Pollution Control and Ecology Commission # 014.00-026

**ARKANSAS POLLUTION CONTROL**

**and ECOLOGY COMMISSION**

**RULE 26**

**RULES OF THE ARKANSAS OPERATING AIR PERMIT PROGRAM**

FOR DISCUSSION PURPOSES ONLY

Strawman Clean Draft

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CHAPTER 1: TITLE AND PURPOSE

Rule 26.101 Title

The following rules of the Arkansas Pollution Control and Ecology Commission, which are adopted in accordance with the provisions of Part II of the Arkansas Water and Air Pollution Control Act Ark. Code Ann. § 8-4-101 *et seq*., shall be known as the “Rules of the Arkansas Operating Air Permit Program,” hereinafter referred to as “Rule 26.”

Rule 26.102 Purpose

The promulgation and enforcement of Rule 26 is intended to meet the requirements of Title V of the Clean Air Act and 40 C.F.R. Part 70 by establishing a comprehensive state air quality permitting program for major sources of air pollutant emissions. Part 70 permits issued under this program will address all applicable air pollutant emissions and regulatory requirements in a single document.

Rule 26.103 Severability

If any provision of Rule 26 is determined to be invalid, then the invalidity shall not affect other provisions of Rule 26.

If federal legislation or a federal court stays, invalidates, delays the effective date of, or otherwise renders unenforceable, in whole or in part, EPA’s regulation of greenhouse gases, then the provisions of Rule 26 concerning greenhouse gases based thereon shall be stayed and shall not be enforceable until the Arkansas Pollution Control and Ecology Commission makes a final decision on whether or not to revise Rule 26 due to the federal legislation or federal court order.

**Rule 26.104 Incorporation by Reference**

Unless otherwise designated, any law adopted into Rule 26 by reference shall be construed as though the referenced law were set forth in Rule 26 line for line, word for word as the referenced law existed on the effective date of Rule 26.

**Rule 26.105 Effective Date**

Rule 26 is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

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CHAPTER 2: DEFINITIONS

The following definitions apply to Rule 26. Except as specifically provided in this Chapter, terms used in Rule 26 retain the meaning accorded to them under the applicable requirements of the Clean Air Act or Rule 19.

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

**“Administrative permit amendment”** means a permit revision that meets the criteria of Rule 26.901 or Rule 26.902 and is processed pursuant to the procedures established in Rule 26.903.

**“Affected states”** means states:

(A) Whose air quality may be affected and that are contiguous to the state in which a Part 70 permit, permit modification, or permit renewal is being proposed; or

(B) That are within fifty (50) miles of the permitted Part 70 source.

**“Air pollutant”** means any solid, liquid, gas, or combination thereof, other than water vapor, nitrogen, and oxygen.

**“Applicable implementation plan”** means the plan promulgated by the State, and those portions of the plan that may be promulgated by EPA, that are codified at 40 CFR § 52 Subpart E.

**“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 provided for in the applicable 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 rules 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 § 111 of the Clean Air Act, including § 111(d);

(D) Any standard or other requirement under § 112 of the Clean Air Act, including any requirement concerning accident prevention under § 112(r)(7) of the Clean Air Act;

(E) Any standard or other requirement of the Acid Rain Program under Title IV of the Clean Air Act or the rules promulgated thereunder;

(F) Any requirements established pursuant to § 504(b) or § 114(a)(3) of the Clean Air Act;

(G) Any standard or other requirement governing solid waste incineration, under § 129 of the Clean Air Act;

(H) Any standard or other requirement for consumer and commercial products, under §183(e) of the Clean Air Act;

(I) Any standard or other requirement for tank vessels, under § 183(f) of the Clean Air Act;

(J) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under § 328 of the Clean Air Act;

(K) Any standard or other requirement of the rules promulgated to protect stratospheric ozone under Title VI of the Clean Air Act, unless EPA has determined that the requirements need not be contained in a Part 70 permit; and

(F) 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 § 504(e) of the Clean Air Act.

**“Area source”** means any stationary source of hazardous air pollutants that is not a major source. The term “area source” shall not include motor vehicles or nonroad vehicles subject to regulation under 42 U.S.C. Subchapter II.

“**Ark. Code Ann.”** means the Arkansas Code Annotated.

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

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

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

**“Division”** means the Division of Environmental Quality, or its successor.

**“Draft permit”** means the version of a Part 70 permit for which the Division offers public participation and affected State review.

**“Emissions unit”** means any part or activity of a stationary source 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 Administrator of the United States Environmental Protection Agency or his/her designee.

**“Existing Part 70** **source”** means a Part 70 source that is in operation on the effective date of Rule 26.

“**Federally regulated air pollutant**” means the following:

(A) Nitrogen oxides or any volatile organic compounds;

(B) Any air pollutant that has a promulgated national ambient air quality standard;

(C) Except as provided in Paragraph (E) of this definition, any air pollutant that is subject to any standard promulgated under the § 111 or § 112 Clean Air Act as of the effective date of Rule 26.

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

(E) Greenhouse gases, except that greenhouse gases shall not be a federally regulated air pollutant unless the greenhouse gases emissions are regulated under Rule 19.

**“Final permit”** means the version of a Part 70 permit issued by the Division that has completed all review procedures required by Rule 26.

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

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

**“Initial permit”** means the first Part 70 permit issued to a Part 70 source that is in existence on the effective date of Rule 26.

