BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO REGULATION NO. 19, REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL	))))	**DOCKET NO. 12-010-R**

RESPONSIVE SUMMARY FOR REGULATION NO. 19, REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL

Pursuant to Arkansas Code Annotated (Ark. Code Ann.) § 8-4-202(d)(4)(C) and Regulation[1] No. 8.815, the Arkansas Pollution Control and Ecology Commission (Commission, APC&EC) shall cause to be prepared a responsive summary, which groups public comments into similar categories and explains why the Commenters' rationale for each category is accepted or rejected.

On September 14, 2012, the Arkansas Department of Environmental Quality (Department, ADEQ) filed a Petition to Initiate Rulemaking to Amend Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control. Commissioner Joseph Bates conducted a public hearing on November 13, 2012, and the public comment period was extended through December 19, 2012. The following is a summary of the comments regarding the proposed amendments to Regulation No. 19 along with the Commission's response.

Comment 1: The Commenter supports the Department's proposed revisions to Regulation No. 19 that exempts the solvent Dimethyl Carbonate as a Volatile Organic Compound (VOC) in the state and believes the change will allow Arkansas business a greater degree of flexibility in meeting more stringent VOC restrictions moving forward.

Response: ADEQ acknowledges and appreciates this Comment. However, due to industry concerns with the implementation of the originally initiated revisions proposed in this

[1] All citations of and references to state environmental regulations contained in this document signify those regulations promulgated by the Arkansas Pollution Control and Ecology Commission.

rulemaking, ADEQ is moving forward to adopt only the initiated revisions that are necessary to retain permitting authority for the Major NSR/PSD program in Arkansas, and Appendix B has been revised accordingly. The Department will revisit withdrawn portions of the proposed rule through future rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 2: ADEQ confirms that the United States Environmental Protection Agency's (EPA) final rule containing the definition of "regulated NSR pollutant" under the New Source Review (NSR) program regarding emission of condensable particulate matter (CPM) was published on October 25, 2012 (77 Fed. Reg. 65107).

Response: The portion of the proposed rule regarding the definition of "Regulated NSR Pollutant" initiated by the Commission on September 28, 2012, was largely verbatim language incorporated under Reg. No. 19.903(B)(1)(a) through (d) and Reg. No. 19.903(B)(6) from the federal proposed rule. The federal regulation had not been promulgated in final form at the time of initiation of the revisions for the present rulemaking. However, the federal proposed rule was finalized, without change, as noted in the Comment. ADEQ will keep the proposed revisions incorporated under Reg. No. 19.903(B)(1)(a) through (d) and Reg. No. 19.903(B)(6) based on EPA's final rule. ADEQ proposed language that differs from the federal definition of "regulated NSR pollutant" under Reg. No. 19.903(B)(1) through (4) is to clarify that this section includes any pollutant subject to any standard promulgated under Section 111 of the Act, and that any or all hazardous air pollutants either listed in Section 112 or added to the list pursuant to Section 112(b)(2) of the Act are not included, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act as of July 27, 2012.

No revisions to the final rule are necessary due to this Comment.

Comment 3: ADEQ pointed out that the correct date for the initiation listed in Reg. No. 19.903(B)(6) is September 28, 2012, and should replace the incorrect date currently listed (August 24, 2012).

Response: ADEQ will correct the date for the initiation listed in Reg. No. 19.903(B)(6) and replace it with September 28, 2012.

Comment 4: EPA is supportive of this proposed rulemaking effort and is greatly appreciative of the extended comment period. EPA also believes ADEQ is actively taking steps to promulgate and submit rules as revisions to the Arkansas State Implementation Plan (SIP) to meet these important requirements for public health protection.

Response: ADEQ acknowledges and appreciates this Comment. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 5: The Commenter states that the proposed Regulation No. 19, dated September 14, 2012, is a redlined version of an outdated rule which was superseded when a newer version of Regulation No. 19 became final on October 26, 2012. The Commenter states the current Regulation No. 19 which is being proposed is not redlined against the most current version of Regulation No. 19 and "ADEQ should carefully review its proposed NAAQS [National Ambient Air Quality Standards] sweep revisions against the most current version of Regulation No. 19 to be sure that its proposal does not create any inconsistencies or other issues, and to be sure that whatever version is proposed to the Commission for final adoption includes changes which were finalized as part of Regulation No. 19 on October 26, 2012. The Commenter believes to have the right to provide additional comment once ADEQ applies its proposed changes to the proper (current) version of Regulation No. 19.

Response: When ADEQ prepared the initial draft of the proposed revisions to Regulation No. 19, it was based on the Regulation that was in effect at the time of initiation (September 2012). Rulemakings are initiated for a host of reasons by ADEQ or third parties at any time during any given year. ADEQ will incorporate any adopted revisions made to Regulation No. 19 from previous rulemakings before presenting the final revised regulation to the Commission for final promulgation.

The two revisions adopted in Regulation No. 19, between the dates this rulemaking was initiated and the public comment period began (the Greenhouse Gases [GHG] biomass deferral and GHG Plantwide Applicability Limits [PALs] rulemakings), do not have a bearing on the context or effectiveness of the language proposed in this revision. Such revision was the insertion of the "biomass deferral" clause, allowing sources to defer carbon dioxide (CO_2) permitting for emissions from the use of biogenic materials for fuel. The other revision involved only the movement of a previously adopted "Rescission Clause" to the Severability section of Regulation No. 19.

ADEQ does not agree that the Commenter has the right to provide additional Comments for consideration on these proposed revisions once incorporated to the final revised version of Regulation No. 19 because comment periods to address all previous and currently proposed revisions to Regulation No. 19 have been made available to the public as prescribed by law (Reg. Nos. 8.805 and 8.806, "Administrative Procedures").

No revisions to the final rule are necessary due to this Comment.

Comment 6: The Commenter suggests that the proposed language to Reg. No. 19.904(B) be amended as it provides "exclusions from the consumption of increments, as provided in 40 C.F.R § 51.166(f)(1)(iii) as of November 29, 2005..." The Commenter points out that the language within this reference omits the exclusion for the "routine maintenance, repair and replacement" in Reg. No. 19.903(C) (which in the proposed revision, becomes (D)), and recommends that the revision be amended to reference that exclusion.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 7: EPA states that the proposed definition of "Regulated NSR Pollutant" at Reg. No. 19.903(B)(2) includes an incorporation by reference date of July 27, 2012, for any pollutant that is subject to any standard promulgated under Section 111. EPA advises that ADEQ will need to monitor all future rulemakings for Section 111 so this incorporation by reference date can be updated appropriately.

