shall apply for and obtain a Part 70 permit prior to the construction of the source, unless the applicable Part 70 permit

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application was submitted prior to the effective date of this Regulation and the Department's draft permitting decision for the source has already proceeded to public comment in accordance with Reg. 35.1007 of this Regulation.

Reg. 35.12.405 Applications for Proposed Significant Modifications at Part 70 Sources

Part 70 sources proposing to construct a new emissions unit or modify an existing emissions unit shall apply for and obtain a modified Part 70 permit prior to the construction or modification of the emissions unit. 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.

Reg. 35.12.406 Part 70 Permit Renewal Applications

For purposes of Part 70 permit renewal, a timely application is one that is received by the Department at least six (6) months prior to the date of Part 70 permit expiration or another longer time as may be approved by the Administrator that ensures that the term of the Part 70 permit will not expire before the Part 70 permit is renewed. This time shall not be greater than eighteen (18) months. Renewal permits are subject to the same procedural requirements that apply to initial Part 70 permit issuance. Expiration of a Part 70 permit terminates a Part 70 source's right to operate unless the Department has received a timely and complete renewal application, in which case the existing Part 70 permit shall remain in effect until the Department takes final action on the renewal application. If the Department fails to act in a timely way on a Part 70 permit renewal, EPA may invoke its authority under Clean Air Act § 505(e) to terminate or revoke and reissue the Part 70 permit.

Reg. 35.12.407 Complete Application

To be deemed complete, an application shall provide all information required by Reg. 35.12.402, except that applications for Part 70 permit revision are only required to supply that information related to the proposed change. Unless the Department determines that an application is not complete within sixty (60) days of receipt of the application, the application shall be deemed complete. If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, it may request the information in writing and set a reasonable deadline for a response.

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Reg. 35.12.408 Confidential Information

If an applicant has submitted information to the State under a claim of confidentiality, the Department may also require the applicant to submit a copy of the information directly to the Administrator.

Reg. 35.12.409 Applicant's Duty to Supplement or Correct Application

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a Part 70 permit application shall, upon becoming aware of the failure or incorrect submittal, promptly submit supplementary facts or corrected information. 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.

Reg. 35.12.410 Certification by Responsible Official

Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Chapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

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Subchapter 12.5: Action on Part 70 Permit Applications

Reg. 35.12.501 Action on Part 70 Permit Applications

The Department may issue a Part 70 permit, Part 70 permit modification, or Part 70 permit renewal only if all of the following conditions have been met:

- (A) The Department has received a complete application for a Part 70 permit, Part 70 permit modification, or Part 70 permit renewal, except that a complete application need not be received before issuance of a general permit;
- (B) Except for modifications qualifying for minor permit modification procedures under Subchapter 12.10 of this Chapter, the Department has complied with the requirements under Subchapter 12.6 of this Chapter for public participation and for notifying and responding to affected states;
- (C) The processing of the Part 70 permit application and the conditions of the Part 70 permit provide for compliance with all applicable requirements and the requirements of this Chapter; and
- (D) The Administrator has received a copy of the draft Part 70 permit and any notices required under Subchapter 12.6 of this Chapter and has not objected to issuance of the Part 70 permit within the time period specified therein.

Reg. 35.12.502 Final Action on Part 70 Permit Applications

The Department shall take final action on each Part 70 permit application (including a request for Part 70 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 Regulation (i.e., initial permitting of existing Part 70 sources and minor permit modifications). Failure of the Department to act upon an application shall not constitute approval of the Part 70 permit application. An aggrieved applicant may seek relief from Department inaction on a Part 70 permit application in accordance with the procedures of Ark. Code Ann. § 8-4-311(b)(10)(F).

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Reg. 35.12.503 Priority for Application Review

The Department shall give priority to taking action on applications for construction and modification over applications for Part 70 permit renewal to the extent practicable.

Reg. 35.12.504 Notification of Application Completeness

The Department shall promptly provide notice to the applicant of whether the application is complete. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within sixty (60) days of receipt of an application, the application shall be deemed complete. To be processed through minor permit modification procedures, a modification shall be subject to an eligibility determination, but a completeness demonstration is not required.

Reg. 35.12.505 Source's Ability to Operate Prior to Final Part 70 Permit Action

A Part 70 source's ability to operate without a Part 70 permit prior to initial Part 70 permit issuance (to existing Part 70 sources) or Part 70 permit renewal shall be in effect from the date the timely and complete application for initial Part 70 permit or Part 70 permit renewal is determined or deemed to be complete until the final Part 70 permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Department. However, the installation of new emissions units and the modification of existing emissions units may not commence construction until a final Part 70 permit for the activity is issued, unless the activity involves equipment exempt from permitting requirements or modifications eligible to be processed through minor permit modification procedures.

Reg. 35.12.506 Basis for Draft Part 70 Permit Conditions

The Department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Department shall send this statement to EPA and to any other person who requests it.

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Subchapter 12.6: Part 70 Permit Review by the Public, Affected States, and EPA

Reg. 35.12.601 Applicability

All initial permits, renewal permits, and significant Part 70 permit modifications shall meet the permit review requirements of this Subchapter.

Reg. 35.12.602 Public Participation

All initial Part 70 permit issuances, significant modifications, and renewals shall afford the public the opportunity to comment.

(A) Public notice shall be given:

- (1) By publication of notice of application receipt by the Department in a newspaper of general circulation in the county where the proposed facility or activity is to be located, in accordance with Arkansas Pollution Control and Ecology Commission Regulation 8, Administrative Procedures. Minor modifications applications are exempt from this requirement. 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 availability for public inspection in at least one location in the area where the source is located and in the Department's central offices of the permit application submitted by the owner or operator and the Department's draft permitting decision and analysis of the effect of the proposed emissions on air quality;
- (3) By publication of a notice of the Department's draft permitting decision in a newspaper of general circulation in the county where the proposed facility or activity is to be located in accordance with Regulation 8. 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 where the source is located;
- (5) To the county judge of the county where the source is located;

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- (6) To persons on a mailing list developed by the Department, including those who request in writing to be on the list; and
 - (7) By other means if necessary to assure adequate notice to the affected public.
- (B) The draft permit notice of Reg. 35.12.602(A) shall identify the affected facility; the name and address of the permittee; the name and address of the Department; the activity or activities involved in the Part 70 permit action; the emissions change involved in any Part 70 permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the Part 70 permit draft, the application, all relevant supporting materials and all other materials available to the Department that are relevant to the Part 70 permit decision; a brief description of the comment procedures required by this Regulation; and a statement of procedures to request a hearing.
- (C) The Department shall provide the notice and opportunity for participation by affected states as is provided for in this Subchapter.
- (D) The Department 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.
- (E) The Department shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his/her obligation under Clean Air Act § 505(b)(2) to determine whether a citizen petition may be granted, and the records shall be available to the public.

Reg. 35.12.603 Transmission of Part 70 Permit Information to the Administrator

- (A) The Department shall provide to the Administrator a copy of each Part 70 permit application (including any application for Part 70 permit modification), each draft Part 70 permit, and each final Part 70 permit. The Department may require the applicant to provide a copy of the Part 70 permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the Department may submit to the Administrator a Part 70 permit application summary form and any relevant portion of the Part 70 permit application and compliance plan, in place of the complete

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Part 70 permit application and compliance plan.

- (B) The Department shall keep for five (5) years the records and submit to the Administrator any information that the Administrator may reasonably require to ascertain whether the Part 70 program complies with the requirements of the Clean Air Act or of 40 C.F.R. Part 70.

Reg. 35.12.604 Review of Draft Part 70 Permit by Affected States

- (A) The Department shall give notice of each draft Part 70 permit to any affected state on or before the time that the Department 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) The Department, as part of the submittal of the draft Part 70 permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures), shall notify the Administrator and any affected state in writing of any refusal by the Department to accept all recommendations for the draft Part 70 permit that the affected state submitted during the public or affected state review period. The notice shall include the Department's reasons for not accepting any recommendation.

Reg. 35.12.605 EPA Objection to Draft Part 70 Permit

- (A) The Administrator will object to the issuance of any draft Part 70 permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this Chapter. The Department shall not issue a Part 70 permit for which an application is required to be transmitted to the Administrator if the Administrator objects to its issuance in writing within forty-five (45) days of receipt of the draft Part 70 permit and all necessary supporting information.
- (B) Any EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the Part 70 permit shall include to respond to the objections. The Administrator will provide the Part 70 permit applicant a copy of the objection.
- (C) Failure of the Department to follow proper Part 70 permit issuance procedural requirements or to submit required information necessary to review the draft Part 70

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permit also shall constitute grounds for an objection.

(D) If the Department fails, within ninety (90) days after the date of an objection under Reg. 35.12.605(A) to revise and submit a draft Part 70 permit in response to the objection, the Administrator will issue or deny the Part 70 permit in accordance with the requirements of the federal program promulgated under Clean Air Act Title V.

Reg. 35.12.606 Public Petitions to the Administrator

If the Administrator does not object in writing to a draft Part 70 permit, any person may petition the Administrator within sixty (60) days after the expiration of the Administrator's 45-day review period to make an objection. The petition shall be based only on objections to the Part 70 permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise the objections within this period, or unless the grounds for the objection arose after this period. If the Administrator objects to the Part 70 permit as a result of a petition filed under Reg. 35.12.606, the Department shall not issue the Part 70 permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a Part 70 permit or its requirements if the Part 70 permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued a Part 70 permit prior to receipt of an EPA objection under Reg. 35.12.605, the Administrator will modify, terminate, or revoke the Part 70 permit, and shall do so consistent with the procedures in Subchapter 12.10 of this Chapter except in unusual circumstances, and the Department may thereafter issue only a revised Part 70 permit that satisfies EPA's objection. In any case, the Part 70 source will not be in violation of the requirement to have submitted a timely and complete application.

Reg. 35.12.607 Prohibition on Default Issuance

The Department shall not issue a Part 70 permit (including a Part 70 permit renewal or modification) until affected states and EPA have had an opportunity to review the draft Part 70 permit as required under this Subchapter.