**“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 subsection (A), (B), or (C) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the air pollutant emitting activities at the stationary source or group of stationary 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 § 112 of the Clean Air Act, which is defined as:

(1) For air 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 § 112(b) of the Clean Air Act, twenty-five (25) tons per year or more of any combination of hazardous air pollutants, or a lesser quantity as the EPA 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 EPA by rule.

(B) A major stationary source of air pollutants, as defined in § 302 of the Clean Air Act, 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 EPA). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of § 302(j) of the Clean Air Act, unless the stationary 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;

(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 (250) million British thermal units 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;

(26) Fossil-fuel-fired steam electric plants of more than two hundred fifty (250) million British thermal units per hour heat input; or

(27) Any other stationary source category, that, as of August 7, 1980, is being regulated under § 111 or § 112 of the Clean Air Act.

(C) A major stationary source as defined in Part D of Title I of the Clean Air Act, including:

(1) For ozone nonattainment areas, stationary 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 ten (10) tons per year of nitrogen oxides shall not apply with respect to any stationary source for which EPA has made a finding, under § 182(f)(1) or (2) of the Clean Air Act, that requirements under § 182(f) of the Clean Air Act do not apply;

(2) For ozone transport regions established pursuant to § 184 of the Clean Air Act, stationary 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 in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by EPA, stationary sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and

(4) For PM10 nonattainment areas classified as “serious,” stationary sources with the potential to emit seventy (70) tons per year or more of PM10.

**“Minor permit modification”** means a change to a Part 70 permit that meets the criteria of Rule 26.1002 and is processed pursuant to the procedures established in Rule 26.1003 through Rule 26.1009.

**“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 Rule.

**“Part 70 program”** means a program approved by EPA under 40 C.F.R. Part 70.

**“Part 70 source”** means any stationary source subject to the permitting requirements of this Rule.

**“Permit modification”** means a revision to a Part 70 permit that meets the requirements of Chapter 10 of Rule 26.

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

**“Potential to emit”** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a stationary source to emit an air pollutant; including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed; shall be treated as part of its design if the limitation is enforceable by EPA. This term 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 Title IV of the Clean Air Act or the regulations promulgated thereunder.

**“PM10”** shall have the same meaning as set forth in Chapter 2 of Rule 19. The definition of the term “PM10” in Chapter 2 of Rule 19 is hereby incorporated by reference.

**“Proposed permit”** means the version of a Part 70 permit that the Division proposes to issue and forwards to EPA for review.

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

**“Renewal”** means the process of reissuing a Part 70 permit at the end of its term.

**“Renewal permit”** means a Part 70 permit that is reissued 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 l980 United States dollars); or

(2) The Division 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 Rule 26, 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 insofar as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the rules promulgated thereunder are concerned; and

(2) The designated representative for any other purposes under Part 70.

**“Rule 8”** means Arkansas Pollution Control and Ecology Commission Regulation No. 8 until Arkansas Pollution Control and Ecology Commission Regulation No. 8 is amended to replace the term “regulation” with “rule.” After that time, Rule 8 means Arkansas Pollution Control and Ecology Commission Rule 8.

**“Rule 9”** means Arkansas Pollution Control and Ecology Commission Regulation No. 9 until Arkansas Pollution Control and Ecology Commission Regulation No. 9 is amended to replace the term “regulation” with “rule.” After that time, Rule 9 means Arkansas Pollution Control and Ecology Commission Rule 9.

**“Rule 18”** means Arkansas Pollution Control and Ecology Commission Regulation No. 18, until Arkansas Pollution Control and Ecology Commission Regulation No. 18 is amended to replace the term “regulation” with “rule.” After that time, Rule 18 means Arkansas Pollution Control and Ecology Commission Rule 18.

**“Rule 19”** means Arkansas Pollution Control and Ecology Commission Regulation No. 19, until Arkansas Pollution Control and Ecology Commission Regulation No. 19 is amended to replace the term “regulation” with “rule.” After that time, Rule 19 means Arkansas Pollution Control and Ecology Commission Rule 19.

**“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 rule promulgated pursuant to Title I of the Clean Air Act. *De Minimis* changes under Rule 19, changes to state only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications.

CHAPTER 3: REQUIREMENT FOR A Part 70 PERMIT, APPLICABILITY

Rule 26.301 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 permit or renewal permit as required under Rule 26. The owner or operator of an existing Part 70 source shall submit an initial application according to the provisions of Chapter 4. If the owner or operator of a Part 70 source submits a timely and complete application for an initial permit or renewal permit, the Part 70 source's failure to have a Part 70 permit is not a violation of Rule 26 until the Division takes final action on the Part 70 permit application, except as noted in this Chapter. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit by the deadline specified in writing by the Division any additional information identified as necessary to process the application. If the Division fails to act in a timely way on a renewal permit, EPA may invoke its authority under § 505(e) of the Clean Air Act 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 permit application was submitted prior to the effective date of Rule 26 and the Division's draft permitting decision for the Part 70 source has already proceeded to public notice in accordance with Rule 19.

(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 changes that qualify as minor permit 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 Rule 19 until an initial Part 70 permit application is due from the existing Part 70 source.