Response: ADEQ acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 8: Commenters state that ADEQ's formal rejection of the federal definition of "regulated NSR pollutant" in the proposed revisions to Reg. No. 19.903(B) and the exclusion of the definition of "subject to regulation" in Reg. No. 19.904(A) circumvents EPA's interpretation of "subject to regulation;" thus, Commenters state it is broader than the federal definition by encompassing pollutants that are subject to monitoring and reporting requirements under the Act, not just pollutants subject to control under the Act. Commenters believe that ADEQ's proposed definition of "Regulated NSR Pollutant" on Reg. No. 19.903(B) and the exclusion of the federal definition of "subject to regulation" in Reg. No. 19.904(A) will include any pollutant regulated under the Clean Air Act (C.A.A., the Act), including those listed under Title I and Title III, and will cause such pollutant to be a regulated NSR pollutant under Regulation No. 19, thus requiring a Prevention of Significant Deterioration (PSD) analysis for that pollutant under Arkansas regulation. Commenters state that exclusion of the federal definition of "subject to regulation" in the proposed revisions in Reg. No. 19.903 and the exclusion of the federal definition in Reg. No. 19.904 will result in excessive burden and confusion among the regulated community, uncertainties of which pollutants are being regulated and discrepancies between the federal and state air regulations.

Commenters suggest that revisions to Reg. No. 19.904(A) include the federal definition of "subject to regulation" and that revisions to Reg. No. 19.903(B) adopt the federal definition of "regulated NSR pollutant." Commenters believe that doing this will cause Arkansas's air regulations to be consistent with federal air regulations in this respect, and obviate the need for ADEQ's proposed addition of the definition of "Regulated NSR Pollutant" in Reg. No. 19.903.

Response: The Department has addressed the Commenters' concerns regarding "subject to regulation" by adding a definition of the term at Reg. No. 19.903(C).

Comment 9: Commenters believe ADEQ's proposal to adopt EPA's recent clarification to the definition of "regulated NSR pollutant" in Reg. No. 19.903(B) to exclude condensable particulate matter prior to certain date creates a discrepancy with the federal PSD program. Commenters state that although EPA's choice to place the definition of "regulated NSR pollutant" in 40 CFR § 52.21(b)(50) to clarify the condensable particulate matter issue may have been convenient, the location at Reg. No. 19.903(B) chosen by ADEQ is not a suitable place for the definition.

Commenters explain that EPA's "regulated NSR pollutant" definition in 40 CFR § 52.21(b)(50) incorporates the "subject to regulation" definition in 40 CFR § 52.21(b)(49), but ADEQ's incorporation by reference at 40 CFR § 52.21(b) as of November 29, 2005, excludes "subject to regulation" definition at § 52.21(b)(49) because on that date the this definition was not included. Commenters also believe the proposed exclusion of § 52.21(b)(49) is especially confusing in light of the effective date tied to the federal regulation (November 29, 2005). Commenters point out that "as of November 29, 2005, § 52.21(b)(49) was 'reserved,'" thus, "it is paradoxical to specifically exclude from state regulation a nonexistent federal regulation and definition." Commenters also state that "ADEQ's proposed definition of 'regulated NSR pollutant' in Reg. No. 19.903 forecloses the narrower federal definition specifically endorsed and adopted by EPA."

Commenters propose ADEQ adopt the federal definition of "subject to regulation" with a date certain, such as the date of initiation of the rulemaking (September 28, 2012), which would also ensure that all elements of the GHG Tailoring Rule are properly reflected in Arkansas's air regulations. Commenters give an alternative ("but less desirable") suggestion: "adopt a revision to the regulation in which the first part of the federal definition is used in lieu of the proposed text (i.e., the definition leading up to but not including (i)-(iv), which is the GHG program)."

Commenters state that, in the event the Commission rejects these suggestions, "it should at a minimum change 'for purposes of this section' to 'for purposes of this chapter' in Regulation 19.903(B), and should use September 28, 2012...rather than August 24, 2012."

One Commenter states also that the definition of "reasonable possibility" [found at 52.21(r)(6)(vi)] is not incorporated into Arkansas's rules under the November 2005 reference date. The Commenter believes that, because ADEQ is establishing permit conditions based on the "reasonable possibility" provisions and does so without the current federal definition, Arkansas's rules are more stringent than federal rule and suggests ADEQ update the incorporation by reference date (or explain why it cannot be updated).

Response: The Department has addressed the Commenters' concerns regarding "subject to regulation" by adding a definition of the term at Reg. No. 19.903(C).

Regarding the inclusion of the "reasonable possibility" provisions, this Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. However, the Department may consider the inclusion of the "reasonable possibility" provisions in a future rulemaking.

ADEQ also agrees with Commenters' suggestions at Reg. No 19.903(B) to replace "section" with "chapter," to clarify application of the language and will also include this replacement at Reg. No. 19.903(B)(6), as well as replace the August 24, 2012, incorporation by reference date with September 28, 2012, to comply with EPA's PSD rules.

See also Responses to Comments 8, 11, and 14.

Comment 10: EPA states that proposed revisions to Reg. No. 19.903(B) include the Arkansas definition of "regulated NSR pollutant" that identifies $PM_{2.5}$ and its precursors as regulated NSR pollutants and establishes requirements for condensables. EPA notes that ADEQ has not addressed the significant emission rates (SERs) for $PM_{2.5}$ or its precursors in the PSD program incorporation by reference date. EPA advises ADEQ this requirement can be addressed by ensuring that Reg. No. 19.904(A) incorporate by reference 40 CFR § 52.21(b)(23) as promulgated on May 16, 2008, effective July 15, 2008, at the earliest.

Response: ADEQ will include 40 CFR § 52.21(b)(23), as of May 16, 2008, which addresses SERs for $PM_{2.5}$ and its precursors in the PSD program at Reg. No. 19.904(A).

Comment 11: EPA explains that to fully adopt the $PM_{2.5}$ PSD regulations consistent with EPA's intent and the requirements under section 116(a) of the Act, ADEQ must ensure that the Arkansas PSD program incorporates by reference the $PM_{2.5}$ increments at 40 CFR § 52.21(c) as promulgated on October 20, 2010, effective December 20, 2010. Additionally, EPA advises that the Arkansas PSD program must incorporate by reference the supporting definition changes to *Major Source Baseline Date* at 40 CFR § 52.21(b)(14)(i), *Minor Source Baseline* at 40 CFR §

52.21(b)(14)(ii), and *Baseline Area* 40 CFR § 52.21(b)(15). EPA further advises that *the Source Impact Analysis Requirements at* 40 CFR § 52.21(k)(1), and the Requirements for Sources Impacting Federal Class I areas at 40 CFR § 52.21(p) are also required elements involving $PM_{2.5}$ increments and must be updated through incorporation by reference date promulgated on October 20, 2010, effective December 20, 2010.