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Subchapter 12.7: Part 70 Permit Content

Reg. 35.12.701 Standard Part 70 Permit Requirements

Each Part 70 permit issued under this Chapter shall include the following elements:

- (A) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of Part 70 permit issuance.
 - (1) The Part 70 permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
 - (2) The Part 70 permit shall state that, if an applicable requirement of the Clean Air Act is more stringent than an applicable requirement of regulations promulgated under Clean Air Act Title IV, the Part 70 permit shall incorporate both provisions, which shall be enforceable by the Administrator.
 - (3) If allowed under an applicable state implementation plan, the Department may make a determination that an alternative emissions limitation is equivalent to that contained in the state implementation plan during the Part 70 permit issuance, renewal, or significant modification process. Any Part 70 permit containing this equivalency determination shall contain provisions that demonstrate that any resulting emissions limitation is quantifiable, accountable, enforceable, and based on replicable procedures.
- (B) The Department shall issue permits for a fixed term of five (5) years in the case of acid rain sources, and for a term not to exceed five (5) years in the case of all other Part 70 sources. Notwithstanding this requirement, the Department shall issue permits for solid waste incineration units combusting municipal waste subject to standards under Clean Air Act § 129(e) for a period not to exceed twelve (12) years and shall review the permits at least every five (5) years.
- (C) Monitoring and related recordkeeping and reporting requirements.
 - (1) Each Part 70 permit shall contain the following requirements with respect to

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monitoring:

- (a) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 C.F.R. Part 64 and any other procedures and methods that may be promulgated pursuant to Clean Air Act §§ 114(a)(3) or 504(b). If more than one monitoring or testing requirement applies, the Part 70 permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the Part 70 permit as a result of streamlining;
 - (b) If the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the Part 70 source's compliance with the Part 70 permit, as reported pursuant to Reg. 35.12.701(C)(3). The monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph; and
 - (c) As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.
- (2) With respect to recordkeeping, the Part 70 permit shall incorporate all applicable recordkeeping requirements and require, if applicable, the following:
- (a) Records of required monitoring information to include the following:
 - (i) The date, place as defined in the Part 70 permit, and time of sampling or measurements;
 - (ii) The date(s) analyses were performed;

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- (iii) The company or entity that performed the analyses;
 - (iv) The analytical techniques or methods used;
 - (v) The results of the analyses; and
 - (vi) The operating conditions as existing at the time of sampling or measurement;
 - (b) Retention of all required monitoring data records and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the Part 70 permit.
- (3) With respect to reporting, the Part 70 permit shall incorporate all applicable reporting requirements and require the following:
- (a) Submittal of any required monitoring reports at least every six (6) months. The reports shall clearly identify all instances of deviations from Part 70 permit requirements. A responsible official shall certify all required reports consistent with Reg. 35.12.410 and Clean Air Act § 114(a)(3); and
 - (b) Prompt reporting of deviations from Part 70 permit requirements, including those attributable to upset conditions as defined in the Part 70 permit, the probable cause of the deviations, and any corrective actions or preventive measures taken. The Department shall define in each Part 70 permit “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements;
- (D) A permit condition prohibiting emissions exceeding any allowances that the Part 70 source lawfully holds under Clean Air Act Title IV or the regulations promulgated thereunder.
- (1) A Part 70 permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the Acid Rain Program, provided

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that the increases do not require a Part 70 permit revision under any other applicable requirement.

- (2) The number of allowances held by a source shall not be limited. However, the source shall not use allowances as a defense for noncompliance with any other applicable requirement.
- (3) Any allowance shall be accounted for according to the procedures established in regulations promulgated under Clean Air Act Title IV;
- (E) A severability clause to ensure the continued validity of the various Part 70 permit requirements if there is a challenge to any portion of the Part 70 permit;
- (F) Provisions stating the following:
 - (1) The permittee shall comply with all conditions of the Part 70 permit. Any Part 70 permit noncompliance constitutes a violation of the Clean Air Act and is grounds for enforcement action; for Part 70 permit termination, revocation and reissuance, or modification; or for denial of a Part 70 permit renewal application;
 - (2) The necessity to halt or reduce the permitted activity to maintain compliance with the conditions of this Part 70 permit shall not be a defense for a permittee in an enforcement action;
 - (3) The Department may modify, revoke, reopen, reissue, or terminate the Part 70 permit for cause. The filing of a request by the permittee for a Part 70 permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any Part 70 permit condition;
 - (4) The Part 70 permit does not convey any property rights of any sort, or any exclusive privilege; and
 - (5) The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the Part 70 permit or to determine compliance with the Part 70 permit. Upon request, the

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permittee shall also furnish to the Department copies of records that the Part 70 permit requires to be kept or, for information claimed to be confidential, the permittee may furnish the records directly to the Administrator along with a claim of confidentiality;

- (G) A provision to ensure that the permittee of a Part 70 source pays fees to the Department consistent with the fee schedule approved pursuant to Arkansas Pollution Control and Ecology Commission's Regulation 9;
- (H) A provision stating that a Part 70 permit revision shall not be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the Part 70 permit;
- (I) Terms and conditions for reasonably anticipated operating scenarios identified for the Part 70 source in its application as approved by the Department. The terms and conditions:
 - (1) Shall require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
 - (2) May extend the Part 70 permit shield described in Reg. 35.12.704 to all terms and conditions under each operating scenario; and
 - (3) Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements and the requirements of this Chapter; and
- (J) Terms and conditions, if the Part 70 permit applicant requests them, for the trading of emissions increases and decreases at the permitted facility, to the extent that the applicable requirements provide for trading increases and decreases without a case-by-case approval of each emissions trade. The terms and conditions:
 - (1) Shall include all terms required under Reg. 35.12.701 and Reg. 35.12.703 to determine compliance;
 - (2) May extend the permit shield described in Reg. 35.12.704 to all terms and conditions that allow increases and decreases in emissions; and

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- (3) Shall meet all applicable requirements of this Subchapter and all other applicable requirements.

Reg. 35.12.702 Federally-Enforceable Requirements

- (A) All terms and conditions in a Part 70 permit, including any provisions designed to limit a Part 70 source's potential to emit, are enforceable by the Administrator and citizens under the Clean Air Act.
- (B) Notwithstanding Reg. 35.12.702(A), the Department shall specifically designate as not being federally enforceable under the Clean Air Act any terms and conditions included in the Part 70 permit that are not required under the Clean Air Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of Subchapter 12.6 and 12.10 of this Chapter, other than those contained in this Subchapter.

Reg. 35.12.703 Compliance Requirements

All Part 70 permits shall contain the following elements with respect to compliance:

- (A) Consistent with Reg. 35.12.701(C), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the Part 70 permit. Any document (including reports) required by a Part 70 permit shall contain a certification by a responsible official consistent with Reg. 35.12.410 and Clean Air Act § 114(a)(3);
- (B) The permittee shall allow the Department or an authorized representative, upon presentation of credentials and other documents as may be required by law, to perform the following:
 - (1) Enter a permittee's premises where a Part 70 source is located, an emissions-related activity is conducted, or records required by the Part 70 permit are kept;
 - (2) Have access to and copy, at reasonable times, any records that the Part 70 permit requires be kept;

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- (3) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the Part 70 permit; and
 - (4) As authorized by the Clean Air Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
- (C) A schedule of compliance consistent with Reg. 35.12.402(A)(9).
- (D) Progress reports consistent with an applicable schedule of compliance and Reg. 35.12.402(A)(9) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Department. The progress reports shall contain the following:
 - (1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates if the activities, milestones or compliance were achieved; and
 - (2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;
- (E) Requirements for compliance certification with terms and conditions contained in the Part 70 permit, including emissions limitations, standards, or work practices. Permits shall include each of the following:
 - (1) The frequency (not less than annually or more frequent periods as specified in the applicable requirement or by the Department) of submissions of compliance certifications;
 - (2) In accordance with Reg. 35.12.701(C), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;
 - (3) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the Part 70 permit or previous reports, as applicable):

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- (a) The identification of each term or condition of the Part 70 permit that is the basis of the certification;
- (b) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether the methods or other means provide continuous or intermittent data. The methods and other means shall include, at a minimum, the methods and means required under Reg. 35.12.701(C). If necessary, the owner or operator also shall identify any other material information that shall be included in the certification to comply with Clean Air Act § 113(c)(2), which prohibits knowingly making a false certification or omitting material information;
- (c) The status of compliance with the terms and conditions of the Part 70 permit for the period covered by the certification, based on the method or means designated in Reg. 35.12.703(E)(3)(b). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify, as possible exceptions to compliance, any periods during which compliance is required but an excursion or exceedance occurred; and
- (d) Other facts as the Department may require to determine the compliance status of the source; and
- (4) A requirement to submit all compliance certifications to the Administrator and to the Department; and
- (F) Other provisions that the Department may require.

Reg. 35.12.704 Part 70 Permit Shield

- (A) Except as provided in this Chapter, the Department shall, if requested by the applicant, expressly include in a Part 70 permit a provision stating that compliance with the conditions of the Part 70 permit shall be deemed compliance with any applicable requirements as of the date of Part 70 permit issuance, if:

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- (1) The applicable requirements are included and are specifically identified in the Part 70 permit; or
 - (2) The Department, in acting on the Part 70 permit application or revision, determines in writing that other requirements specifically identified are not applicable to the Part 70 source, and the Part 70 permit includes the determination or a concise summary thereof.
- (B) If a Part 70 permit does not expressly state that a permit shield exists, the presumption shall be that no permit shield is provided.
- (C) Nothing in Reg. 35.12.704 or in any Part 70 permit shall alter or affect the following:
- (1) The provisions of Clean Air Act § 303 (emergency orders), including the authority of the Administrator under that section;
 - (2) The liability of an owner or operator of a Part 70 source for any violation of applicable requirements prior to or at the time of Part 70 permit issuance;
 - (3) The applicable requirements of the Acid Rain Program, consistent with Clean Air Act § 408(a); or
 - (4) The ability of EPA to obtain information from a Part 70 source pursuant to Clean Air Act § 114.
- (D) Permit shield provisions shall not extend to minor permit modifications.

Reg. 35.12.705 General Permits

- (A) The Department may, after notice and opportunity for public participation provided under Subchapter 12.6 of this Chapter, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other Part 70 permits and shall identify criteria whereby sources may qualify for the general permit. To sources that qualify, the Department shall grant the conditions and terms of the general permit. Notwithstanding the permit shield provisions of this Subchapter, the Part 70 source shall be subject to enforcement action for operation without a Part 70 permit if the Part 70 source is later determined not to qualify for the conditions and terms of the

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general permit. The Department shall not authorize general permits for acid rain sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Clean Air Act Title IV.