Rule 26.302 Stationary sources subject to permitting

Unless exempted by Rule 26.303 the following stationary sources shall be subject to permitting under Rule 26:

(A) Any major source;

(B) Any stationary source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the Clean Air Act (e.g., New Source Performance Standards). However, non-major stationary sources subject to § 111 of the Clean Air Act are exempt from the obligation to obtain a Part 70 permit until EPA completes a rulemaking to determine how Part 70 programs should be structured for non-major stationary sources;

(C) Any stationary source, including an area source, subject to a standard or other requirement under § 112 of the Clean Air Act (i.e., hazardous air pollutant rules), except that a stationary source is not required to obtain a permit solely because it is subject to rules or requirements under § 112(r) of the Clean Air Act;

(D) Any stationary source subject to Rule 19, Chapter 9;

(E) Any acid rain source (which shall be permitted in accordance with the provisions of the Acid Rain Program); and

(F) Any stationary source in a stationary source category designated by EPA pursuant to 40 CFR Part 70.

Rule 26.303 Stationary source category exemptions

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

(A) All stationary sources listed in Rule 26.302 that are not major sources, acid rain sources, or solid waste incineration units required to obtain a permit pursuant to § 129(e) of the Clean Air Act, are exempt from the obligation to obtain a Part 70 permit until EPA completes a rulemaking to determine how Part 70 programs should be structured for non-major stationary sources.

(B) All stationary sources and stationary 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; and

(C) All stationary sources and stationary 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, 40 CFR § 6l.145, Standard for Demolition and Renovation.

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

Rule 26.304 Emissions units subject to permitting

The Division 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 are exempt from permitting requirements as per Chapter 4 and Appendix A of Rule 19.

Rule 26.305 Emissions subject to permitting

All federally regulated air pollutant emissions and recognized air pollutant emissions from a Part 70 source shall be included in a Part 70 permit. Only federally regulated air pollutants may trigger the need for a Part 70 permit or a Part 70 permit modification process. A permit modification involving only air pollutants other than federally regulated air pollutants shall be permitted according to the procedure of Rule 18. These conditions shall be incorporated into the Part 70 permit by administrative permit amendment.

Rule 26.306 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 stationary source category in question is included in the list of stationary sources contained in the definition of major source.

CHAPTER 4: APPLICATIONS FOR Part 70 PERMITS

Rule 26.401 Duty to apply

For each Part 70 source, the owner or operator shall submit a timely and complete Part 70 permit application (on forms supplied by the Division) in accordance with this Chapter.

Rule 26.402 Standard application form and required information

(A) The Division shall provide a standard application form or forms for Part 70 sources to the owners and operators of Part 70 sources. The Division may use its discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments to the forms shall include:

(1) A list of insignificant activities that are exempt 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 Part 70 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 Part 70 source;

(4) The following emission-related information:

(a) All federally regulated air pollutants emitted from any emissions unit, except for those units included in the insignificant activities list pursuant to Rule 26.402(A).

(b) Any additional information related to the emissions of air pollutants sufficient to verify requirements that are applicable to the Part 70 source, and other information necessary to collect any permit fees owed under the fee schedule in Rule 9;

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

(d) Emissions rate in tons per year and in 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:

(i) Fuels;

(ii) Fuel use;

(iii) Raw materials;

(iv) Production rates; and

(v) Operating schedules;

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

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

(h) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to § 123 of the Clean Air Act); and

(i) Calculations used to determine the information in Rule 26.402(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, of Part 70 or to determine the applicability of the requirements;

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

(8) Additional information as determined to be necessary by the Division to define alternative operating scenarios identified by the applicant pursuant to Rule 26.701(I) or to define terms and conditions in the Part 70 permit implementing Rule 26.802 or Rule 26.701(J);

(9) A compliance plan for the Part 70 source that contains all 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;

(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 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 the Part 70 source if the Part 70 source is not in compliance with all applicable requirements at the time of Part 70 permit issuance. The 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 if the Part 70 source is required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an acid rain source, except as specifically superseded by rules promulgated under Title IV of the Clean Air Act 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 Rule 26.410 and § 114(a)(3) of the Clean Air Act;

(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 Division; 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.

(11) The use of nationally-standardized forms for acid rain portions of Part 70 permit applications and compliance plans, as required by rules promulgated under Title IV of the Clean Air Act.

(B) The applicant shall include in the Part 70 permit application the information specified in Rule 26.402(A) for each emissions unit at a Part 70 source. The applicant shall not omit any information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required by Rule 9.

(C) Reserved

Rule 26.403 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 Part 70 source becomes subject to the Part 70 permit program, or on or before an earlier date that the Division may establish. The earliest that the Division may require an initial application from an existing Part 70 source is six (6) months after the Department notifies the owner or operator of the existing Part 70 source in writing of its duty to apply for an initial Part 70 permit.

Rule 26.404 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 Part 70 source, unless the applicable permit application was submitted prior to the effective date of Rule 26 and the Division's draft permitting decision for the Part 70 source has already proceeded to public comment in accordance with Rule 19.

Rule 26.405 Applications for proposed significant modifications at Part 70 sources

The owner or operator of a Part 70 source 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 changes that qualify as minor permit modifications or changes allowed under the operational flexibility provisions of a Part 70 permit.

Rule 26.406 Renewal permit applications

For the purposes of a renewal permit, a timely application is one that is received by the Division at least six (6) months prior to the date of Part 70 permit expiration or another longer time as may be approved by EPA 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 permit issuance. Part 70 permit expiration terminates the owner’s or operator’s right to operate a Part 70 source unless the Division has received a timely and complete renewal application, in which case the existing Part 70 permit shall remain in effect until the Division takes final action on the renewal permit application. If the Division fails to act in a timely way on a renewal permit, EPA may invoke its authority under § 505(e) of the Clean Air Act to terminate or revoke and reissue the Part 70 permit.