Response: ADEQ agrees with the Commenter, and at Reg. No. 19.904 will incorporate by reference as of October 20, 2010, the following sections:

- 40 CFR § 52.21(b)(14)(i)
- 40 CFR § 52.21(b)(14)(ii)
- 40 CFR § 52.21(b)(15)
- 40 CFR § 52.21(c)
- 40 CFR § 52.21(k)(1)
- 40 CFR § 52.21(p)

Additionally, as logical outgrowth of these additions, ADEQ proposes to adopt at Reg. No. 19.904, 40 CFR § 52.21(b)(14)(iii) as of October 20, 2010, and 40 CFR § 52.21(i)(5)(ii) and (iii) as of May 16, 2008, federal PSD provisions which are supportive of the above additions.

See also Response to Comment 1.

Comment 12: Commenters believe ADEQ's exclusion of the federal definition of "subject to regulation" in the proposed revision would make it more difficult for ADEQ to adopt the flexible approach to GHG PSD permitting that EPA recently adopted in its GHG Tailoring Rule Step 3, which causes some sources permitted as a *minor* source for PSD under federal air regulations to be categorized as a *major* source under state regulations due solely to CO_2e emissions. "That rule adds a 'plantwide applicability limit' approach through a revision of the definition of 'subject to regulation.'" Commenters also state that "EPA's July 2012 revision to the definition of 'subject to regulation' in 40 CFR § 52.21(b)(49) provides that GHG emissions from a stationary source shall not be subject to regulation if the source maintains its total source-wide emissions below the GHG PAL level and meets other specified requirements" (77 Fed. Reg. 41051). Commenters suggest the Commission either adopt the federal definition of "subject to regulation" or change the incorporation by reference date in Reg. Nos. 19.903(C) and 19.904(A), and delete Reg. No. 19.904(G), as it is unnecessary in their opinion. Commenters conclude that without the PAL provision, Arkansas rules are more stringent than the federal rules and require the Commission complete an economic impact and environmental benefit analysis as part of this rulemaking.

Response: See Responses to Comments 5 and 8.

Comment 13: Commenters suggest it may be beneficial at this time for ADEQ to simply incorporate by reference the federal PSD regulations as of date certain on Regulation No. 19, Chapter 9, thus eliminating the need to revise definitions and minimizing potential conflicts between state and federal language and requirements.

Commenters state: "ADEQ is proposing to add a definition for 'Regulated NSR Pollutant' to maintain consistency with the Federal NSR rule in 40 CFR Parts 51 and 52. The added definition is copied almost exactly from the definition in 40 CFR § 52.21(b)(50). However, ADEQ has failed to include a definition of 'subject to regulation,' an important term which appears in the definition of 'Regulated NSR Pollutant.'" Therefore, Commenters suggest the following revision to Reg. No. 19.903:

"(4) Any pollutant that otherwise is subject to regulation under the Act on May 12, 2010."

Commenters state that the federal rules at 40 CFR § 52.21(b)(49) provide a specific definition for "subject to regulation. Without this specificity in the Arkansas rules, Commenters are concerned that the Arkansas rules could conflict and/or be more stringent than federal rules.

In Reg. No. 19.903(B), Commenters state that through the incorporation of "regulated NSR pollutant," along with the proposed changes to Chapter 2 of Regulation No. 19, ADEQ is officially adopting $PM_{2.5}$ as a "regulated NSR pollutant" in Arkansas. However, Commenters believe ADEQ's proposal fails to adopt the necessary structural components of the PSD permitting program for $PM_{2.5}$, which includes major source threshold, SER, Significant Impact Level (SIL), Significant Monitoring Concentration (SMC), and ambient air increment values for $PM_{2.5}$. Commenters believe that failure to adopt a SER for $PM_{2.5}$ results in a PSD permitting program that is significantly more stringent than that required by federal law. Commenters state that in the absence of a defined SER for $PM_{2.5}$, 40 CFR § 52.21(b)(23)(ii), as adopted by ADEQ in Reg. No. 19.903(C), defines any net increase in $PM_{2.5}$ emissions as "significant," thus subjecting such an increase to all applicable requirements of the PSD permitting program. Commenters believe that this problem arises due to ADEQ's incorporation by reference, in Reg. Nos. 19.903(C) and 19.904(A), of the majority of the federal PSD program codified in 40 CFR § 52.21 as of November 29, 2005. The structural components were incorporated into 40 CFR § 52.21 by EPA via a final rule published in the Federal Register on May 16, 2008. Therefore, Commenters request that ADEQ adopt the applicable provisions of 40 CFR § 52.21 as of a date subsequent to May 16, 2008, or specifically incorporate into Regulation No. 19, Chapter 9, all provisions necessary to implement the PSD permitting program for $PM_{2.5}$.

Response: ADEQ has addressed issues raised in this Comment in previous Responses. ADEQ agrees that in Regulation No. 19 several incorporated sections of 40 CFR § 52.21 must be

updated so that all necessary elements of the PSD permitting program are in place as outlined by EPA.

See also Responses to Comments 8, 10, 11, and 14.

Comment 14: EPA states that Arkansas has incorporated by reference the federal PSD requirements at 40 CFR § 52.21, except as noted in Reg. No. 19.904, and for the Arkansas PSD program to incorporate all necessary elements, the incorporation by reference date must include EPA's final rules "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)" (73 Fed. Reg. 28321, May 16, 2008) and "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$) - Increments, SILs and Significant Monitoring Concentration (SMC)" (75 Fed. Reg. 64864, October 20, 2010). Therefore, EPA states Arkansas PSD program's date of incorporation by reference must be corrected in the proposed revisions at Reg. No. 19.903(C) and throughout Reg. No. 19.904.

Response: In Reg. No. 19.903(C) (now "(D)"), the incorporation by reference date for 40 CFR § 51.301 and 40 CFR § 52.21(b) will be updated to October 20, 2010.

See also Responses to Comments 8 and 11.

Comment 15: EPA explains that $PM_{2.5}$ SILs and SMCs are discretionary elements that states can adopt as screening tools, but that $PM_{2.5}$ SILs and SMCs for PSD purposes is currently subject to litigation. Thus, EPA states that the outcome of this litigation could affect EPA's ability to approve these provisions into the Arkansas PSD SIP in the future. EPA recognizes the regulatory text adopted in 40 CFR §§ 51.166(k)(2) and 52.21(k)(2) does not reflect accurately EPA's intent, since it does not afford permitting authorities sufficient discretion to deny sources use of the SILs where their use would lead to violation of NAAQS. Therefore, EPA believes it would be in ADEQ's best interest to not include 40 CFR § 51.166(k)(2) in the state PSD program through incorporation by reference. EPA recognizes that Arkansas PSD program already relies on EPA's SILs for other criteria pollutants through the air permitting and modeling guidance. EPA will continue to rely on 40 CFR § 51.165(b) to reaffirm its authority to promulgate and implement the $PM_{2.5}$ SILs and encourages ADEQ to consider adopting these provisions into the state PSD program. If ADEQ chooses to include $PM_{2.5}$ SMCs in the Arkansas PSD program, then the incorporation by reference should include 40 CFR § 52.21(i)(5) as promulgated on October 20, 2010, effective December 20, 2010.