- (B) For Part 70 sources that would qualify for a general permit, the owner or operator shall apply to the Department for coverage under the terms of the general permit or shall apply for a Part 70 permit consistent with Subchapter 12.4 of this Chapter. The Department may, in the general permit, provide for applications that deviate from the requirements of Subchapter 12.4 of this Chapter, provided that the applications meet the requirements of Clean Air Act Title V, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures, the Department may grant a Part 70 source owner or operator's request for authorization to operate under a general permit, but the grant shall not be a final Part 70 permit action for purposes of judicial review.

Reg. 35.12.706 Temporary Sources

The Department may issue a single Part 70 permit authorizing emissions from similar operations by the same source's owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one change of location during the term of the Part 70 permit. The Department shall not permit an acid rain source as a temporary source. Permits for temporary sources shall include the following:

- (A) Conditions that assure compliance with all applicable requirements at all authorized locations;
- (B) Requirements that the owner or operator notify the Department at least ten (10) days in advance of each change in location; and
- (C) Conditions that assure compliance with all other provisions of this Subchapter.

Reg. 35.12.707 Emergency Provision

- (A) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source that causes the Part 70 source to exceed a technology-based emissions limitation under the Part 70 permit due to unavoidable

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increases in emissions attributable to the emergency and that requires immediate corrective action to restore normal operation. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

- (B) An emergency constitutes an affirmative defense to an action brought for noncompliance with technology-based emissions limitations if the conditions of Reg. 35.12.707(B)(1) through (4) are met. The permittee shall demonstrate the affirmative defense of an emergency through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
 - (2) The permitted facility was at the time being properly operated;
 - (3) During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the Part 70 permit; and
 - (4) The permittee submitted notice of the emergency to the Department by the next business day after the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
- (C) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- (D) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

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Subchapter 12.8: Operational Flexibility Provisions for Part 70 Permits

Reg. 35.12.801 Applicant's Duty to Apply for Alternative Scenarios

The Part 70 permit applicant shall apply for any reasonably anticipated alternative facility operating scenarios at the time of Part 70 permit application. The Department shall include approved alternative operating scenarios in the Part 70 permit. The permittee may implement any operating scenario allowed in a Part 70 permit without the need for Part 70 permit revision or notification to the Department.

Reg. 35.12.802 Changes Resulting in No Emissions Increase

- (A) A permittee may make changes at a permitted source within the facility that contravene Part 70 permit terms without a Part 70 permit revision if the changes:
 - (1) Are not modifications under any provision of Clean Air Act Title I;
 - (2) Do not exceed emissions allowable under the Part 70 permit (whether expressed therein as a rate of emissions or in the terms of total emissions);
 - (3) Do not violate applicable requirements; and
 - (4) Do not contravene federally enforceable Part 70 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 Administrator and the Department at least seven (7) days prior to implementing the proposed changes, or within a shorter time frame that the Department allows for emergencies. The permittee, Department, and EPA shall attach each notice to their copy of the relevant Part 70 permit. For each change, the written notice shall include a brief description of the change within the permitted facility, the date that the change will occur, any change in emissions, and any Part 70 permit term or condition that is no longer applicable as a result of the change. The Part 70 permit shield described in Reg. 35.12.704 does not apply to any change made pursuant to this paragraph.

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Reg. 35.12.803 Emissions Trading in Part 70 Permits

The Department shall, if a Part 70 permit applicant requests it, issue permits that contain terms and conditions, including all terms required under 40 C.F.R. 70.6(a) and (c), to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the Part 70 permit independent of otherwise applicable requirements. The Part 70 permit applicant shall include in its application proposed replicable procedures and Part 70 permit terms that ensure the emissions trades are quantifiable and enforceable. The Department shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The Part 70 permit shall also require compliance with all applicable requirements. The permittee shall provide written notice within seven (7) days to the Department that states when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the Part 70 permit. The Part 70 permit shield described in Reg. 35.12.704 shall extend to terms and conditions that allow the increases and decreases in emissions.

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Subchapter 12.9: Administrative Part 70 Permit Amendments

Reg. 35.12.901 Administrative Part 70 Permit Amendment Applicability

An administrative Part 70 permit amendment is a permit revision, requested by the permittee, that:

- (A) Corrects typographical errors;
- (B) Identifies a change in the name, address, or phone number of any person identified in the Part 70 permit, or provides a similar minor administrative change at the Part 70 source;
- (C) Requires more frequent monitoring or reporting by the permittee;
- (D) Allows for a change in ownership or operational control of a source that has been permitted under Chapters 10 and 11 of this Regulation if the Department determines that no other change in the Part 70 permit is necessary and a written agreement containing a specific date for transfer of Part 70 permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;
- (E) Incorporates a change in the Part 70 permit involving air contaminants other than federally-regulated air pollutants that has been processed under Chapter 3 of this Regulation;
- (F) Incorporates a change in the Part 70 permit solely involving the retiring of an emissions unit; or
- (G) Incorporates a change to the facilities' insignificant activities list.

Reg. 35.12.902 Acid Rain Administrative Part 70 Permit Amendments

The regulations promulgated under Clean Air Act Title IV govern administrative Part 70 permit amendments for purposes of the acid rain portion of the Part 70 permit.

Reg. 35.12.903 Administrative Part 70 Permit Amendment Procedures

The Department shall make any administrative Part 70 permit amendment consistent with the following:

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- (A) The Department shall take no more than sixty (60) days from receipt of a request for an administrative Part 70 permit amendment to take final action on the request, and may incorporate changes without providing notice to the public or affected states if it designates any Part 70 permit revisions as having been made pursuant to this Subchapter;
- (B) The Department shall submit a copy of the revised Part 70 permit to the Administrator; and
- (C) The owner or operator of a Part 70 source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

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Subchapter 12.10: Part 70 Permit Modifications, Reopenings

Reg. 35.12.1001 Part 70 Permit Modification

A Part 70 permit modification is any revision to a Part 70 permit that does not qualify for processing as an administrative amendment pursuant to Subchapter 12.9 of this Chapter. The regulations promulgated under Clean Air Act Title IV govern Part 70 permit modifications for purposes of the acid rain portion of the Part 70 permit.

Reg. 35.12.1002 Minor Permit Modification Applicability

The minor permit modification process is an expedited procedure that allows a Part 70 source to make trivial changes involving limited emissions increases, 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, without a public notice process or a preconstruction permit. Minor permit modification procedures may be used only for those Part 70 permit modifications that:

- (A) Involve emissions increases of less than:
 - (1) Seventy-five (75) tons per year of carbon monoxide;
 - (2) Forty (40) tons per year of nitrogen oxides;
 - (3) Forty (40) tons per year of sulfur dioxide;
 - (4) Twenty-five (25) tons per year of particulate matter;
 - (5) Ten (10) tons per year of direct PM_{2.5};
 - (6) Fifteen (15) tons per year of PM₁₀;
 - (7) Forty (40) tons per year of volatile organic compounds;
 - (8) Six-tenths (0.6) tons per year of lead; and
- (B) Involve the installation or modification of emissions units that do not require a Title I emissions netting procedure to determine eligibility;
- (C) Do not violate any applicable requirement;

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- (D) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the Part 70 permit;
- (E) Do not require or change a case-by-case determination of an emissions limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (F) Do not seek to establish or change a Part 70 permit term or condition for which there is no corresponding underlying applicable requirement and that the Part 70 source has assumed to avoid an applicable requirement to which the Part 70 source would otherwise be subject. The terms and conditions include:
 - (1) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and
 - (2) An alternative emissions limitation approved pursuant to regulations promulgated under the Clean Air Act § 112(i)(5); and
- (G) Are not modifications under any provision of Clean Air Act Title I.

**Reg. 35.12.1003 Prohibition on Multiple Related Minor Permit Modification
Application Submittals**

An owner or operator of a Part 70 source shall not submit multiple minor permit modification applications that are designed to conceal a larger modification that would not be eligible for minor permit modification procedures. The Department may, in its discretion, require the processing of multiple related minor permit modification applications as a significant permit modification.

Reg. 35.12.1004 Minor Permit Modification Application

An application requesting the use of minor permit modification procedures shall meet the standard Part 70 permit application requirements and shall additionally include the following:

- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

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- (B) The applicant's suggested draft Part 70 permit conditions;
- (C) Certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that the procedures be used; and
- (D) Completed forms for the Department to use to notify the Administrator and affected states as required under Subchapter 12.6 of this Chapter.

Reg. 35.12.1005 EPA and Affected State Notification of Minor Permit Modification Application

Within five (5) business days of receipt of a complete minor permit modification application, the Department shall meet its obligation to notify the Administrator and affected states of the requested Part 70 permit modification. The Department promptly shall send any notice required under Subchapter 12.6 of this Chapter to the Administrator.

Reg. 35.12.1006 Permittee's Ability to Make Minor Modification

The permittee may make the change proposed in the minor permit modification application upon receipt of written notification from the Department. The Department shall have fifteen (15) days after its receipt of the application to determine if the minor permit modification application is complete and is eligible for minor permit modification procedures. If the Department does not respond within this fifteen-day period, the permittee may proceed with the proposed modification at his or her own risk. After the permittee makes the change and until the Department takes action on the application, the permittee shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the permittee need not comply with the existing permit terms and conditions he or she seeks to modify. However, if the permittee fails to comply with the proposed permit terms and conditions during this time period, the Department may enforce against the permittee the existing permit terms and conditions that he or she seeks to modify.

Reg. 35.12.1007 Group Processing of Minor Permit Modifications

The Department may process multiple applications for different minor permit modifications as a single minor permit modification if the group of multiple Part 70 permit applications as a whole

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meets the eligibility requirements of Reg. 35.12.1002.

Reg. 35.12.1008 Permit Shield Not Applicable to Minor Permit Modifications

The permit shield under Subchapter 12.7 of this Chapter does not extend to minor permit modifications.

Reg. 35.12.1009 Significant Modification Procedures

The Department shall use the procedures of Subchapter 12.6 of this Chapter for applications that:

- (A) Involve new applicable requirements;
- (B) Are modifications under any provision of Clean Air Act Title I;
- (C) Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the Part 70 permit;
- (D) Require or change a case-by-case determination of an emissions limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (E) Involve an increase in federally-regulated air pollutant emissions that cannot be processed under minor permit modification procedures; or
- (F) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the Part 70 source has assumed to avoid an applicable requirement to which the Part 70 source would otherwise be subject. The terms and conditions include:
 - (1) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Clean Air Act Title I; and
 - (2) An alternative emissions limitation approved pursuant to regulations promulgated under Clean Air Act § 112(i)(5).