Rule 26.407 Complete application

To be deemed complete, an application shall provide all information required by Rule 26.402, except that applications for permit revision need supply only that information related to the proposed change. Unless the Division determines that an application is not complete within sixty (60) days of receipt of the application, the application shall be deemed to be complete. If, while processing an application that has been determined or deemed to be complete, the Division determines that additional information is necessary to evaluate or take final action on that application, the Division may request the information in writing and set a reasonable deadline for a response.

Rule 26.408 Confidential information

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

Rule 26.409 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 Part 70 source after the date the applicant filed a complete application but prior to release of a draft permit.

Rule 26.410 Certification by responsible official

Any application form, report, or compliance certification submitted pursuant to Rule 26 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under Rule 26 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

CHAPTER 5: ACTION ON APPLICATIONS

Rule 26.501 Action on Part 70 permit applications

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

(A) The Division has received a complete application for a Part 70 permit, permit modification, or renewal permit, except that a complete application need not be received before issuance of a general permit;

(B) Except for changes qualifying for minor permit modification procedures under Chapter 10 of Rule 26, the Division has complied with the requirements under Chapter 6 of Rule 26 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 Rule 26; and

(D) EPA has received a copy of the proposed Part 70 permit and any notices required under Chapter 6 of Rule 26 and has not objected to issuance of the Part 70 permit within the time period specified therein.

Rule 26.502 Final action on Part 70 permit application

The Division shall take final action on each Part 70 permit application (including a request for permit modification or renewal permit) 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 Rule 26 (i.e., initial permitting of existing Part 70 sources and minor permit modifications). Failure of the Division to act upon an application shall not constitute approval of the Part 70 permit application. An aggrieved applicant may seek relief from Division inaction on a Part 70 permit application in accordance with the procedures of Ark. Code Ann. § 8-4-311 (b)(10)(F).

Rule 26.503 Priority for application review

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

Rule 26.504 Notification of application completeness

The Division shall promptly provide notice to the applicant of whether the application is complete. Unless the Division 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. For changes processed through minor permit modification procedures, the program shall not require a completeness determination, but the change shall be subject to an eligibility determination.

Rule 26.505 Ability to operate a Part 70 source prior to final permit action

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

Rule 26.506 Basis for draft permit conditions

The Division 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 Division shall send this statement to EPA and to any other person who requests it.

CHAPTER 6: Part 70 PERMIT REVIEW BY THE PUBLIC, AFFECTED STATES, AND EPA

Rule 26.601 Applicability

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

Rule 26.602 Public participation

All initial permit issuances, significant modifications, minor permit modifications, and renewal permits shall afford the public the opportunity to comment.

(A) Public notice shall be given:

(1) By publication of notice of application receipt by the Division, in a newspaper of general circulation in the county where the proposed Part 70 source or activity is to be located, in accordance with Rule 8.

(a) If the local newspaper is unable or unwilling to publish the notice, notice may be published in a newspaper in general circulation through the State;

(b) Minor permit modifications are exempt from Rule 26.602(A)(1).

(2) By the availability for public inspection in at least one location in the area where the Part 70 source is located and in the Division's central offices of the Part 70 permit application submitted by the owner or operator and the Division's draft permitting decision and analysis of the effect of the proposed emissions on air quality;

(3) By publication of a notice of the Division's draft permitting decision in a newspaper of general circulation in the county where the proposed Part 70 source or activity is to be located, in accordance with Rule 8. If 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 Part 70 source is located;

(5) To the county judge of the county where the Part 70 source is located;

(6) To persons on a mailing list developed by the Division, including those who request in writing to be on the list; and

(7) By other means if necessary to assure adequate notice to the affected public.

(B) The notice of Rule 26.602(A)(3) shall identify:

(1) The affected Part 70 source;

(2) The name and address of the permittee;

(3) The name and address of the Division;

(4) The activity or activities involved in the Part 70 permit action;

(5) The emissions change involved in any permit modification;

(6) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials and all other materials available to the Division that are relevant to the Part 70 permit decision;

(7) A brief description of the comment procedures required by Rule 26; and

(9) A statement of procedures to request a hearing.

(C) The Division shall provide notice and opportunity for participation by affected states in accordance with Rule 26.604.

(D) The Division shall provide at least thirty (30) days for public comment on its draft permitting decision and shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

(E) The Division shall keep a record of the commenters and issues raised during the public participation process so that EPA may fulfill its obligation under § 505(b)(2) of the Clean Air Act to determine whether a citizen petition may be granted. The Division shall make the records available to the public.

Rule 26.603 Transmission of Part 70 permit information to EPA

(A) The Division shall provide to EPA a copy of each Part 70 permit application (including any application for permit modification), each proposed permit, and each final permit. The Division may require the applicant to provide a copy of the Part 70 permit application (including the compliance plan) directly to EPA. Upon agreement with EPA, the Division may submit to EPA 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 Part 70 permit application and compliance plan.

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

Rule 26.604 Review of draft permit by affected states

(A) The Division shall give notice of each draft permit to any affected state on or before the time that the Division provides this notice to the public, except to the extent that minor permit modification procedures requires the timing of the notice to be different.

(B) The Division, as part of the submittal of the proposed permit to EPA (or as soon as possible after the submittal for minor permit modification procedures), shall notify EPA and any affected state in writing of any refusal by the Division to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the Division's reasons for not accepting any recommendation. The Division is not required to accept recommendations that are not based on applicable requirements or the requirements of 40 C.F.R. Part 70.