Response: On January 22, 2013, the U.S. Court of Appeals vacated and remanded 40 CFR §§ 51.166(k)(2) and 52.21(k)(2) – based on EPA's lack of authority (to allow state permitting authorities) to automatically exempt sources from the required air quality analysis with projected

impacts below SILs. The Court upheld parts of EPA's rule codifying $PM_{2.5}$ SILs in 40 CFR § 51.165(b)(2). The Court vacated the parts of EPA's rule establishing a $PM_{2.5}$ SMC because doing so exceeded EPA's statutory authority. The $PM_{2.5}$ proposed revisions to Regulation No. 19 that are a part of this rulemaking do not include references to the sections (or within a range of the sections) which were affected by the vacated rules.

No revisions to the final rule are necessary due to this Comment.

Comment 16: The Commenter believes Reg. No. 19.502 does not impose any requirements with respect to routine or *de minimis* permitting. The Commenter believes that Reg. No. 19.502 does not provide a basis for applying NAAQS directly to facilities through routine permitting or modeling and, like Reg. No. 19.402, applies only to permits to "construct" or "modify."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 17: Commenters state that ADEQ should not interpret Reg. No. 19.302 as requiring non-PSD permit applicants to measure the facility's emissions against the NAAQS without a duly promulgated SIP. Commenters state that Reg. No. 19.302 does not task ADEQ with ensuring that the NAAQS are not exceeded at compliance points established under EPA-approved models, and does not compel facility-level implementation of the revised NAAQS through routine permitting. Commenters state that, in response to previous permit applicants' requests, "ADEQ justifies implementing the NAAQS at the individual permit level through the Modeling Protocol because Regulation 19.302 obligates ADEQ to ensure that NAAQS are not exceeded at compliance points established under EPA-approved models." However, Commenters do not agree with this interpretation, stating that Reg. No. 19.302 does not task ADEQ with ensuring that the NAAQS are not exceeded. Commenters state the only provision in Reg. No. 19.302 concerning 'computer modeling' obligates ADEQ to perform modeling for areas that can reasonably be expected to be in excess of the NAAQS. One Commenter also pointed out "ADEQ has also stated that non-PSD Title V permit applicants are required to model source emissions against the NAAQS because NAAQS are 'applicable requirements' under Regulation 19." However, Commenters do not agree that Regulation No. 19 establishes NAAQS as "applicable requirements" because under Regulation No. 19 NAAQS compliance is not a source-specific obligation for any type of source. One Commenter explains "EPA has consistently stated that NAAQS themselves are not applicable requirements, and that applicable requirements are merely the methods employed by the state to comply with the NAAQS."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

Comment 18: Commenters state that ADEQ and the Commission should engage in the required SIP development process in order to implement the new and revised NAAQS. Commenters believe ADEQ should issue a clarification that the new NAAQS will not be applicable to individual stationary sources, either as limitations on emissions or applicable requirements, and that modeling of the new NAAQS is not required on a routine basis except where a PSD permit is required.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

Comment 19: The Commenter states that Reg. No. 19.402 does not obligate facilities to conduct modeling demonstrations with respect to attainment and maintenance of the revised NAAQS as part of routine permitting. The Commenter states that Reg. No. 19.402 does not provide a basis for requiring modeling as a routine requirement for all permits, and was approved by EPA as meeting the federal Minor NSR requirements and quotes the proposed rule issued by EPA (65 Fed. Reg. 26972, May 9, 2000) "The provisions of Regulation No. 19, Chapter 4 apply only to sources which are not 'major' under [the federal C.A.A.] definition." The Commenter, citing EPA Region 6, Technical Support Document, on SIP Actions on the Arkansas SIP submission of Regulation No. 19 (March 22, 2000), points out that major sources must comply with Regulation No. 19, Chapters 9 (PSD) and 11 and Regulation No. 26, and concludes that major sources subject to Regulation No. 26 are, therefore, not subject to Reg. No. 19.402 at all. The Commenter also states that Reg. No. 19.402 only applies to permits to "construct" or "modify" a source, therefore, does not apply to operating permits or renewals whose associated potential emissions increases are reasonably expected to be insignificant or are otherwise under the *de minimis* thresholds listed in Reg. No. 19.407(C)(2).

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 20: The Commenter states "Reg.19.402 does not create an obligation to measure each permit against the NAAQS."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 21: The Commenter states that the paragraph found at Reg. No. 19.903(B)(6) officially begins the era of regulating CPM in Arkansas. Although some sources and permits (PSD permits) have addressed CPM (through the requirement for Method 202 testing), many permitted sources may not have considered CPM. Commenters have several questions on how the transition from regulating only filterable particulate matter to regulating filterable plus CPM will be accomplished, as follows:

a. The reference to CPM only appears in Chapter 9, which could be interpreted to mean that only PSD sources must consider CPM. Is it ADEQ's intent that non-PSD Title V sources and minor sources also address CPM in their minor source and non-PSD Title V permits?

b. If a permittee is applying for an expedited permit modification for a particular project, such as a *de minimis* change or minor modification, will ADEQ require a facility wide re-assessment of $PM_{2.5}$ or CPM at that time, thus delaying issuance of the particular project permit approval?

c. Does ADEQ have a "deadline" in which all permittees will be expected to have updated their permits to explicitly consider $PM_{2.5}$ and/or CPM? For Title V sources, the permit renewal process provides a mechanism for this update.

Response: The definitions of $PM_{2.5}$ include measurements by methods that include CPM. Therefore, CPM will need to be addressed in non-PSD permits as well as PSD permits that include $PM_{2.5}$.

De minimis/Minor Modification changes and administrative amendments to permits will not trigger the requirement to address CPM for sources other than those affected by the De Minimis/minor modification.

There is no deadline for incorporation of CPM. CPM will be added to permits when they are modified or revised, as appropriate. Facility-wide emissions, including CPM, will need to be addressed at permit renewal for Title V sources at the latest and during permit modifications (i.e. permit modifications that are not administrative amendments, De Minimis or minor modifications) for other sources.

No revisions to the final rule are necessary due to this Comment.

Comment 22: The Commenter believes that ADEQ's proposed revisions do not incorporate various changes EPA made at 40 CFR § 52.21, including changes specifically to address $PM_{2.5}$. "EPA has set a 'significance' level of $PM_{2.5}$ at 10 tpy [tons per year] for 'direct $PM_{2.5}$'; has set ambient air increments for $PM_{2.5}$; and has set 'significant impact levels' for $PM_{2.5}$." Therefore, the Commenter states: "under Regulation 19.904(A), Arkansas facilities would be subject to the 2005 language which does not include *any* of these improvements." The Commenter also states the 2005 definition of "significant" does not provide a threshold for $PM_{2.5}$, thus the threshold in Regulation No. 19 "is arguably any net emission increase of $PM_{2.5}$." That result "would likely catch any project with any particulate matter increase, no matter how small, in the web of PSD permitting." The Commenter makes the following suggestion: change the incorporation by reference date in Reg. Nos. 19.903(C) and 19.904(A) from 2005 to September 28, 2012.