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Reg. 35.12.1010 Reopening for Cause by the Department

- (A) Each issued Part 70 permit shall include provisions specifying the conditions that will cause the Department to reopen the Part 70 permit prior to the expiration of the Part 70 permit. The Department shall reopen and revise a Part 70 permit under any of the following circumstances:
- (1) Additional applicable requirements under the Clean Air Act become applicable to a Part 70 major source with a remaining permit term of three (3) or more years. The Department shall complete the reopening no later than eighteen (18) months after promulgation of the applicable requirement. No reopening is required if the effective date of the requirement is later than the date that the Part 70 permit is due to expire, unless the original Part 70 permit or any of its terms and conditions have been extended due to failure of the Department to take action on a renewal Part 70 permit;
 - (2) Additional requirements (including excess emissions requirements) become applicable to an acid rain source under the Acid Rain Program. Upon approval by the Administrator, the Department shall deem excess emissions offset plans as incorporated into the Part 70 permit;
 - (3) The Department or EPA determines that the Part 70 permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the Part 70 permit; or
 - (4) The Administrator or the Department determines that the Part 70 permit must be revised or revoked to assure compliance with the applicable requirements.
- (B) Proceedings to reopen and issue a Part 70 permit shall follow the same procedures that apply to initial Part 70 permit issuance and shall affect only those parts of the Part 70 permit for which cause to reopen exists. Reopening shall be made as expeditiously as practicable.
- (C) The Department shall provide a notice of intent to reopen the Part 70 permit to the permittee at least at least thirty (30) days in advance of the date that the Part 70 permit is to be reopened, except that the Department may provide a shorter time period in the case

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of an emergency.

Reg. 35.12.1011 Reopening for Cause by EPA

- (A) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a Part 70 permit, the Administrator shall notify the Department and the permittee of the finding in writing.
- (B) The Department shall, within ninety (90) days after receipt of the notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this ninety-day period for an additional ninety (90) days if he or she finds that a new or revised Part 70 permit application is necessary or that the Department requires the permittee to submit additional information.
- (C) The Administrator will review the proposed determination from the Department within ninety (90) days of receipt.
- (D) The Department has ninety (90) days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the Part 70 permit in accordance with the Administrator's objection.
- (E) If the Department fails to submit a proposed determination pursuant to this section, or fails to resolve any objection pursuant to this section, the Administrator will terminate, modify, or revoke and reissue the Part 70 permit after the following actions:
 - (1) Providing at least a thirty-day notice to the permittee in writing of the reasons for any action; and
 - (2) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

Reg. 35.12.1012 Part 70 Permit Flexibility

- (A) The Department may grant an extension to any testing, compliance or other dates in the Part 70 permit. No extensions shall be authorized until the permittee receives written approval from the Department. The Department may grant a request, at its discretion, in

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the following circumstances:

- (1) The permittee makes a request in writing at least fifteen (15) days in advance of the deadline specified in the facility's Part 70 permit;
 - (2) The extension does not violate a federal requirement;
 - (3) The permittee demonstrates the need for the extension; and
 - (4) The permittee documents that the permittee took all reasonable measures to meet the current deadline and documents reasons the current deadline cannot be met.
- (B) The Department may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limitation in a facility's Part 70 permit. None of these activities shall be authorized until the permittee receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:
- (1) The permittee makes the request in writing at least thirty (30) days in advance of the date that temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limitation in a facility's Part 70 permit;
 - (2) The request does not violate a federal requirement;
 - (3) The request is temporary in nature;
 - (4) The request will not result in a condition of air pollution;
 - (5) The request contains information necessary for the Department to evaluate the request, including but not limited to, quantification of the emissions and the date and time the emission will occur;
 - (6) The request will result in increased emissions less than five (5) tons of any individual federally-regulated air pollutant for which a national ambient air quality standard has been adopted under Chapter 2 of this Regulation, one (1) ton of any single hazardous air pollutant and two and five-tenths (2.5) tons of total

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hazardous air pollutants; and

- (7) The permittee maintains records of the dates and results of temporary emissions and/or testing.
- (C) The Department may grant a request to allow an alternative to the monitoring specified in a facility's operating Part 70 permit. Activities shall not be authorized until the permittee receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:
 - (1) The permittee makes the request in writing at least thirty (30) days in advance of the first date that the monitoring alternative will be used at the facility;
 - (2) The request does not violate a federal requirement;
 - (3) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the facility's operating Part 70 permit; and
 - (4) The permittee shall incorporate any request, if approved by the Department, into the next Part 70 permit modification application.

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Subchapter 12.11: Part 70 Permit Fees

Reg. 35.12.1101 Part 70 Fee Requirement and Schedule

- (A) In accordance with 40 C.F.R. 70.9, the owners or operators of Part 70 sources shall pay initial and annual fees that are sufficient to cover the Department's Part 70 permit program costs. The fee schedule for Part 70 permits is contained in Arkansas Pollution Control and Ecology Commission Regulation 9.
- (B) The Department shall use fees collected for Part 70 permits solely for Part 70 permit program costs.

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Subchapter 12.12: Acid Rain Sources Provisions

Reg. 35.12.1202 Purpose

The purpose of this Subchapter is to ensure that the Department permits acid rain sources located within the state accordance with the regulations promulgated pursuant to Clean Air Act Title IV.

Reg. 35.12.1202 Adoption by Reference

The Arkansas Pollution Control and Ecology Commission hereby adopts and incorporates by reference those provisions of 40 C.F.R. Parts 72 and 76 (including all provisions of Parts 73, 74, 75, 77, and 78 referenced therein) as in effect on October 15, 1999, for purposes of implementing an Acid Rain Program that meets the requirements of Clean Air Act Title IV. The term “permitting authority” shall mean the Department, and the term “Administrator” shall mean the Administrator of the United States Environmental Protection Agency. If the provisions or requirements of 40 C.F.R. Parts 72 or 76 conflict with or are not included in this Regulation, the Part 72 or 76 provisions and requirements shall apply and take precedence.

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CHAPTER 13: NONATTAINMENT REGULATIONS

Subchapter 13.1: Purpose

Reg. 35.13.101 Purpose

The purpose of this Chapter is to establish state implementation plan requirements for any area in Arkansas designated nonattainment for any national ambient air quality standard under Subpart C of 40 CFR Part 81.

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Subchapter 13.2: Nonattainment Area Pre-Construction New Source Review

Reg. 35.13.201 Purpose

This Subchapter implements the nonattainment area permitting program for major sources pursuant to 40 C.F.R. § 51.165.

Reg. 35.13.202 Definitions

- (A) All terms used in this Subchapter shall have the same meaning as set forth in 40 C.F.R. 51.165(a)(1) and 40 C.F.R. 51.165(f)(2), which are hereby incorporated by reference as of the effective date of this Regulation, except:
 - (1) 40 C.F.R. § 51.165(a)(1)(ii)(B), which is not incorporated by reference;
 - (2) 40 C.F.R. § 51.165(a)(1)(v)(C)(1), which is not incorporated by reference;
 - (3) 40 C.F.R. § 51.165(a)(1)(xliii), which is not incorporated by reference;
 - (4) 40 C.F.R. § 51.165(a)(1)(xliv), which is not incorporated by reference;
 - (5) 40 C.F.R. § 51.165(a)(1)(xlv), which is not incorporated by reference; and
 - (6) 40 C.F.R. § 51.165(a)(1)(xlvi), which is not incorporated by reference.
- (B) Terms and phrases used in this Subchapter that are not explicitly defined in 40 C.F.R. § 51.165(a)(1) or 40 C.F.R. § 51.165(f)(2) shall have the same meaning as set forth in Chapter 2 of this Regulation unless manifestly inconsistent with the context in which they are used.

Reg. 35.13.203 Applicability

- (A) This Subchapter 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 Clean Air Act § 107(d)(1)(A)(i), if the stationary source or modification would locate anywhere in the designated nonattainment area. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source or major modification.

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- (B) The applicability procedures for determining whether a project is a major modification enumerated at 40 C.F.R. § 51.165 (a)(2)(ii)(A) through (F) as of the effective date of this Regulation are hereby incorporated by reference.
- (C) Any major stationary source for a plant-wide applicability limitation for a regulated NSR pollutant, shall comply with the requirements under Reg. 35.13.213.
- (D) This Subchapter does not apply to any source or modification that would be a major source or major modification only if fugitive emissions to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the categories listed in 40 C.F.R. § 51.165 (a)(4)(i) through (xxvii).

Reg. 35.13.203 Requirement for a Permit

No major source shall be constructed or modified in any nonattainment area, without first obtaining a permit that requires the proposed source to be constructed or modified in accordance with the requirements of this Subchapter. The required information for application for a permit under Reg. 35.1005 is incorporated by reference.

Reg. 35.13.204 Approval Criteria

The Department shall not grant or modify a permit under this Subchapter unless:

- (A) The owner or operator demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this Subchapter or without interfering with the attainment or maintenance of a national ambient air quality standard in the state where the proposed source (or modification) is located or in a neighboring state;
- (B) The Director determines that, by the time the source is to commence operation, sufficient offsetting emissions reductions in accordance with Reg. 35.13.205 have been obtained, that total allowable emissions from existing sources in the nonattainment area, from new or modified sources that 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 the permit to construct or modify so as to represent reasonable further progress toward

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achievement of the national primary ambient air quality standards;

- (C) The proposed source is required to comply with the lowest achievable emission rate;
- (D) The owner or operator of the proposed source has demonstrated that all major sources, owned or operated by him or her (or by any entity controlling, controlled by, or under common control with him or her) in the State are subject to emissions limitations and are in compliance, or on a schedule for compliance, with all applicable emissions limitations and standards; and
- (E) An analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source demonstrates that benefits of the proposed source significantly outweighs the environmental and social costs imposed as a result of its location, construction, or modification.

