

PROPOSED RULES OR REGULATIONS
EO 05-04 and Act 143 of 2007: Regulatory Flexibility

Department: Arkansas Department of Environmental Quality
Division: Air Division
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Title or Subject: Arkansas Pollution Control and Ecology Commission Regulation Number 9

Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

Under current proposed changes to Regulation Numbers 18, 19, and 26, greenhouse gases, including carbon dioxide and methane, will be permitted. Greenhouse gas is the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Carbon dioxide is a new pollutant and the Department does not believe there is a need to assess a fee for this pollutant at this time. The majority of the components of GHG are already permitted if emitted by a major source. More specifically, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are all currently permitted as necessary. The proposed changes to Regulation Number 9 are needed to prevent collection of permitting fees that will result when carbon dioxide and methane are permitted under Regulation Numbers 18, 19, and 26. Carbon dioxide and methane are by far the most common and abundant components of GHG. The amount of fees for facilities could drastically increase once the proposed changes needed to permit carbon dioxide and methane under Regulation Numbers 18, 19, and 26 become final.

In addition, this proposed change is needed to codify into regulation ADEQ practices. The Department does not currently include methane emissions in permits and likewise does not charge for methane emissions. The decision to not charge for methane emissions was made in 1998. Nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are regulated in Arkansas and will continue to be assessed current fees.

2. What are the top three benefits of the proposed rule or regulation?
 - (i) *The proposed amendments to the regulation will eliminate inordinately costly fees that would otherwise go into effect with the permitting of carbon dioxide and methane.*
 - (ii) *The proposed amendments will ensure Arkansas facilities are not put at a disadvantage with respect to surrounding states.*
 - (iii) *The proposed amendments will provide for a smooth transition of carbon dioxide and methane into ADEQ's air permitting system at no cost to facilities.*

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

By taking no action, facilities permitted for carbon dioxide and methane emissions would be subject to a large increase in permitting fees under the current fee structure in comparison to other components of greenhouse gases assessed permitting fees. Both carbon dioxide and methane are emitted in higher volumes than other pollutants included in these fees.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.

There are no known market-based alternatives or voluntary standards that can be considered in place of the proposed amendments to Regulation Number 9.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of collecting information, completing paperwork, filing recordkeeping, auditing and inspecting associated with this new rule or regulation.

The costs of the proposed amendments to Regulation Number 9 to the state government are presumed to be minimal. The costs associated with Regulation 9 will be those of completing a proposed rulemaking.

6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.

The proposed amendments will not create any new compliance requirements for small businesses. ADEQ estimates that no small businesses will be affected.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

The proposed amendments will not create any barriers to entry.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

The proposed amendments will not create any new compliance requirements for small businesses.

9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.

The proposed regulation does not contain different requirements for different sized entities. This regulation deals with excluding two pollutants from being chargeable emissions. These two pollutants are excluded from air permit fees, regardless of the size of the permitted entity.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

The proposed amendments do not create any new compliance requirements for small businesses. Accordingly, there are no changes that small businesses will need to implement.

11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?

Federal law requires that states implementing the federal Clean Air Act implement a permit fee system that is capable of supporting the state permitting process and establishing a default price in the event that a state cannot demonstrate the adequacy of its fee structure. The permit fees under this system vary from state to state depending on a number of factors, with the common factor being the federal requirement that the permit fees be adequate to operate the state permitting program.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

ADEQ has not received any input from small businesses or small business advocates at this time.