Response: ADEQ agrees that in Regulation No. 19 several incorporated sections of 40 CFR § 52.21 must be updated so that all necessary elements of the PSD permitting program are in place.

See also Responses to Comments 10, 11, and 14.

Comment 23: The Commenter points out that the proposed Regulation No. 19 refers frequently to a 10 tpy threshold for $PM_{2.5}$, which is ostensibly based on the federal significance threshold for $PM_{2.5}$. However, the Commenter argues that the "federal regulations are clear to differentiate 'direct' $PM_{2.5}$ from precursors such as sulfur dioxide [SO_2] and nitrogen oxide [NO_2]," and states the text in Regulation No. 19 does not do so. The Commenter suggests the Commission revise Regulation No. 19 text and add the word "direct" before $PM_{2.5}$ in Reg. Nos. 19.401 and 19.407(C).

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 24: EPA states that the proposed definition of "National Ambient Air Quality Standards" or "NAAQS" contained in Regulation No. 19, Chapter 2 and Appendix B (the NAAQS table) includes an incorporation by reference date of July 27, 2012, for any pollutant that is subject to any standard promulgated under 40 CFR Part 50. EPA advises that ADEQ will need to monitor all future rulemakings under 40 CFR Part 50 so that this incorporation by reference date can be updated appropriately.

Response: ADEQ will monitor future rulemakings under 40 CFR Part 50 so that this incorporation by reference date is updated appropriately.

No revisions to the final rule are necessary due to this Comment.

Comment 25: The Commenter suggests an amendment to the proposed language of Reg. No. 19.502(A) to avoid confusion. The Commenter states the proposed amendment should not include the citation with the phrase "Any National Ambient Air Quality Standard (as listed in 40 CFR § 52.21)." Previously, the language included the phrase "or any ambient air increment" before the parenthetical. The Commenter points out that the NAAQS are not listed in CFR § 52.21, but only the ambient air increments are. Thus, the Commenter suggests the text to read as follows:

"(A) Any National Ambient Air Quality Standard ~~(as listed in 40 CFR § 52.21.)~~ as defined herein;"

Response: ADEQ agrees with the Commenter and will revise Reg. No. 19.502(A) as suggested.

Comment 26: The Commenter suggests that Reg. No. 19.502(B) must be amended because there is no "ambient air increment(s) identified in Chapter 9" of Regulation No. 19, and should read as follows:

"(B) Any ambient air increment ~~identified in~~ pursuant to Chapter 9 of this Regulation;"

Response: ADEQ agrees with the Commenter and will revise Reg. No. 19.502(B) as suggested.

Comment 27: The Commenter believes Regulation No. 19 should be amended to provide that existing facilities are not required to perform Tier II testing in connection with a permit renewal with no significant emissions increases. The Commenter believes the modeling requirement by ADEQ is more stringent than federal requirements. The Commenter states the intent of Tier II testing is to determine whether a facility is required to comply with New Source Performance Standards (NSPS), and further Tier II testing should not be required under APC&EC air regulations unless the facility in question reaches a point at which it can test out of NSPS requirements. The Commenter believes "it is unnecessarily cost prohibitive to require a facility to perform Tier II testing when the facility is already, and will continue to be, regulated under NSPS."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 28: Commenters believe ADEQ's Economic Impact Statement (EIS) for the proposed amendments to Regulation No. 19 does not comply with Act 143 of 2007 (Act 143). Commenters state that an EIS must include a number of elements, including an assessment of the types of small businesses that will be affected by the rule and how they will be adversely affected, a reasonable determination of the compliance costs on small business and the implementation costs to ADEQ, and whether there is an alternative less burdensome to accomplish the rule's objectives. In the Commenters' opinion, ADEQ's proposed revision is likely to impose substantial costs on all affected sources, including small business.

Response: ADEQ disagrees with Commenters. When revisions to include the proposed federal definition of "Regulated NSR Pollutant" were first proposed for Regulation No. 19, EPA's proposed revisions to this definition had not become final. Therefore, ADEQ, in the interest of following proper procedure, treated the proposed changes to Regulation No. 19 as "more stringent than federal law," and completed an EIS for the rulemaking. At the time of initiation, this rulemaking was not exempt from requirements under Act 143; however, the federal language was finalized as proposed in Regulation No. 19 prior to the end of the public comment period for Regulation No. 19, causing ADEQ's proposed language to be no "more stringent," and therefore exempt from Act 143 requirements as the proposed revisions codify federal law.

When requesting initiation, the Department responded accordingly using Commission and Legislative approved forms to outline the economic impacts and environmental benefits of proposed rulemakings, and the Department adhered to the elements addressed in the forms. ADEQ asserts that protocol, as found in APC&EC's *Regulation Formatting and Drafting Guidelines (Guidelines),* was followed for the proposed NAAQS rulemaking and the EIS which ADEQ prepared and submitted was formatted just as is the example found in Appendix 18 of *Guidelines*.

Guidelines states that ADEQ must forward to the Arkansas Economic Development Commission (AEDC) a copy of the proposed rule and a corresponding EIS for review prior to the expected initiation date (p. 6). ADEQ must also submit to the APC&EC as part of the initiation packet one of the following documents to serve as proof of contact with AEDC (p. 9):

- An approval letter from AEDC;
- A Memorandum stating that 10 business days have passed since submittal of a letter or EIS to AEDC, and a copy of the letter sent to AEDC; *or*
- A Memorandum explaining why Act 143 is not applicable to the rulemaking (based on exemptions found on p. 6).

For the proposed NAAQS revisions to Regulation No. 19, ADEQ e-mailed (per AEDC's website instructions) a copy of the redlined proposed Regulation and the EIS form prior to filing for

initiation. As part of the initiation packet for this Regulation, ADEQ submitted to the APC&EC an approval letter received from AEDC after review of the EIS and this Regulation proposal, and a Memorandum stating that 10 business days had passed since submittal of the letter and EIS to AEDC, along with a copy of the original e-mail sent to AEDC.

AEDC states in the approval letter: "Per Act 143 of 2007, I have reviewed the proposed Regulation No. 19 and the financial impact statement. *Arkansas Code § 25-15-2(d)(1) of Act 143 requires [AEDC] to determine if you have taken sufficient measures* to balance the objectives of the proposed rules with the interest of the impacted small business. It is my *determination that in drafting the proposed Regulation No. 19, you have taken sufficient steps* to protect the interests of the impacted small businesses." (Emphasis added.)

