

TO: Legislative Council

FROM: Mike Bates, Chief, Air Division, Arkansas Department of Environmental Quality

DATE: March 30, 2009

SUBJECT: Regulation 19 Revisions, Regulations of the Arkansas Plan of Implementation for Air Pollution Control

ADEQ proposes these revisions to Regulation 19 by revising Chapter 14 to address the State's obligations as part of the Clean Air Interstate Rule (CAIR). Chapter 14 of Regulation 19, CAIR NO_x Ozone Season Trading Program General Provisions, controls the interstate transport of NO_x emitted by fossil-fuel fired Electric Generating Units by creating an interstate cap and trade program. Much of the federal program was incorporated by reference. This action will incorporate changes made by the United States Environmental Protection Agency (EPA) and correct an abbreviation.

However, since these revisions were proposed, Regulation 19 has undergone a separate rulemaking process, including a public review process. These proposed revisions and the finalized rulemaking do not affect one another. The separate rulemaking process was initiated on June 13, 2008, and the rule was finalized by the Arkansas Pollution Control and Ecology Commission on December 5, 2008. There is no effect of the CAIR changes on the previously completed rulemaking. For clarity, we have combined the proposed changes with the finalized version of Regulation 19.

On October 19, 2007, the EPA modified portions of CAIR that were previously incorporated by reference into Chapter 14 of Regulation 19. The Department is proposing this rulemaking primarily so the provisions of Regulation 19 conform to this change. EPA has revised the calculation methodology for the efficiency standard in the cogeneration unit definition to exclude energy input from biomass making it more likely that units co-firing biomass will be able to meet the efficiency standard and qualify for an exemption to CAIR. The changes also include a new definition of "biomass," modifying the definitions of "cogeneration unit" and "total energy input" and clarifying the definition of "permitting authority." These changes were required to be made in all CAIR affected states by January 1, 2009; however, uncertainty caused by federal court actions delayed ADEQ's attempt to finalize incorporation of these changes.

In addition to this change, the abbreviation "MW" (megawatt), that is used in Reg. 19.1404, will be corrected to "MWh" (megawatt hour) to match the one used in sections that were incorporated by reference.

These revisions were proposed on May 22, 2008, and the public comment period for this regulation revision closed on July 11, 2008. The EPA submitted the only comment on this rulemaking and it was supportive; therefore, no changes have been made in response to comments received and a revised financial impact statement is not required.