Reg. 35.13.205 Emissions Offsets

- (A) For sources and modifications subject to this Subchapter, 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) The emission offset credit provisions of 40 C.F.R. § 51.165(a)(3)(ii)(A) through (J) as of the effective date of this Regulation are hereby incorporated by reference.
- (C) In meeting the emission offset credit requirements of Reg. 35.13.205(B), the ratio of total actual emissions reductions to the emission increase shall be as follows:

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- (1) The ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in Reg. 35.13.205(C)(2) through (4).
 - (2) For ozone nonattainment areas that are subject to Clean Air Act Title I, Part D, Subpart 2, the ratio of total actual emissions reductions of volatile organic compounds to the emissions increase of volatile organic compounds listed at 40 C.F.R. § 51.165(a)(9)(ii)(A) through (E) as of the effective date of this Regulation are hereby incorporated by reference.
 - (3) Notwithstanding Reg. 35.13.205(C)(2), the ratio of total actual emissions reductions of volatile organic compounds to the emissions increase of volatile organic compounds shall be at least 1.15:1 for all areas within an ozone transport region that is subject to Clean Air Act Title I, Part D, Subpart 2, except for serious, severe, and extreme ozone nonattainment areas that are subject to Clean Air Act Title I, Part D, Subpart 2.
 - (4) For ozone nonattainment areas that are subject to Clean Air Act Title I, Part D, Subpart 1 (but are not subject to Clean Air Act Title I, Part D, Subpart 2, including eight-hour ozone nonattainment areas subject to 40 C.F.R. § 51.902(b)), the ratio of total actual emissions reductions of volatile organic compounds to the emissions increase of volatile organic compounds shall be at least one to one (1:1).
- (D) In meeting the emission offset credit requirements of Reg. 35.13.205(B), the emission offsets shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified below:
- (1) The offset requirement for emissions of the ozone precursors nitrogen oxides and volatile organic compounds may be satisfied by offsetting reductions in emissions of either of those precursors, if all other requirements for such offsets are also satisfied.
 - (2) The offset requirement for emissions of direct PM_{2.5} emissions or emissions of precursors of PM_{2.5} may be satisfied by offsetting reductions in direct PM_{2.5} emissions or emissions of any PM_{2.5} precursor identified under 40 C.F.R. §

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51.165(a)(1)(xxxvii)(C) as of the effective date of this Regulation, which is hereby incorporated by reference, if the offsets comply with the interprecursor trading hierarchy and ratio established in the approved state implementation plan for a particular nonattainment area.

Reg. 35.13.206 Control Technology Information

Control technology information from permits issued under this Subchapter shall be promptly submitted to the RACT/BACT/LAER clearinghouse for the benefit of other states and the general public.

Reg. 35.13.207 Enforceable Procedures

The provisions of 40 C.F.R. § 51.165(a)(5)(i) and (ii) as of the effective date of this Regulation are hereby incorporated by reference.

Reg. 35.13.208 Modifications to Existing Units

- (A) The provisions of 40 C.F.R. § 51.165(a)(6)(i) through (vi) as of the effective date of this Regulation are hereby incorporated by reference.
- (B) The owner or operator of the source shall make the information required to be documented and maintained pursuant to Reg. 35.13.208(A) available for review upon a request for inspection by the Department or the general public, except for information entitled to confidential treatment. The contents of a permit shall not be entitled to confidential treatment.

Reg. 35.13.209 Applicability to Nitrogen Oxides

The requirements of this Subchapter applicable to major sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major 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 has granted a nitrogen oxides waiver applying the standards set forth under Clean Air Act § 182(f) and the waiver continues to apply.

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Reg. 35.13.210 PM₁₀ Precursors

The requirements of this Subchapter applicable to major sources and major modifications of PM₁₀ shall also apply to major sources and major modifications of PM₁₀ precursors, except where the Administrator determines that the sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ ambient standards in the area.

Reg. 35.13.211 PM_{2.5} Precursors

The requirements of this Subchapter applicable to major sources and major modifications of PM_{2.5} shall also apply to major sources and major modifications of PM_{2.5} precursors, except that the Department may exempt new major stationary sources and major modifications of a particular precursor from the requirements of this section if the nonattainment new source review precursor demonstration submitted to and approved by the Administrator shows that the sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area. Any demonstration submitted for the Administrator's review must meet the conditions for a nonattainment new source review precursor demonstration as set forth in 40 C.F.R. § 51.1006(a)(3).

Reg. 35.13.212 Applicability to Attainment and Unclassifiable Areas

- (A) The requirements of this Subchapter shall apply to any major source or major modification that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Clean Air Act § 107, if it would be considered to cause or contribute to a violation of any national ambient air quality standard pursuant to 40 C.F.R. § 51.165(b)(2).
- (B) A proposed major source or major modification subject to Reg. 35.13.212(A) 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. In the absence of such emission reductions, the Department shall deny the proposed construction.
- (C) Reg. 35.13.212(A) 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

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pollutant, the source or modification is located in an area designated as nonattainment pursuant to Clean Air Act § 107.

Reg. 35.13.213 Actuals Plantwide Applicability Limitations

The provisions of 40 C.F.R. § 51.165(f)(1) through (15) as of the effective date of this Regulation are hereby incorporated by reference.

Reg. 35.13.214 Equipment Replacement

Without regard to other considerations, routine maintenance, repair, and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in 40 C.F.R. § 51.165(h)(1) through (3) as of the effective date of this Regulation, which are hereby incorporated by reference, are met.

Reg. 35.13.215 Applicability of Other Chapters and Regulations

- (A) The administrative requirements, permit modification and administrative permit amendment procedures, and public notice requirements of Chapter 12 of this Regulation shall apply to permits issued under this Subchapter.
- (B) All facilities subject to permitting under this Subchapter shall pay fees in accordance with Arkansas Pollution Control and Ecology Commission Regulation 9.
- (C) All major sources subject to this Subchapter shall comply with all other applicable provisions of this Regulation.

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Subchapter 13.3: Stage I Vapor Recovery

Reg. 35.13.301 Purpose

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

Reg. 35.13.302 Applicability

This Subchapter applies to all gasoline dispensing facilities and to delivery vessels delivering gasoline to a gasoline dispensing facility in an ozone nonattainment area; and this Subchapter applies to all persons owning or operating a gasoline dispensing facility in an ozone nonattainment area.

Reg. 35.13.303 Definitions

For the purposes of this Subchapter:

- (A) **“Control of a corporation”** means ownership of more than fifty percent (50%) of its stock.
- (B) **“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.
- (C) **“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 (4) psi or greater. This does not include diesel fuel or liquefied petroleum gas.
- (D) **“Gasoline 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.
- (E) **“Gasoline dispensing facility” or “GDF”** means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

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- (F) **“Independent small business marketer”** means a person engaged in the marketing of gasoline unless the person:
- (1) Is a refiner;
 - (2) Controls, is controlled by, or is under common control with, a refiner;
 - (3) 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 the refiner or any person; or
 - (4) Receives less than fifty percent (50%) of his or her annual income from refining or marketing of gasoline.
- (G) **“Line”** means any pipe suitable for transferring gasoline or recapturing vapor.
- (H) **“Operator”** means any person who leases, operates, controls, or supervises a facility where gasoline is dispensed.
- (I) **“Owner”** means any person who has legal or equitable title to the gasoline storage tank at a facility.
- (J) **“Ozone Nonattainment area”** means a county or counties designated by EPA as not meeting the national ambient air quality standard for ozone.
- (K) **“Poppeted vapor recovery adaptor”** means a vapor recovery adaptor that automatically and immediately closes itself if the vapor return line is disconnected and maintains a tight seal if the vapor return line is not connected.
- (L) **“Refiner”** means any person whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, the refiner) exceeds sixty-five thousand (65,000) barrels per day.
- (M) **“Stationary storage tank”** means a gasoline storage container that is a permanent fixture.

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- (N) **“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 twelve (12) inches above the bottom of the tank if the tank has a vapor recovery adaptor. 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.
- (O) **“Throughput”** means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month.
- (P) **“Vapor tight”** means a condition where an organic vapor analyzer or a combustible gas detector at a potential volatile organic compounds leak source shows less than ten thousand (10,000) ppm when corrected to gasoline vapor concentration, or less than one hundred percent (100%) of the lower explosive limit when calibrated and operated according to the manufacturer’s specifications.

Reg. 35.13.304 Exemptions

- (A) This Subchapter does not apply to:
 - (1) Transfers made to storage tanks at gasoline dispensing facilities equipped with floating roofs or their equivalent;
 - (2) Stationary storage tanks with a capacity of not more than two hundred fifty (250) gallons;
 - (3) Stationary storage tanks used exclusively for the fueling of implements of normal farm operations;
 - (4) Facilities with a throughput of less than ten thousand (10,000) gallons of gasoline;
 - (5) Independent small business marketers of gasoline dispensing less than fifty thousand (50,000) gallons per month;
 - (6) Any other facility or use exempted by State or federal statute.

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- (B) If the owner or operator claims any exemption for a facility subject to this Subchapter, the owner or operator of the facility shall:
 - (1) Maintain appropriate records on site showing that the requirements for the exemption have been met;
 - (2) Update records by the fifteenth (15th) day of the month following the month to which the records pertain. These records shall be provided to Departmental personnel upon request and may be used by the Department for enforcement purposes; and
 - (3) Notify the Department in writing of the claim of exemption and provide written record on forms as the Department may require showing the requirements for the exemption have been met.

Reg. 35.13.305 Prohibited Activities

A person shall not cause, allow, or permit the transfer of gasoline from any gasoline delivery vessel into any stationary storage tank or allow the operation of a gasoline dispensing facility unless the transfer or operation complies with the following requirements:

- (A) 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;
- (B) The vapor control system is in good working order based upon manufacturer's specifications and is connected and operating with vapor tight connections;
- (C) The vapor control system is properly maintained and any damaged or malfunctioning components or elements of design have been repaired, replaced, or modified;
- (D) All gauges, meters, or other specified testing devices on the gasoline delivery vessel and the gasoline storage tank are maintained in proper working order;
- (E) All loading lines and vapor lines of gasoline delivery vessels and vapor collection systems are equipped with fittings that are leak tight and vapor tight;

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- (F) All hatches on the gasoline delivery vessel are kept closed and securely fastened; and
- (G) The stationary storage tank and vapor control system has been tested, no less than annually, on a schedule acceptable to the Director according to the test methods required herein.

Reg. 35.13.306 Recordkeeping

The owner or operator shall maintain the following records for not less than five (5) years and shall make the records available for inspection by the Department:

- (A) Records of the occurrence of any maintenance and testing including the scheduled date and actual date that maintenance or testing was performed;
- (B) Records of the occurrence and duration of each malfunction of operation;
- (C) Records of actions taken during periods of malfunction to minimize emissions, including corrective actions to restore malfunction process and air pollution control and monitoring equipment to its normal or usual manner of operation; and
- (D) Records of monthly totals of gasoline throughput for the facility.