ADEQ followed protocol for requirements related to Act 143, and AEDC, which is the agency legally responsible for determination under Act 143, made the decision that all requirements of Act 143 were met by ADEQ for this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 29: States have three years to adopt and submit an infrastructure SIP (for maintenance of the NAAQS) after attainment status designation by EPA. The state develops and submits a SIP, which is approved by EPA and becomes federally enforceable or is disapproved (partially or completely) and a Federal Implementation Plan (FIP) is developed. Congress intended for attainment or maintenance strategies to take time to implement, and for the public to have opportunity to Comment at several stages in the process.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 30: Commenters state that the definitions for $PM_{2.5}$ and PM_{10} should be revised. Commenters point out that ADEQ's proposed revisions to Regulation No. 19 included "$PM_{2.5}$" definition: "as measured by a reference method based on Appendix L of 40 C.F.R Part 50 as of July 27, 2012, or by an approved regional method designated in accordance with Appendix C of 40 CFR Part 53." Commenters argue this proposed definition defines $PM_{2.5}$ by how it is measured. Commenters state the methods referenced in the proposed definition are for determining $PM_{2.5}$ concentrations in the ambient air, not in emissions. Commenters point out there is no separate definition for "$PM_{2.5}$ Emissions" in Regulation No. 18 (as there is in Regulation No. 19, Chapter 2), yet there are several provisions within Regulation No. 18 where $PM_{2.5}$ is intended to refer to emissions. Commenters believe the omission of a definition of

"$PM_{2.5}$ Emissions" in Regulation No. 18 "creates a discrepancy that will lead to confusion among the regulated community and the permitting authority." Therefore, commenters propose that the Commission eliminate the potential for confusion by adopting a definition for "$PM_{2.5}$," in lieu of the proposed definitions in Regulations No. 18 and No. 19, as follows:

> "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers as measured:
>
> (A) in the ambient air by a reference method based on Appendix L of 40 C.F.R Part 50 as of July 27, 2012, or by an approved regional method designated in accordance with Appendix C of 40 CFR Part 53; or
>
> (B) in emissions by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51, Appendix M as of July 27, 2012, or by a test method specified in these regulations or any supplement thereto."

Commenters believe this issue is equally applicable to the definition of "PM_{10}" in Regulations No. 18 and No. 19, and propose a similar change to the definitions for PM_{10} in Regulations No. 18 and No. 19. One Commenter suggests that if the above change is not made, "the date used in the definition of '$PM_{2.5}$ Emissions' should at least be changed from 'December 8, 1984,' to 'September 28, 2012,' for consistency with the definition of 'PM_{10} Emissions' and with Regulation 19.702(F)."

Response: ADEQ disagrees that the proposed definition of "$PM_{2.5}$" needs to be changed in either Regulations No. 18 or No. 19. In Regulations No. 18 and No. 19, the definition of "$PM_{2.5}$" is used in the context of ambient air and it refers to those measurements and techniques based on Appendix L of 40 CFR Part 50. Emissions of "$PM_{2.5}$" are used in the context of emissions from sources and references in 40 CFR Part 51, Appendix M. Reference methods for both contexts are addressed in the proposed or existing definitions of $PM_{2.5}$ and PM_{10}. Thus, these emission limits or amounts related to "$PM_{2.5}$" are very clearly identified, making it unnecessary to add a definition in Regulation No. 19.

However, after considering Comments received from several Commenters, ADEQ is proposing to update the incorporation by reference date for 40 CFR Part 51, Appendix M, as of July 27, 2012, that is found in Regulation No. 19 within the definitions of "$PM_{2.5}$ emissions" and "PM_{10} emissions" to ensure that the definitions include all relevant Test Methods adopted by EPA.

Comment 31: The Commenter recommends amending sections of Regulations No. 18 and No.19 that are directly related to NAAQS implementation and modeling, even though ADEQ is not proposing revisions to these particular sections during this rulemaking. The Commenter

believes that these recommendations "will reduce ongoing confusion and conflict concerning dispersion modeling and NAAQS analyses during the routine (non-PSD) permitting process." The Commenter believes that several sections, both in Regulations No. 18 and No. 19, "can be or have been mistakenly construed by ADEQ to mean that the applicant and/or the ADEQ is required to perform dispersion modeling and NAAQS analyses as part of the permitting process." The Commenter adds that complex modeling analyses are not appropriate, or federally required, for routine non-PSD permitting projects.

The Commenter states that Reg. Nos. 19.301, 19.302 and 19.303 set out the requirements for ADEQ and a permittee to "meet and maintain" the NAAQS. Reg. No. 19.303 sets out the permittee's responsibilities which include obtaining a permit prior to "construction" or "modification," and operating equipment pursuant to the permit, but the Commenter points out that nowhere in this section is a permittee obligated to conduct computer modeling in order to meet the NAAQS. The Commenter believes a permittee's compliance with Reg. No. 19.303 should be considered sufficient evidence that it is complying with its obligation to meet and maintain the NAAQS. The Commenter believes it is ADEQ's duty, not the permittee's, to conduct computer modeling, only if there is a reasonable expectation of NAAQS exceedance in a substantial area of the state, and concludes, "this should not be interpreted by the state more stringently than by EPA." Therefore, the Commenter proposes the following deletions:

On Reg. No. 19.402, Approval Criteria:

No permit shall be granted or modified under this chapter unless the owner/operator demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this regulation. ~~or without interfering with the attainment or maintenance of a national ambient air quality standard.~~
****

On Reg. No. 19.405, Action on Application:

(A) Technical Review
The Department will review the application submitted under this chapter in order to ensure to their reasonable satisfaction that:
~~(1) the stationary source will be constructed or modified to operate without interfering with attainment or maintenance of a national ambient air quality standard;~~
(2) .....
****

On Reg. No. 19.502, General Regulations:

No person shall cause or permit the construction or modification of equipment which would cause or allow the following standards or limitations which are in effect as of the effective date of this regulation, to be exceeded:
~~(A) Any National Ambient Air Quality Standard or ambient air increment (as listed in 40 CFR 52.21).~~
(B) Any applicable emission limitation promulgated by the United States Environmental Protection Agency.
(C) Any applicable emission limitation promulgated by the Department in this regulation.
****

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 32: The Commenter states that the "Insignificant Activities List," ("Appendix A" in both Regulations No. 18 and No. 19 is essentially identical) outlines a series of air emission activities that are exempt from the requirement to obtain an air permit. The introductory paragraph contains the following clause:

"Any activity for which a state or federal applicable requirement applies (such as NSPS, National Emission Standards for Hazardous Air Pollutants [NESHAP], or Maximum Achievable Control Technology [MACT]) is not insignificant, even if this activity meets the criteria below."