Rule 26.605 EPA objection to proposed permit

(A) The Division shall not issue a Part 70 permit for which an application is required to be transmitted to EPA if, pursuant to 40 CFR § 70.8(c), EPA objects to the Part 70 permit issuance in writing within forty-five (45) days of receipt of the proposed permit and all necessary supporting information.

(B) Any EPA objection will include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.

(C) Failure of the Division to follow proper Part 70 permit issuance procedural requirements or to submit required information necessary to review the proposed permit also shall constitute grounds for an objection by EPA.

(D) If the Division fails, within ninety (90) days after the date of an objection to submit a revised proposed permit in response to the objection, 40 CFR § 70.8(c) provides that EPA will issue or deny the Part 70 permit in accordance with the requirements of the federal program promulgated under Title V of the Clean Air Act.

Rule 26.606 Public petitions to EPA

If EPA does not object in writing to a proposed Part 70 permit, any person may petition EPA within sixty (60) days after the expiration of EPA’s forty-five (45) day review period to make an objection.

(A) 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 the public comment period, or unless the grounds the objection arose after the period.

(B) If EPA objects to the Part 70 permit as a result of a petition filed under Rule 26.606, the Division 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 forty-five-day review period and prior to an EPA objection. If the Division has issued a Part 70 permit prior to receipt of an EPA objection under Rule 26.606, EPA will modify, terminate, or revoke the Part 70 permit consistent with the procedures in 40 CFR § 70.7(g)(4) or (5)(i) and (ii) except in unusual circumstances, and the Division 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.

Rule 26.607 Prohibition on default issuance

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

CHAPTER 7: Part 70 PERMIT CONTENT

Rule 26.701 Standard Part 70 permit requirements

Each Part 70 permit issued under Rule 26 shall include the following elements:

(A) Emission 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, where an applicable requirement of the Clean Air Act is more stringent than an applicable requirement of rules promulgated under Title IV of the Clean Air Act, both provisions shall be incorporated into the Part 70 permit and shall be enforceable by EPA.

(3) If allowed under an applicable implementation plan, the Division may make a determination that an alternative emission limit at a Part 70 source, equivalent to that contained in the applicable implementation plan, may be made in the Part 70 permit issuance, renewal, or significant modification process. Any Part 70 permit containing an equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(B) Part 70 Permit Duration:

The Division shall issue the Part 70 permit for a fixed term as specified in Rule 26.701(B)(1) through (3):

(1) Five (5) years for acid rain sources;

(2) A period not to exceed twelve (12) years for solid waste incineration units combusting municipal solid waste subject to the standards under § 129(e) of the Clean Air Act. The Division shall review each Part 70 permit for solid waste incineration units at least every five (5) years; and

(3) A period not to exceed five (5) years for all other Part 70 sources.

(C) Monitoring and related recordkeeping and reporting requirements:

(1) Each Part 70 permit shall contain the following requirements with respect to 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 § 114(a)(3) or § 504(b) of the Clean Air Act. If more than one monitoring or testing requirement applies, the Part 70 permit may specify a streamlined set of monitoring or testing provisions if 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 permittee’s compliance with the Part 70 permit, as reported pursuant to Rule 26.701(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, as applicable, the following:

(a) Records of required monitoring information that 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;

(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 records of all required monitoring data 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 reports of any required monitoring at least every six (6) months. The reports shall clearly identify all instances of deviations from permit requirements. A responsible official shall certify all required reports consistent with Rule 26.410 and § 114(a)(3) of the Clean Air Act.

(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 Division 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 condition in the Part 70 permit prohibiting emissions exceeding any allowances that the Part 70 source lawfully holds under Title IV of the Clean Air Act or the rules promulgated thereunder.

(1) The Division shall not require a Part 70 permit revision for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program if the increases do not require a permit revision under any other applicable requirement.

(2) The Division shall not limit the number of allowances held by the Part 70 source. Allowances shall not constitute a defense to non-compliance with any other applicable requirement.

(3) Any allowance shall be accounted for according to the procedures established in rules promulgated under Title IV of the Clean Air Act.

(E) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the Part 70 permit.

(F) Provisions stating the following:

(1) The permittee shall comply with all conditions of the Part 70 permit. Failure to comply with any condition of the Part 70 permit constitutes a violation of the Clean Air Act and is grounds for enforcement action; for Part 70 permit termination, Part 70 permit revocation and reissuance, or permit modification; or for denial of a renewal permit application.

(2) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Part 70 permit.

(3) The Part 70 permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated non-compliance does not stay any condition in the Part 70 permit.

(4) The Part 70 permit does not convey any property rights of any sort, or any exclusive privilege.

(5) The permittee shall furnish to the Division, within a reasonable time, any information that the Division 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 permittee shall also furnish to the Division copies of records required to be kept by the Part 70 permit or, for information claimed to be confidential, the permittee may furnish the records directly to the EPA along with a claim of confidentiality.

(G) A provision to ensure that a Part 70 source pays fees to the Division consistent with the fee schedule approved pursuant to Rule 9.

(H) A provision stating that no permit revision shall 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 by the applicant for the Part 70 source in its application as approved by the Division. 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 Part 70 source a record of the scenario under which it is operating;

(2) May extend the permit shield described in Rule 26.704 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 Rule 26.

(J) Terms and conditions, if the Part 70 permit applicant requests them, for the trading of emissions increases and decreases in the permitted Part 70 source, 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 Rule 26.701 and Rule 26.703 to determine compliance;

(2) May extend the permit shield described in Rule 26.704 to all terms and conditions that allow increases and decreases in emissions; and

(3) Shall meet all applicable requirements and requirements of Rule 26.