Reg. 35.13.307 Inspection

- (A) The premises of any gasoline dispensing facility shall be available for inspection by representatives of the Department.
- (B) The process of transfer of gasoline from any gasoline delivery vessel into any stationary storage tank shall be subject to observation by representatives of the Department.

Reg. 35.13.308 Vapor Recovery Systems

- (A) The vapor control system required by Reg. 13.13.305 shall include one or more of the following:
 - (1) A vapor-tight line from the stationary storage tank to the gasoline delivery vessel;
 - (2) For a coaxial vapor recovery system, either a poppeted or unpoppeted vapor

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recovery adaptor;

- (3) For a dual point vapor recovery system, a poppeted vapor recovery adaptor;
 - (4) 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) All vapor recovery adaptors, poppeted or unpoppeted, shall remain covered with a vapor tight cap or a vapor return line except if 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 if the tank is replaced or upgraded.
 - (D) Where vapor lines from the storage tanks are manifolded, poppeted vapor recovery adaptors shall be used. 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 (3) inches. If the manifold vapor lines have a nominal pipe size of three (3) inches or larger, then two (2) tanks at a time may be loaded.
 - (E) Vent lines on stationary storage tanks shall have properly maintained pressure-release valves or restrictors.

Reg. 35.13.309 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 according to the test methods required herein.
- (C) Gasoline vessels shall sustain a pressure change of no more than seven hundred fifty (750) pascals (three [3] inches of water) in five (5) minutes when pressuring to a gauge pressure of four thousand five hundred (4,500) pascals (eighteen [18] inches of water) or evacuated to a gauge pressure of one thousand five hundred (1,500) pascals (six [6]

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inches of water) during testing. This capacity is to be demonstrated using the pressure test specified in EPA Test Method 27. The owner or operator shall provide documentation of pressure test compliance to the Department upon request.

Reg. 35.13.310 Owner or Operator Responsibility

- (A) It shall be the responsibility of owners and operators of gasoline dispensing facilities to assure compliance with this Chapter and to disallow the transfer of gasoline from any gasoline delivery vessel that does not comply with those requirements of this Chapter applicable to gasoline delivery vessels.
- (B) It shall be the responsibility of owners and operators of gasoline dispensing facilities to properly maintain, repair, replace, modify, and test the vapor recovery system components of all stationary storage tanks regulated herein.
- (C) It shall be the responsibility of owners and operators of gasoline dispensing facilities to submit compliance test results of the vapor recovery system volatile organic compounds leak detection test to the Department on forms as the Department may require.
- (D) It shall be the responsibility of owners and operators of gasoline dispensing facilities to repair and retest vapor recovery system equipment within fifteen (15) days of a failed vapor recovery system volatile organic compound leak detection test as set forth in Reg. 35.1111.
- (E) The owners or operators shall send a retest notification to the Department to be received no later than five (5) days prior to the retest.
- (G) If the ability to perform the retest will require longer than fifteen (15) days, the owners or operators are required to submit a request for an extension (not to exceed fifteen [15] days) to repair and to perform the test, indicating why repairs will not be made within the prescribed time frame. The request for extension will not be considered approved until a notification of acceptance is returned.
- (H) The owner or operator shall submit volatile organic compound leak detection compliance test scheduling, compliance test results, and compliance retest notifications to the

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Department via electronic submittal, U.S. Postal Service, commercial delivery service, or by hand delivery.

Reg. 35.13.311 Test Methods

- (A) Owners or operators of facilities affected by this Subchapter shall carry out leak detection testing no less than annually in accordance with EPA Test Method 21.
 - (1) The detection instrument shall meet the performance criteria of EPA Test Method 21, “Determination of Volatile Organic Compound Leaks”; and
 - (2) Calibration of gases shall be:
 - (a) Zero air (less than ten [10] parts per million of hydrocarbon in air);
 - (b) For a combustible gas detector, propane at a concentration of approximately, but less than, two and five-tenths percent (2.5%) by volume; and
 - (c) For an organic vapor analyzer, isobutylene at a concentration of approximately, but less than, ten thousand (10,000) ppm.
- (B) Owners or operators of facilities affected by this Subchapter shall test any equipment as required by this Chapter within the following time frames:
 - (1) Within sixty days of the effective date of a nonattainment designation;
 - (2) No less than annually;
 - (3) For new equipment or newly modified equipment within sixty (60) days of commencing operation; and
 - (4) The owner or operator shall notify the Department of the scheduled date of compliance testing at least fifteen (15) days in advance of the test. The owner or operator shall submit the compliance test results to the Department within sixty (60) days after completing the testing.

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Reg. 35.13.312 Effective Date of this Subchapter

- (A) The requirements of this Subchapter shall be effective within ozone nonattainment areas one (1) year after the designation by EPA of an area as an ozone nonattainment area.
- (B) In the case of an independent small business marketer with three (3) or more facilities and sales of fifty thousand (50,000) gallons or more per month, this Chapter 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.

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CHAPTER 14: BEST AVAILABLE RETROFIT TECHNOLOGY REQUIREMENTS

Reg. 35.1401 Best Available Retrofit Technology Emission Limits

- (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) 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.
- (C) 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.
- (E) Domtar Industries, Inc. Ashdown Mill (AFIN 41-00002) shall comply with best available retrofit technology requirements for particulate matter at Power Boiler No. 1 (SN-03) by meeting an emission limit of 0.07 pounds of PM₁₀ per million British thermal units of heat input (0.07 lb/MMBtu) on a thirty-day rolling average.

Reg. 35.1402 Compliance Provisions

The owner or operator of each source subject to Reg. 35.1401 shall:

- (A) Comply with the applicable emission limit as expeditiously as practicable, but in no event later than five (5) years after EPA approval of the Arkansas Regional Haze State Implementation Plan;
- (B) Establish and implement procedures to properly operate and maintain the control equipment necessary to comply with the applicable emission limits set forth in Reg. 35.1401; and

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- (C) Demonstrate compliance with the applicable limits listed in Reg. 35.1401 in accordance with the provisions of Chapter 7 of this Regulation.

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ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 35

APPENDIX A

Insignificant Activities List

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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 listing these activities, the Department exempts certain sources or types of sources from the requirements to obtain a permit or plan under this Regulation. Listing in this Appendix 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 NSPS, NESHAP, or MACT) is not insignificant, even if this activity meets the criteria below.

Group A

The following emission units, operations, or activities shall 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).

- (A) Fuel burning equipment with a design rate less than ten million British thermal units (10 MMBTU) per hour, provided that the aggregate emissions from all the units listed as insignificant do not exceed:
 - (1) Five (5) tons per year of any combination of hazardous air pollutants; or
 - (2) Ten (10) tons per year of any other air contaminant or pollutant.
- (B) 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 five-tenths (3.5) pounds-force per square inch absolute, provided that the aggregate emissions from all liquid storage tanks listed as insignificant do not exceed:
 - (1) Five (5) tons per year of any combination of hazardous air pollutants; or
 - (2) Ten (10) tons per year of any other pollutant.
- (C) 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 five-tenths (0.5) pounds per square inch

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absolute, provided that the aggregate emissions from all liquid storage tanks listed as insignificant do not exceed:

- (1) Five (5) tons per year of any combination of hazardous air pollutants; or
 - (2) Ten (10) tons per year of any other pollutant.
- (D) Caustic storage tanks that contain no volatile organic compounds.
- (E) Emissions from laboratory equipment/vents used exclusively for routine chemical or physical analysis for quality control or environmental monitoring purposes provided that the aggregate emissions from all equipment/vents considered insignificant do not exceed:
- (1) Five (5) tons per year of any combination of hazardous air pollutants; or
 - (2) Ten (10) tons per year of any other air pollutant.
- (F) 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.
- (G) 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.
- (H) 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 if closed. This includes filling, blending, or mixing of the contents of containers by a retailer.
- (I) Equipment used for surface coating, painting, dipping, or spraying operations, provided the material used contains no more than four-tenths (0.4) pounds per gallon volatile organic compounds, that contains no hexavalent chromium and that emits no more than one-tenth (0.1) tons per year of all other hazardous air pollutants.
- (J) Non-production equipment approved by the Department, used for waste treatability studies or other pollution prevention programs provided that the emissions are less than:
- (1) Ten (10) tons per year of any pollutant regulated under this Regulation;

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- (2) Two (2) tons per year of a single hazardous air pollutant;¹ and
 - (3) Five (5) tons per year of any combination of hazardous air pollutants.
- (K) Operation of groundwater remediation wells, including emissions from the pumps and collection activities, but not from air-stripping or storage, provided that the emissions are less than:
 - (1) Ten (10) tons per year of pollutant regulated under this Regulation;
 - (2) Two (2) tons per year of a single hazardous air pollutant; and
 - (3) Five (5) tons per year of any combination of hazardous air pollutants.
- (L) Emergency-use generators, boilers, or other fuel burning equipment, with the exception of generators that provide electricity to the distribution grid, that:
 - (1) Are of equal or smaller capacity than the primary operating unit;
 - (2) Cannot be used in conjunction with the primary operating unit;
 - (3) Do not emit or have the potential to emit federally-regulated air pollutants in excess of the primary operating unit; and
 - (4) Are not operated more than ninety (90) days a year.
- (M) Other activities if the facility demonstrates that no enforceable permit conditions are necessary to ensure compliance with any applicable law or regulation provided that the aggregate emissions of all activities listed under this group are less than:
 - (1) Five (5) tons per year of any pollutant regulated under this Regulation;
 - (2) One (1) tons per year of a single hazardous air pollutant; and
 - (3) Two and five-tenths (2.5) tons per year of any combination of hazardous air

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

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pollutants.