Over time, EPA has significantly expanded the regulatory "reach" of these programs, particularly the NESHAP program. The Commenter believes that as a result, many sources, such as emergency generator engines, which have historically been considered insignificant in Arkansas, no longer qualify as such under Appendix A of Regulations No. 18 and No.19, creating an unnecessary permitting burden to both applicant and ADEQ resources.

The Commenter states that ADEQ has addressed the expansion of these regulatory programs in part via the language regarding "special applicability" found in Reg. No. 18.301(B)(3), which allows that, for certain source categories (those listed and those for which a standard was promulgated by EPA after June 27, 2008), no air permit is required by ADEQ solely due to the applicability of a federal NSPS, NESHAP, or MACT standard. Therefore, the Commenter believes that due to this existing provision of Regulation No. 18, ADEQ is "implicitly acknowledging that it is not necessary to impose air permitting requirements for each and every source subject to a federal NSPS, NESHAP, or MACT standard."

The Commenter proposes to add the following language to the last sentence of the introductory paragraph of Appendix A in both Regulations No. 18 and No. 19 to create consistency between the permit applicability criteria of Reg. No. 18.301 and the "Insignificant Activity" criteria of Regulations No. 18 and No. 19:

"Any activity for which a state or federal applicable requirement applies (such as NSPS, National Emission Standards for Hazardous Air Pollutants [NESHAP], or Maximum Achievable Control Technology [MACT]), provided such applicable requirement is subject to Special Applicability under the provisions of §18.301(B)(3) of ADEQ Regulation 18, is not insignificant, even if this activity meets the criteria below."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 33: Commenters state the NAAQS should be implemented through attainment designation as determined on an area-wide basis.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

Comment 34: Commenters state that states should consider costs in determining how to implement a NAAQS. Because the C.A.A. is based on "cooperative federalism," the United States Supreme Court has held that the states have authority and responsibility to determine the methods and strategies to achieve a NAAQS. Commenters believe that a state may select whatever control strategy it desires, so long as the NAAQS are met, and consideration is given to the cost-effectiveness of various technologies to implement each particular NAAQS.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 35: Commenters explain that few nearby states require modeling for non-PSD permitting and/or Title V renewals [and those which do require modeling typically have procedures to streamline the process such as limited requirements] for $PM_{2.5}$. Commenters

request that consideration be given to process simplifications such as exemptions of small sources and minimizing modeling when minor or no changes are made to the source itself (e.g., exempt *de minimis* and/or minor modification changes that are below the emission increase thresholds defined in Reg. Nos. 18.307(C), 19.407(C), and 26.1002.)

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 36: Commenters state in an attachment paper "$PM_{2.5}$ Dispersion Modeling Case Study," perceived issues associated with dispersion modeling and the newer NAAQS standards, describing a modeling example and its results. "Emissions sources so small that ADEQ considers them insignificant can be shown to cause considerable NAAQS issues when modeled."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 37: Commenters express their concerns in "Additional Information Concerning Dispersion Modeling Concerns Overview," and argue that federal air regulations generally only require modeling during major New Source Review (NSR)/PSD permit actions and SIP corrective actions to address nonattainment areas, and not during frequent and routine non-major permitting actions (such as non-PSD construction permits, non-PSD Title V permit modifications, or Title V permit renewals).

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 38: Commenters believe dispersion modeling uses several worst-case assumptions so there is usually some doubt as to whether "Miniature Problem Areas" near property lines exist, and often there are no occupied structures in the "Area."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 39: Commenters believe ADEQ should revisit underlying assumptions that require NAAQS modeling during routine permitting because EPA does not require it. Commenters state that if EPA does not require such modeling, ADEQ should modify air permitting regulations and remove language that may imply modeling must be done at the time of routine permitting, and recommends ADEQ to do so with this NAAQS rulemaking.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 40: Commenters state that ADEQ's implementation of the new NAAQS at the facility level is inappropriate and will have harmful effects - particularly regarding ADEQ's screening Modeling Protocol in conjunction with the revised regulation, implementation will result in significant burdens on regulated facilities. Commenters believe that ADEQ treats the NAAQS as if they are exactly what EPA says they are not: emissions standards directly applicable to individual stationary sources.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 41: Commenters gave an example of a facility which had previously shown compliance with NAAQS through air dispersion modeling, but during the permit renewal process impacts were shown to be significantly higher than in past modeling demonstrations (no major physical modifications or specific emission changes but there were changes in EPA's air dispersion model and changes to the processing of meteorological data, specifically AERMINUTE). Commenters state that to receive a permit renewal, the facility had to agree to make various physical changes at a cost estimated to be in excess of $2,000,000. Commenters state regulatory changes to the model, model version, meteorological data set, and processing tools have a significant impact on model results. Commenters ask, if all models were determined to be "accurate" at the time, "which is right?" Commenters state the "present day" result is 38% higher than the result 11 years ago (same data run, different model version, different results).

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 42: Commenters state that "implementation of NAAQS at the facility level through Modeling Protocol is inappropriate and contrary to EPA's interpretation that NAAQS are not directly applicable to individual stationary sources." Commenters explain that EPA "has been specific about types of permits requiring modeling to determine potential impacts on attainment and maintenance of NAAQS, but no such requirement exists for other permits, including Title V and minor sources." Commenters believe requiring routine air quality modeling for other types of permitting goes beyond what Congress envisioned and what EPA requires in order to prevent air quality degradation in clean air areas. Commenters cite EPA's "Model Rule for Minor NSR Program" (released in 2012 as part of its "Tribal NSR Implementation Manual") and point out that the model rule does not require routine modeling, but rather provides the permitting authority the right to request air quality impact analysis from a minor source or modification - if there is a concern that the construction of the minor source or modification would cause or contribute to a NAAQS exceedance or PSD increment violation.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 43: Commenters state that ADEQ currently implements the NAAQS at the permit level and relies upon *de facto* regulation, i.e. the Modeling Protocol. Commenters believe the Protocol followed by ADEQ is a binding regulation for the following reasons: (1) prescribes policy/practice; (2) has legal effects on regulated facilities; (3) ADEQ treats as controlling; (4) is the basis for ADEQ permitting decisions on interpretations formulated in the Protocol; and (5) leads private parties to believe permits will be denied if not adhered to. One Commenter concludes, "the Modeling Protocol as regulation for implementation of NAAQS goes far beyond ADEQ's authority," and has not been adopted according to statutory procedures provided for in Ark. Code Ann. § 8-4-202. Consequently, Commenters argue, "the regulated community has not been afforded due process in promulgation of the rules and regulations for implementing the substantive statutes charged to ADEQ for administration."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 44: Commenters believe the model that currently shows compliance with existing NAAQS will have problems once new standards are in place, and is concerned that it will create