Rule 26.702 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 EPA and citizens under the Clean Air Act.

(B) Notwithstanding Rule 26.702(A), the Division 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 Chapters 6 and 10 of Rule 26, other than those contained in this Chapter.

Rule 26.703 Compliance requirements

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

(A) Consistent with Rule 26.701(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 Rule 26.410 and § 114(a)(3) of the Clean Air Act.

(B) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Division or an authorized representative to perform the following:

(1) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the Part 70 permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the Part 70 permit;

(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 Part 70 permit or applicable requirements.

(C) A schedule of compliance consistent with Rule 26.402(B)(8).

(D) Progress reports consistent with an applicable schedule of compliance and Rule 26.402(B)(8) to be submitted at least semiannually, or more frequently if specified in the applicable requirement or by the Division. The progress reports shall contain the following:

(1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when 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 emission limitations, standards, or work practices. Part 70 permits shall include each of the following:

(1) The frequency (not less than annually or more frequently if specified in the applicable requirement or by the Division) of submissions of compliance certifications;

(2) In accordance with Rule 26.701(C), a means for monitoring the compliance of the Part 70 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):

(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 Rule 26.701(C). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with § 113(c)(2) of the Clean Air Act, 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 Rule 26.703(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 and in which an excursion or exceedance occurred; and

(d) Any other facts as the Division may require to determine the compliance status of the Part 70 source.

(4) A requirement that all compliance certifications be submitted to the EPA as well as to the Division.

(F) Any other provisions as the Division may require.

Rule 26.704 Permit shield

(A) Except as provided in Rule 26, the Division 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:

(1) The applicable requirements are included and are specifically identified in the Part 70 permit; or

(2) The Division, in acting on the Part 70 permit application or permit 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) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide a permit shield.

(C) Nothing in this subsection or in any Part 70 permit shall alter or affect the following:

(1) The provisions of § 303 of the Clean Air Act (emergency orders), including the authority of the EPA under that § 303 of the Clean Air Act;

(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 § 408(a) of the Clean Air Act; or

(4) The ability of EPA to obtain information from a Part 70 source pursuant to § 114 of the Clean Air Act.

(D) Permit shield provisions shall not extend to minor permit modifications.

Rule 26.705 General permits

(A) The Division may, after notice and opportunity for public participation provided under Chapter 6 of Rule 26, issue a general permit covering numerous similar Part 70 sources. Any general permit shall comply with all requirements applicable to other Part 70 permits and shall identify criteria by which Part 70 sources may qualify for the general permit. To Part 70 sources that qualify, the Division shall grant the conditions and terms of the general permit. Notwithstanding the permit shield provisions of this Rule 26.704, 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 general permit. The Division shall not authorize a general permit for acid rain sources under the Acid Rain Program unless otherwise provided in rules promulgated under Title IV of the Clean Air Act.

(B) For Part 70 sources that would qualify for a general permit, the owner or operator shall apply to the Division for coverage under the terms of the general permit or shall apply for a Part 70 permit consistent with Chapter 4 of Rule 26. The Division may, in the general permit, provide for applications that deviate from the requirements of Chapter 4 of Rule 26 if the applications meet the requirements of Title V of the Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures, the Division may grant a request for authorization to operate under a general permit, but the grant shall not be a final permit action for purposes of judicial review.

Rule 26.706 Temporary sources

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

(A) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(B) Requirements that the owner or operator notify the Division at least ten (10) days in advance of each change in location; and

(C) Conditions that assure compliance with all other provisions of this Chapter.

Rule 26.707 Emergency provision

(A) An “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the Part 70 source that causes the Part 70 source to exceed a technology-based emission limitation under the Part 70 permit, due to unavoidable increases in emissions attributable to the emergency, and that requires immediate corrective action to restore normal operation. An emergency shall not include non-compliance 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 non-compliance with a technology-based emission limitations if the conditions of Rule 26.707(B)(1) through (4) are met. The permittee shall demonstrate the affirmative defense of 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 Part 70 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 Division by the next working 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.

CHAPTER 8: OPERATIONAL FLEXIBILITY PROVISIONS

Rule 26.801 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 Division 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 a permit revision or notification to the Division.

Rule 26.802 Changes resulting in no emissions increases

(A) A permittee may make a change at the Part 70 source that contravenes terms in the Part 70 permit without a permit revision if the change:

(1) Is not a Title I Modification;

(2) Does 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) Does not violate applicable requirements; and

(4) Does not contravene federally enforceable terms and conditions in the Part 70 permit that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements;

(B) The permittee shall provide written notice to EPA and the Division at least seven (7) days prior to implementing the proposed changes allowed under Rule 26.802(A), or within a shorter time frame that the Division allows for emergencies. The permittee, Division, 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 Part 70 source, the date when the change will occur, any change in emissions, and any term or condition in the Part 70 permit that is no longer applicable as a result of the change. The permit shield described in Chapter 7 of Rule 26 does not apply to any change made pursuant to Rule 26.802.

Rule 26.803 Emissions trading in Part 70 permit

The Division shall, if a Part 70 permit applicant requests it, issue Part 70 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 Part 70 source 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 terms that ensure the emissions trades are quantifiable and enforceable. The Division 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 seven (7) days’ written notice to the Division that shall state 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 permit shield described in Chapter 7 of Rule 26 shall extend to terms and conditions that allow increases and decreases in emissions.

Rule 26.804 Emissions trading allowed under Rule 19

(A) The permittee may trade increases and decreases in emissions within permitted Part 70 source, if the trades are allowed under Rule 19 without requiring a permit revision.

