

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

Department: Arkansas Department of Environmental Quality (“ADEQ”)

Division: Air Division

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Title or Subject: Arkansas Pollution Control and Ecology Commission Regulation No. 19

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.

The proposed changes are needed to comply with current federal regulations on the National Ambient Air Quality Standards (“NAAQS”) and to update the Arkansas Pollution Control and Ecology Commission’s Regulations to correspond with federal regulations. Complaints have not motivated ADEQ to pursue regulatory action. Compliance with federal regulation has been the motivating factor for these changes. Under the Clean Air Act (“CAA”), the United States Environmental Protection Agency (“EPA”) is required to set national air quality standards for criteria pollutants. The law also requires EPA to periodically review the standards. In October 2006, EPA revised the 24-hour PM_{2.5} primary and secondary NAAQS from 65 micrograms per cubic meter (µg/m³) to 35µg/m³. Also, in October 2006, EPA revoked the annual standard for PM₁₀ and retained the 24-hour primary and secondary NAAQS standards of 150 µg/m³. In March 2008, EPA revised the 8-hour ozone NAAQS standard from 0.08 parts per million (ppm) to 0.075 ppm. In November 2008, EPA revised the lead NAAQS standard from a calendar quarter average of 1.5 µg/m³ to a rolling three month average of 0.15 µg/m³. In June 2010, EPA retained the secondary 3-hour NAAQS standard of 0.5 ppm for sulfur dioxide, and added a 1-hour standard of 75 ppb. In February 2010, EPA added for nitrogen dioxide a primary 1-hour NAAQS standard of 100 ppb and retained the primary and secondary annual standards of 53 ppb. The proposed amendments to Regulation No. 19 will enable Arkansas to permit emission sources in a way that is protective of the current NAAQS. Adoption of this proposed rulemaking will satisfy requirements under Section 110 of the CAA which requires that each state provide for implementation, maintenance, and enforcement of NAAQS within the State. Section 161 of the CAA also requires that state implementation plans contain provisions to prevent significant deterioration of air quality in areas of the state designated as “attainment” or “unclassifiable” for each NAAQS. On March 12, 2012, EPA proposed to amend the definition of “Regulated New Source Review Pollutant” to clarify when condensable particulate matter should be measured for purposes of New Source Review (NSR) permitting. This proposed action, if finalized by EPA, will be beneficial to facilities in Arkansas because it would correct an inadvertent error made in 2008 when the EPA issued its final rule to implement the NSR program for PM_{2.5}. The change imposed an unintended new requirement on state agencies and the regulated community. If finalized by EPA, this revision would reestablish the interpretation that for measurement of “particulate matter emissions,” in the context of the PSD and NSR regulations, there is

no explicit requirement to include measurement of condensable PM emissions, except for PM₁₀ and PM_{2.5}. Therefore, ADEQ is proposing to include EPA's proposed rule in the event it is finalized before the end of the public comment period for the Regulation No. 19 proposed rulemaking.

2. What are the top three benefits of the proposed rule or regulation?

(i) The substantive proposed changes to Regulation No. 19 will allow ADEQ to comply with the CAA.

(ii) The substantive proposed changes will enable Arkansas to be in alignment with current federal rules and enable ADEQ's permitting process to flow more smoothly for the Department and permitted sources.

(iii) The substantive changes provide for ADEQ to retain federal program approval.

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

By taking no action, Arkansas would not be able to permit for PM_{2.5} and implement the NAAQS. In addition, Arkansas's regulations would be less stringent than current federal rules, opening Arkansas up to lawsuits and giving EPA cause to place Arkansas under a Federal Implementation Plan and directly implementing permitting and other activities associated with air pollution control programs.

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 No. 19.

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 No. 19 to the state government are presumed to be minimal.

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. The Arkansas air pollution control regulations are primarily based on the volume of various air pollutants emitted, not the size of the emitting facility.

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?

This proposed rule will enable Arkansas to provide equivalent state regulation to that at the federal level. The proposed rule allows the revised NAAQS to be properly implemented under Arkansas Regulations.

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.