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Group B

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

- (A) Combustion emissions from propulsion of mobile sources and emissions from refueling these sources unless regulated by Clean Air Act Title II and required to obtain a permit under Clean Air Act Title V. 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;
- (B) Air conditioning and heating units used for comfort that do not have applicable requirements under Clean Air Act Title VI;
- (C) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process;
- (D) Non-commercial food preparation or food preparation at restaurants, cafeterias, caterers, etcetera;
- (E) Consumer use of office equipment and products, not including commercial printers or business primarily involved in photographic reproduction;
- (F) Janitorial services and consumer use of janitorial products;
- (G) Internal combustion engines used for landscaping purposes;
- (H) Laundry activities, except for dry-cleaning and steam boilers;
- (I) Bathroom/toilet emissions;
- (J) Emergency (backup) electrical generators at residential locations;
- (K) Tobacco smoking rooms and areas;

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- (L) Blacksmith forges;
- (M) Maintenance of grounds or buildings, including lawn care, weed control, pest control, and water washing activities;
- (N) Repair, upkeep, 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, activities such 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 cutting²;
- (O) 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;
- (P) Portable electrical generators that can be "moved by hand" from one location to another³;
- (Q) Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic;
- (R) Brazing or soldering equipment related to manufacturing activities that do not result in emission of hazardous air pollutants⁴;
- (S) Air compressors and pneumatically-operated equipment, including hand tools;
- (T) Batteries and battery charging stations, except at battery manufacturing plants;
- (U) Storage tanks, vessels, and containers holding or storing liquid substances that do not

² Cleaning and painting activities qualify if they are not subject to volatile organic compounds or hazardous air pollutants control requirements. Asphalt batch plant owners or operators shall get a permit

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

⁴ 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.

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- contain any volatile organic compounds or hazardous air pollutants⁵;
- (V) Storage tanks, reservoirs, and pumping and handling equipment of any size containing 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;
 - (W) 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;
 - (X) Drop hammers or presses for forging or metalworking;
 - (Y) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;
 - (Z) Vents from continuous emissions monitors and other analyzers;
 - (AA) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities;
 - (BB) Hand-held applicator equipment for hot melt adhesives with no volatile organic compounds in the adhesive;
 - (CC) Lasers used only on metals and other materials that do not emit hazardous air pollutants in the process;
 - (DD) Consumer use of paper trimmers/binders;
 - (EE) 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

⁵Brazing, 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.

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delivering the steam;

- (FF) Salt baths using non-volatile salts that do not result in emissions of any air pollutant covered by this Regulation;
- (GG) Laser trimmers using dust collection to prevent fugitive emissions;
- (HH) Bench-scale laboratory equipment used for physical or chemical analysis, not including lab fume hoods or vents;
- (II) Routine calibration and maintenance of laboratory equipment or other analytical instruments;
- (JJ) Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis;
- (KK) Hydraulic and hydrostatic testing equipment;
- (LL) Environmental chambers not using hazardous air pollutant gases;
- (MM) Shock chambers, humidity chambers, and solar simulators;
- (NN) 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;
- (OO) Process water filtration systems and demineralizers;
- (PP) Demineralized water tanks and demineralizer vents;
- (QQ) Boiler water treatment operations, not including cooling towers;
- (RR) Emissions from storage or use of water treatment chemicals, except for hazardous air pollutants or pollutants listed under regulations promulgated pursuant to Clean Air Act § 112(r) as of July 1, 1997, for use in cooling towers, drinking water systems, and boiler water/feed systems;
- (SS) Oxygen scavenging (de-aeration) of water;

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- (TT) Ozone generators;
- (UU) Fire suppression systems;
- (VV) Emergency road flares;
- (WW) Steam vents and safety relief valves;
- (XX) Steam leaks;
- (YY) Steam cleaning operations;
- (ZZ) Steam and microwave sterilizers;
- (AAA) Site assessment work to characterize waste disposal or remediation sites;
- (BBB) Miscellaneous additions or upgrades of instrumentation;
- (CCC) Emissions from combustion controllers or combustion shutoff devices but not combustion units itself;
- (DDD) Use of products for the purpose of maintaining motor vehicles operated by the facility, not including air cleaning units of the vehicles (e.g., antifreeze, fuel additives);
- (EEE) Stacks or vents to prevent escape of sanitary sewer gases through the plumbing traps;
- (FFF) Emissions from equipment lubricating systems (i.e., oil mist), not including storage tanks, unless otherwise exempt;
- (GGG) Residential wood heaters, cook stoves, or fireplaces;
- (HHH) Barbecue equipment or outdoor fireplaces used in connection with any residence or recreation;
- (III) Log wetting areas and log flumes;
- (JJJ) Periodic use of pressurized air for cleanup;

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- (KKK) Solid waste dumpsters;
- (LLL) 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;
- (MMM) Natural gas odoring activities unless the Department determines that emissions constitute air pollution;
- (NNN) Emissions from engine crankcase vents;
- (OOO) Storage tanks used for the temporary containment of materials resulting from an emergency reporting to an unanticipated release;
- (PPP) Equipment used exclusively to mill or grind coatings in roll grinding rebuilding, and molding compounds if all materials charged are in paste form;
- (QQQ) Mixers, blenders, roll mills, or calendars for rubber or plastic where no materials in powder form are added and where no hazardous air pollutants, organic solvents, diluents, or thinners are used or emitted;
- (RRR) The storage, handling, and handling equipment for bark and wood residues not subject to fugitive dispersion off-site (this applies to the equipment only);
- (SSS) Maintenance dredging of pulp and paper mill surface impoundments and ditches containing cellulosic and cellulosic-derived bio-solids and inorganic materials such as lime, ash, or sand;
- (TTT) Tall oil soap storage, skimming, and loading;
- (UUU) Water heaters used strictly for domestic (non-process) purposes;
- (VVV) Facility roads and parking areas, unless necessary to control off-site fugitive emissions;
- (WWW) Agricultural operations, including on-site grain storage, not including internal combustion engines or grain elevators; and

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(XXX) Natural gas and oil exploration and production site equipment not subject to a rule under 40 C.F.R. Parts 60, 61, or 63.

DRAFT

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 35

APPENDIX B

National Ambient Air Quality Standards List

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APPENDIX B: NATIONAL AMBIENT AIR QUALITY STANDARDS LIST

The National Ambient Air Quality Standards as adopted as of the effective date of this Regulation 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	Fifteen hundredths (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 (98th) 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

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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	Seventy (70) parts per billion	Annual fourth-highest daily maximum eight-hour concentration, averaged over three (3) years	All Chapters
Particle Pollution, PM _{2.5}	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
Particle Pollution, PM ₁₀	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

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Pollutant	Final Rule Cite	Final Rule Date	Primary/ Secondary	Averaging Time	Level	Form	Applicable 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	One-half (0.5) parts per million	Not to be exceeded more than once per year	All Chapters

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 35

APPENDIX C

**Crosswalk with Previous Arkansas Pollution Control and
Ecology Commission Air Quality Regulations**

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APPENDIX C: CROSSWALK WITH PREVIOUS ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION AIR QUALITY REGULATIONS

The following tables provide a crosswalk for the location in Regulation 35 of provisions previously contained in Regulations 18, 19, and 26. These tables do not identify substantive, stylistic, typographical, or clarifying changes made during the consolidation of those regulations into Regulation 35. This Regulation repeals Regulation 31 and does not retain the language. Instead the requirements for nonattainment new source review Subchapter 13.2 incorporates by reference those provisions of 40 C.F.R. § 51.165 necessary for nonattainment new source review.

Regulation 18		
Previous Citation	New Citation	Subject
Reg. 18.101	Reg. 35.101	Title
Reg. 18.102	Reg. 35.103 and Reg. 35.3.101	Intent and Construction
Reg. 18.103	Reg. 35.3.102	Applicability
Reg. 18.104	Reg. 35.104	Severability
Regulation 18, Chapter 2	Regulation 35, Chapter 2 and Chapter 3, Subchapter 3.2	Definitions
Reg. 18.301	Reg. 35.3.1001	Applicability
Reg. 18.302	Reg. 35.3.1003	Permit Approval Criteria
Reg. 18.303	Reg. 35.3.1004	Owner/Operator's Responsibilities
Reg. 18.304	Reg. 35.3.1005	Required Information
Reg. 18.305	Reg. 35.3.1006	Action on Application
Reg. 18.306	Reg. 35.3.1007	Public Participation
Reg. 18.307	Reg. 35.3.1008	Permit Amendments
Reg. 18.308	Reg. 35.3.1013	Exemption from Permitting
Reg. 18.309	Reg. 35.3.1009	Permit Revocation and Cancellation

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Regulation 18		
Previous Citation	New Citation	Subject
Reg. 18.310	Reg. 35.3.1010	General Permits
Reg. 18.311	Reg. 35.3.1011	Newly Subject Sources
Reg. 18.312	Reg. 35.3.1012	Operational Flexibility – Applicant’s Duty to Apply
Reg. 18.313	Reg. 35.3.1012	Changes Resulting in No Emissions Increases
Reg. 18.314	Reg. 35.3.1012	Permit Flexibility
Reg. 18.315	Reg. 35.3.1002	Registration
Regulation 18, Chapter 4	None	Reserved
Reg. 18.501	Reg. 35.3.801	Visible Emissions Limitations
Reg. 18.601	Reg. 35.105	Intent
Reg. 18.602	Reg. 35.3.301	General Prohibition
Reg. 18.603	Reg. 35.3.302	Exemptions
Reg. 18.604	Reg. 35.3.304	Conditions of Air Pollution
Reg. 18.605	Reg. 35.3.304	Open Burning Authorizations
Reg. 18.701	Reg. 35.3.501	Emissions from Mobile Equipment
Reg. 18.801	Reg. 35.3.401	Prohibition of the Emission of Air Contaminants Such as to Constitute Air Pollution
Reg. 18.901	Reg. 35.3.402	Prohibitions
Regulation 18, Chapter 10	Reg. 35.3.901	Sampling, Monitoring, Notice, Recordkeeping, and Reporting Requirements
Reg. 18.1101	Reg. 35.3.902	Upsets
Reg. 18.1102	None	Fuel Curtailment
Reg. 18.1103	None	Conditions of Air Pollution
Reg. 18.1104	None	Department’s Authority

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Regulation 18		
Previous Citation	New Citation	Subject
Reg. 18.1105	Reg. 35.3.902	Emergency Conditions
Reg. 18.1201	Reg. 35.3.403	Circumvention
Reg. 18.1301	Reg. 35.3.501	Authority
Reg. 18.1302	Reg. 35.3.901	Notification and Reporting Requirements
Reg. 18.1401	Reg.35.3.601	Public Notification
Reg. 18.1402	Reg. 35.901	Confidentiality
Reg. 18.1501	Reg. 35.106	Effective Date
Regulation 18, Appendix A	Regulation 35, Appendix A	Insignificant Activities List
Regulation 18, Appendix B	Regulation 35, Appendix B	National Ambient Air Quality Standards List