(B) The permittee shall provide seven (7) days’ written notice to the Division. The written notice shall state the following:

(1) When the proposed change will occur;

(2) A description of the change;

(3) Any change in emissions;

(4) The requirements in the Part 70 permit with which the Part 70 source will comply using the emissions trading provisions of Rule 19,

(5) The air pollutants emitted subject to the emissions trade, and

(6) The provisions in Rule 19 with which the permittee shall comply and that provide for the emission trade.

(C) The permit shield described in Chapter 7 of Rule 26 shall not extend to any change made pursuant toRule 26.804.

(D) The Division shall determine compliance with the requirements in the Part 70 permit that the Part 70 source will meet using the emissions trade according to requirements of Rule 19 authorizing the emissions trade.

CHAPTER 9: ADMINISTRATIVE PERMIT AMENDMENTS

Rule 26.901 Administrative permit amendment applicability

An “administrative 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 Part 70 source, which has been permitted under Rule 19, if the Division determines that no other change in the Part 70 permit is necessary and the permittee submits to the Division a written agreement containing a specific date for transfer of Part 70 permit responsibility, coverage, and liability between the current and new permittee;

(E) Incorporates a change in the Part 70 permit involving air pollutants other than federally regulated air pollutants that has been processed under permitting provisions of Rule 18 and Rule 19;

(F) Incorporates a change in the Part 70 permit solely involving the retiring of an emissions unit; or

(G) Incorporates a change to the Part 70 source’s insignificant activities list.

Rule 26.902 Acid Rain Program administrative permit amendments

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

Rule 26.903 Administrative permit amendment procedures

The Division shall make an administrative permit amendment consistent with the following:

(A) The Division shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if the Division designates the permit revision as having been made pursuant to Rule 26.903.

(B) The Division shall submit a copy of the permit revision to EPA.

(C) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

CHAPTER 10: PERMIT MODIFICATIONS, REOPENINGS

Rule 26.1001 Permit modification

This Chapter establishes criteria and procedures for permit modifications. The rules promulgated under Title IV of the Clean Air Act shall govern permit modifications for purposes of the acid rain portion of the Part 70 permit.

Rule 26.1002 Minor permit modification applicability

The minor permit modification process is an expedited procedure that allows the permittee of a Part 70 source to make trivial changes involving limited emission 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. The Division may only use minor permit modification procedures if the permit modification:

(A) Involves an emission increase 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 PM2.5;

(6) Fifteen (15) tons per year of PM10;

(7) Forty (40) tons per year of volatile organic compounds; and

(8) Six-tenths (0.6) tons per year of lead.

(B) Involves the installation of or change(s) to emissions units that do not require a Title I emissions netting procedure to determine eligibility;

(C) Does not violate any applicable requirement;

(D) Does not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the Part 70 permit;

(E) Does not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(F) Does not seek to establish or change a term or condition in the Part 70 permit 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 Title I modification; and

(2) An alternative emissions limit approved pursuant to rules promulgated under § 112(i)(5) of the Clean Air Act; and

(G) Is not a Title I modification.

Rule 26.1003 Prohibition on multiple related minor permit modification application submittals

The permittee 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 Division may, in its discretion, require that multiple related minor permit modification applications be processed as a significant permit modification.

Rule 26.1004 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;

(B) The permittee’s suggested draft permit conditions;

(C) Certification by a responsible official that the proposed change meets the criteria for use of minor permit modification procedures and a request that minor permit modification procedures be used; and

(D) Completed forms for the Division to use to notify EPA and affected states as required under Chapter 6 of Rule 26.

Rule 26.1005 EPA and affected state notification of minor permit modification application

Within five (5) working days of receipt of a complete minor permit modification application, the Division shall meet its obligation to notify EPA and affected states of the requested permit modification. The Division promptly shall send any notice required under Chapter 6 of Rule 26 to EPA.

Rule 26.1006 Timetable for issuance of minor permit modification

The Division shall not issue a final minor permit modification until after EPA's forty-five (45) day review period or until EPA has notified the Division that EPA will not object to issuance of the permit modification, although the Division can approve the permit modification prior to that time. Within ninety (90) days of the Division's receipt of an application under minor permit modification procedures or fifteen (15) days after the end of the EPA’s forty-five (45) day review period under Chapter 6 of Rule 26, whichever is later, the Division shall:

(A) Issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by Chapter 6 of Rule 26.

Rule 26.1007 Permittee’s ability to make minor permit modification changes

The permittee of a Part 70 source may make the change proposed in its minor permit modification application upon receipt of written notification from the Division. The Division 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 Division does not respond within this fifteen (15) day period, the permittee may proceed with the proposed change at its own risk. After the permittee makes the change allowed by the preceding sentence, and until the Division takes action on the application, the permittee shall comply with both the applicable requirements governing the change and the proposed terms and conditions. During this time period, the permittee need not comply with the existing terms and conditions of the Part 70 permit that the permittee seeks to modify. However, if the permittee fails to comply with its proposed terms and conditions during this time period, the existing terms and conditions of the Part 70 permit the permittee seeks to modify may be enforced against it.

Rule 26.1008 Group processing of minor permit modifications

The Division may process multiple applications for different minor permit modifications as a single minor permit modification if the group of multiple minor permit modification applications as a whole meets the eligibility requirements of Rule 26.1002.

Rule 26.1009 Permit shield not applicable to minor permit modifications

The permit shield under Chapter 7 of Rule 26 does not extend to minor permit modifications.

Rule 26.1010 Significant modification procedures

Significant modifications involving the procedures of Chapter 6 of Rule 26 shall be used if the permit modification:

(A) Involves new applicable requirements;

(B) Is a Title I modification;

(C) Involves significant changes to existing monitoring, reporting, or recordkeeping requirements in the Part 70 permit;

(D) Requires or changes a case-by-case determination of an emission limitation or other standard*,* or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(E) Involves an increase in federally regulated air pollutant emissions that cannot be processed under the procedures in Rule 26.1002 through Rule 26.1009

(F) Seeks to establish or change a term or condition in the Part 70 permit 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 Title I modification; and

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Clean Air Act.

 Rule 26.1011 Reopening for cause by the Division

(A) Each issued Part 70 permit shall include provisions specifying the conditions under which the Part 70 permit will be reopened prior to the expiration of the Part 70 permit. A Part 70 permit shall be reopened and revised under any of the following circumstances:

* 1. Additional applicable requirements under the Clean Air Act become applicable to a major Part 70 source with a remaining Part 70 permit term of three (3) or more years. The Division shall complete the reopening no later than eighteen (18) months after promulgation of the applicable requirement. The reopening is not required if the effective date of the requirement is later than the date on which the Part 70 permit is due to expire, unless the original Part 70 permit or any of its terms and conditions has been extended due to failure of the Division to take action on a renewal permit;
	2. Additional requirements (including excess emissions requirements) become applicable to an acid rain source under the Acid Rain Program. Upon approval by EPA, the Division shall deem excess emissions offset plans to be incorporated into the Part 70 permit;
	3. The Division 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. EPA or the Division 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 as apply to initial permit issuance and shall affect only those parts of the Part 70 permit for which cause to reopen exists. The Division shall make the reopening as expeditiously as practicable.

(C) If reopening is required, the Division shall provide a notice of intent to reopen the Part 70 permit to the permittee of the Part 70 source at least 30 days in advance of the date that the Part 70 permit is to be reopened, except that the Division may provide a shorter time period in the case of an emergency.

Rule 26.1012 Reopenings for cause by EPA

(A) If EPA finds that cause exists to terminate, modify, or revoke and reissue a Part 70 permit, EPA shall notify the Division and the permittee of the finding in writing.

(B) The Division 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. EPA may extend this ninety (90) day period for an additional ninety (90) days if EPA finds that a new or revised Part 70 permit application is necessary or that the Division must require 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 Division shall have 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 EPA’s objection.

(E) If the Department fails to submit a proposed determination pursuant to this subsection, or fails to resolve any objection pursuant to this subsection, the Administrator will terminate, modify, or revoke and reissue the permit after the following actions:

(1) Providing at least thirty (30) days’ notice to the permittee in writing of the reasons for any such action.

(2) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

Rule 26.1013 Part 70 Permit flexibility

1. The Division may grant an extension to any testing, compliance or other dates in a Part 70 permit. No extensions shall be authorized until the permittee of the Part 70 source receives written approval from the Division. The Division may grant the request, at its discretion, in the following circumstances:

The permittee of the Part 70 source makes a request in writing at least fifteen (15) days in advance of the deadline specified in the Part 70 permit;

The extension does not violate a federal requirement;

The permittee of the Part 70 source demonstrates the need for the extension; and

The permittee of the Part 70 source documents that all reasonable measures have been taken to meet the current deadline and documents reasons the current deadline cannot be met.

1. The Division may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement, or other limit in a Part 70 permit. The requested activities shall not be authorized until the permittee of the Part 70 source receives written approval from the Division. The Division may grant such a request, at its discretion, in the following circumstances:
	1. The permittee of the Part 70 source 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 limit in the 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 conditions of air pollution as defined in Chapter 2 of Rule 18;
	5. The request contains the information necessary for the Division to evaluate the request, including but not limited to, quantification of emissions and the date and time 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 Rule 19, one (1) ton of any single hazardous air pollutant and two and one-half (2.5) tons of total hazardous air pollutants; and
	7. The permittee of the Part 70 source maintains records of the dates and results of the temporary emissions and/or testing.
2. The Division may grant a request to allow an alternative to the monitoring specified in a Part 70 permit. Requested activities shall not be authorized until the permittee of the Part 70 source receives written approval from the Division. The Division may grant the request, at its discretion, in the following circumstances:

The permittee of the Part 70 source 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 Part 70 source;

The request does not violate a federal requirement;

The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the Part 70 permit; and

The permittee shall incorporate any request, if approved by the Division under Rule 26.1013(C), into the next permit modification application for the Part 70 source.

CHAPTER 11: Part 70 PERMIT FEES

Rule 26.1101 Fee requirement

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 State’s Part 70 program costs. The Division shall ensure that any fee required by Rule 26 will be used solely for Part 70 program costs.

Rule 26.1102 Fee schedule

The fee schedule for Part 70 permits is contained in Rule 9.

CHAPTER 12: ACID RAIN SOURCES PROVISIONS

 Rule 26.1201 Purpose

The purpose of this Chapter is to ensure that acid rain sources located within the state are permitted in accordance with the regulations promulgated pursuant to Title IV of the Clean Air Act.

 Rule 26.1202 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) for purposes of implementing an Acid Rain Program that meets the requirements of Title IV of the Clean Air Act. The term “permitting authority” shall mean the Division, 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 Rule 26, the Part 72 or 76 provisions and requirements shall apply and take precedence.

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CHAPTER 13: Reserved

 Rule 26.1301 Reserved