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Regulation 19		
Previous Citation	New Citation	Subject
Reg. 19.101	Reg. 35.101	Title
Reg. 19.102	Reg. 35.102	Applicability
Reg. 19.103	Reg. 35.103	Intent and Construction
Reg. 19.104	Reg. 35.104	Severability
Regulation 19, Chapter 2	Regulation 35, Chapter 2	Definitions
Reg. 19.301	Reg. 35.601	Purpose
Reg. 19.302	Reg. 35.602	Department Responsibilities
Reg. 19.303	Reg. 35.603	Regulated Sources Responsibilities
Reg. 19.304	Reg. 35.604	Delegated Federal Programs
Reg. 19.401	Reg. 35.1001	General Applicability
Reg. 19.402	Reg. 35.1003	Approval Criteria
Reg. 19.403	Reg. 35.1004	Owner/Operator's Responsibility
Reg. 19.404	Reg. 35.1005	Required Information
Reg. 19.405	Reg. 35.1006	Action on Application
Reg. 19.406	Reg. 35.1007	Public Participation
Reg. 19.407	Reg. 35.1008	Permit Amendments
Reg. 19.408	Reg. 35.1016	Exemption from Permitting
Reg. 19.409	Reg. 35.1011	Transition
Reg. 19.410	Reg. 35.1009	Permit Revocation and Cancellation

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Regulation 19		
Previous Citation	New Citation	Subject
Reg. 19.411	Reg. 35.101	General Permits
Reg. 19.412	Reg. 35.1017	Dispersion Modeling
Reg. 19.413	Reg. 35.901	Confidentiality
Reg. 19.414	Reg. 35.1012	Operational Flexibility-Applicant's Duty to Apply for Alternative Scenarios
Reg. 19.415	Reg. 35.1013	Changes Resulting in No Emissions Increase
Reg. 19.416	Reg. 35.1014	Permit Flexibility
Reg. 19.417	Reg. 35.1002	Registration
Reg. 19.501	Reg. 35.401	Purpose
Reg. 19.502	Reg. 35.403	General Regulations
Reg. 19.503	Reg. 35.404	Visible Emissions Regulations
Reg. 19.601	Reg. 35.501	Upset Conditions
Reg. 19.602	Reg. 35.502	Emergency Conditions
Reg. 19.701	Reg. 35.701	Purpose
Reg. 19.702	Reg. 35.702	Air Emissions Sampling
Reg. 19.703	Reg. 35.703	Continuous Emissions Monitoring
Reg. 19.704	Reg. 35.704	Notice of Completion
Reg. 19.705	Reg. 35.705	Recordkeeping and Reporting Requirements
Reg. 19.706	Reg. 35.706	Public Availability of Emissions Data
Reg. 19.801	Reg. 35.801	Purpose
Reg. 19.802	Reg. 35.802	Permit Emissions Limitations
Reg. 19.803	None	Sulfuric Acid Plants
Reg. 19.804	Reg. 35.803	Kraft Pulp Mills (TRS)
Reg. 19.901	None	Title
Reg. 19.902	Reg. 35.1011	Purpose

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Regulation 19		
Previous Citation	New Citation	Subject
Reg. 19.903	Reg. 35.1102	Definitions
Reg. 19.904	Reg. 35.1103	Adoption of Regulations
Regulation 19, Chapter 10	None	Regulations for the Control of Volatile Organic Compounds in Pulaski County
Regulation 19, Chapter 11	Reg. 35.1015	Part 70 Permitting Procedures
Regulation 19, Chapter 12	None	Reserved
Reg. 19.1301	Reg. 35.13.301	Purpose
Reg. 19.1302	Reg. 35.13.302	Applicability
Reg. 19.1303	Reg. 35.13.303	Definitions
Reg. 19.1304	Reg. 35.13.304	Exemptions
Reg. 19.1305	Reg. 35.13.305	Prohibited Activities
Reg. 19.1306	Reg. 35.13.306	Recordkeeping
Reg. 19.1307	Reg. 35.13.307	Inspection
Reg. 19.1308	Reg. 35.13.308	Vapor Recovery Systems
Reg. 19.1309	Reg. 35.13.309	Gasoline Delivery Vessels
Reg. 19.1310	Reg. 35.13.310	Owner/Operator Responsibility
Reg. 19.1311	Reg. 35.13.311	Test Methods
Reg. 19.1312	Reg. 35.13.312	Effective Date
Regulation 19, Chapter 14	None	CAIR NOx Ozone Season Trading Program General Provisions
Reg. 19.1501	None	Purpose
Reg. 19.1502	None	Definitions
Reg. 19.1503	None	BART Eligible Sources
Reg. 19.1504	Reg. 35.1402	Facilities Subject-to-BART
Reg. 19.1505	Reg. 35.1401	BART Requirements

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Regulation 19		
Previous Citation	New Citation	Subject
Reg. 19.1506	Reg. 35.1402	Compliance Provisions
Reg. 19.1507	None	Permit Reopening
Regulation 19, Appendix A	Regulation 35, Appendix A	Insignificant Activities List
Regulation 19, Appendix B	Regulation 35, Appendix B	National Ambient Air Quality Standards List

Regulation 26		
Previous Citation	New Citation	Subject
Reg. 26.101	Reg. 35.101	Title
Reg. 26.102	Reg. 35.12.101	Purpose
Reg. 26.103	Reg. 35.104	Severability
Regulation 26, Chapter 2	Regulation 35, Chapter 2 and Chapter 12, Subchapter 12.2	Definitions
Reg. 26.301	Reg. 35.12.301	Requirement for a permit
Reg. 26.302	Reg. 35.12.302	Sources subject to permitting
Reg. 26.303	Reg. 35.12.303	Source category exemptions
Reg. 26.304	Reg. 35.12.304	Emissions units subject to permitting
Reg. 26.305	Reg. 35.12.305	Emissions subject to permitting
Reg. 26.306	Reg. 35.12.306	Fugitive emissions subject to permitting
Reg. 26.401	Reg. 35.12.401	Duty to Apply
Reg. 26.402	Reg. 35.12.402	Standard application form and required information

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Regulation 26		
Previous Citation	New Citation	Subject
Reg. 26.403	Reg. 35.12.403	Initial applications from existing part 70 sources
Reg. 26.404	Reg. 35.12.404	Applications for proposed new part 70 sources
Reg. 26.405	Reg. 35.12.405	Applications for proposed significant modifications at part 70 sources
Reg. 26.406	Reg. 35.12.406	Permit renewal applications
Reg. 26.407	Reg. 35.12.407	Complete Application
Reg. 26.408	Reg. 35.12.408	Confidential information
Reg. 26.409	Reg. 35.12.409	Applicant's duty to supplement or correct application
Reg. 26.410	Reg. 35.12.410	Certification by responsible official
Reg. 26.501	Reg. 35.12.501	Action on part 70 permit applications
Reg. 26.502	Reg. 35.12.502	Final action on permit application
Reg. 26.503	Reg. 35.12.503	Priority for application review
Reg. 26.504	Reg. 35.12.504	Notification of application completeness
Reg. 26.505	Reg. 35.12.505	Source's ability to operate prior to final permit action
Reg. 26.506	Reg. 35.12.506	Basis for draft permit conditions
Reg. 26.601	Reg. 35.12.601	Applicability
Reg. 26.602	Reg. 35.12.602	Public Participation
Reg. 26.603	Reg. 25.12.603	Transmission of permit information to the Administrator
Reg. 26.604	Reg. 35.12.604	Review of draft permit by affected States
Reg. 26.605	Reg. 35.12.605	EPA objection to proposed permit
Reg. 26.606	Reg. 35.12.606	Public petitions to the Administrator
Reg. 26.607	Reg. 35.12.607	Prohibition on default issuance

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Regulation 26		
Previous Citation	New Citation	Subject
Reg. 26.701	Reg. 35.12.701	Standard permit requirements
Reg. 26.702	Reg. 35.12.702	Federally-enforceable requirements
Reg. 26.703	Reg. 35.12.703	Compliance requirements
Reg. 26.704	Reg. 35.12.704	Permit shield
Reg. 26.705	Reg. 35.12.705	General permits
Reg. 26.706	Reg. 35.12.706	Temporary sources
Reg. 26.707	Reg. 35.12.707	Emergency provision
Reg. 26.801	Reg. 35.12.801	Applicant's duty to apply for alternative scenarios
Reg. 26.802	Reg. 35.12.802	Changes resulting in no emissions increase
Reg. 26.803	Reg. 35.12.803	Emissions trading in permit
Reg. 26.804	None	Emissions trading allowed under Regulation No. 19
Reg. 26.901	Reg. 35.12.901	Administrative permit amendment applicability
Reg. 26.902	Reg. 35.12.902	Acid Rain administrative permit amendments
Reg. 26.903	Reg. 35.12.903	Administrative permit amendment procedures
Reg. 26.1001	Reg. 35.12.1001	Permit modification
Reg. 26.1002	Reg. 35.12.1002	Minor permit modification applicability
Reg. 26.1003	Reg. 35.12.1003	Prohibition on multiple related minor permit modification application submittals
Reg. 26.1004	Reg. 35.12.1004	Minor permit modification application
Reg. 26.1005	Reg. 35.12.1005	EPA and affected State notification of minor permit modification application
Reg. 26.1006	None	Timetable for issuance of minor permit modification

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Regulation 26		
Previous Citation	New Citation	Subject
Reg. 26.1007	Reg. 35.12.1006	Source's ability to make minor modification
Reg. 26.1008	Reg. 35.12.1007	Group processing of minor permit modifications
Reg. 26.1009	Reg. 35.12.1008	Permit shield not applicable to minor permit modifications
Reg. 26.1010	Reg. 35.12.1009	Significant modification procedures
Reg. 26.1011	Reg. 35.12.1010	Reopening for cause by the Department
Reg. 26.1012	Reg. 35.12.1011	Reopenings for cause by EPA
Reg. 26.1013	Reg. 35.12.1012	Permit flexibility
Reg. 26. 1101	Reg. 35.12.1101	Fee requirement
Reg. 26.1101	Reg. 35.12.1101	Fee schedule
Reg. 26.1201	Reg. 35.12.1202	Purpose
Reg. 26.1202	Reg. 35.12.1202	Adoption by Reference
Reg. 26.1301	Reg. 35.106	Effective Date