a "permit moratorium" and will result in an inability to make small needed facility changes in a timely manner.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 45: Commenters believe implementation of the new NAAQS could have a negative impact on the waste industry's future-looking alternative fuels projects and the ability to implement those projects.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 46: Commenters believe implementation of the proposed air regulations revisions will deter investment in alternative fuels and pollution control projects.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 47: Commenters believe ADEQ's planned implementation of the federal NAAQS will place unnecessary economic and regulatory burdens on [the regulated community,] and it will negatively impact the ability of Arkansas's industry to remain competitive with that of surrounding states.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 48: Commenters believe ADEQ's modeling regulation will put facilities in Arkansas in a non-competitive position compared to sister facilities in other states. Commenters give a real-world example whereby a facility encountered a 6:1 ratio [modeling costs:cost of proposed capital investment]. Commenters state this ratio is not competitive, and the state will not likely continue to attract large companies.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 49: Commenters state, by the requirements listed in the Commission's regulations and in Ark. Code Ann. § 8-4-312, if a proposal is more stringent than federal law, it must undergo appropriate economic impact and environmental benefits analysis. Commenters believe the current package is devoid of that type of analysis.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 50: Commenters believe the proposed changes pose a significant risk in the form of business risk, cost and regulatory uncertainty and will render Arkansas's air regulations to be more restrictive than federal law. Commenters also state that ADEQ's cost-benefit analyses are inadequate, not useful for policy makers to determine the costs or benefits from the proposed rules, do not consider factors affecting costs and benefits as required by law, and are speculative.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 51: Commenters are concerned the implementation of these NAAQS under ADEQ's existing permitting strategy and policy could result in the requirement to install control technology, possibly costing hundreds of millions of dollars. Commenters state this cost would be passed on to ratepayers in the form of electric rate increases, which would adversely impact the cost of production, and could affect the competitiveness of steel production. Commenters believe increases in electric rates disproportionately affect low-income populations since a larger portion of their income goes toward utility payments. Commenters believe the rulemaking package contains no analysis of the direct or indirect costs to industry, to the public or the impact on public health, nor it shows the benefits expected in Arkansas from implementation of the NAAQS under current ADEQ practice and policy.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

Comment 52: Commenters believe that with the proposed revisions, facilities could be faced with significant added costs with little or no added benefit to human health or the environment.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 53: Commenters are in support of the incorporation of the minimum requirements necessary for ADEQ to maintain delegation of the air program in the state, but are concerned with requirements for permittees after the regulations are adopted. Commenters state ADEQ uses a "bottom-up process," whereby NAAQS are implemented through source-by-source permitting decisions instead of a customary top-down SIP development process.

Response: See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 54: Commenters believe proposed NAAQS revisions should be implemented through a SIP development process.

Response: This Comment did not address any specific proposed revision; therefore, it is outside of the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 55: Commenters state ADEQ should clarify regulations and permit policies to address situations where a facility has met old NAAQS standards but will need time to take corrective actions in order to meet the new and more stringent standards.

Response: This Comment did not address any specific proposed revision; therefore, it is outside of the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 56: Commenters state that ADEQ will not take a final action on a permit application until facilities complete a satisfactory modeling prediction, which typically costs many thousands of dollars to meet modeled limits and can result in weeks or even months of permitting delays. Commenters believe many of the ambient pollutant concentrations predicted by both the screening and refined modeling are not reflective of reality and can result in double counting of

some air emissions in some overly conservative models. Commenters believe that, in attainment areas, only new sources should be added to ambient background concentrations for modeling purposes. Commenters conclude that these modeling exercises, not required by federal regulation, create an unnecessary burden to the regulated community, are difficult to "pass" ADEQ's screening model, and believe that NAAQS shorter averaging times (1-hr NO_2 and SO_2) will add another layer of technical complexity and challenge with respect to satisfactory modeling demonstrations.

Response: This Comment did not address any specific proposed revision; therefore, it is outside of the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 57: Commenters believe ADEQ should review the process for ensuring compliance with the NAAQS because it currently relies on air modeling required of individual permittees, rather than comprehensive modeling of local airsheds. Commenters state this was a workable approach in the past but that EPA's revised NAAQS are more difficult to meet. Commenters do not believe that the individual permitting approach will ensure compliance with NAAQS by itself and states that ADEQ should use a more comprehensive approach.

Response: This Comment did not address any specific proposed revision; therefore, it is outside of the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 58: Commenters state that ADEQ has failed to consider the entirety of the effects of implementing the NAAQS, given the manner in which ADEQ interprets and applies the NAAQS through its permitting program. Commenters state only sources that trigger the PSD requirements of Regulation No. 19, Chapter 9, must undergo computer modeling. Commenters believe that neither Congress nor EPA requires that SIPs apply NAAQS to individual stationary sources as emissions standards, limitations or applicable requirements and quote EPA, "The NAAQS should not be confused with emission standards,...The NAAQS...serve as benchmarks from which each state derives the total emission reductions necessary to be accomplished in a given area...Consequently, EPA does not enforce the NAAQS per se. Instead, EPA enforces emissions standards designed to contribute to achievement and maintenance of the NAAQS." (Clean Air Act Compliance/Enforcement Guidance Manual (U.S. EPA, 1986.)) Commenters also state that NAAQS are not "applicable requirements" under the Title V program, and point out that Title V permits must include all pollution control obligations under the C.A.A. that are applicable to a source under a SIP (or FIP). Commenters point out that Congress has stated that NAAQS are "the reference point for the analysis of the factors contributing to air pollution and

the imposition of control strategy and tactics." Commenters give examples citing responses EPA gave to petitions to object to the proposed rule for Title V permits in order to establish the argument that "the new ($PM_{2.5}$) standard does not impose any obligation on sources" until the state identifies a specific emission reduction measure through a SIP approved by EPA.

Response: This Comment did not address any specific proposed revision; therefore, it is outside of the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 59: Commenters state that ADEQ has not provided adequate information in response to industry questions about the planned implementation of the NAAQS and that "there should be a public forum for ADEQ to explain the implications of the implementation of the standards to the public and to the regulated community."

Response: This Comment did not address any specific proposed revision; therefore, it is outside of the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 60: Commenters state that, upon incorporation of NAAQS into the air regulations without clarity or a binding commitment by ADEQ on how the NAAQS will be implemented, the air regulations will be more stringent than federal law.

Response: This Comment did not address any specific proposed revision; therefore, it is outside of the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 61: Commenters state it has been ADEQ's internal practice since at least the mid-1990s to perform computer-based dispersion modeling of permittee's air pollutant emissions to predict fence line pollutant concentrations, and then compare these predictions to the NAAQS during Title V (Regulation No. 26) permit issuances/modifications. Commenters state that modeling utilizes multiple conservative assumptions (including that all emissions sources are emitting at maximum permitted hourly rates) and evaluates areas up to the facility fence line, it can many times generate phantom concerns. Commenters note, in recent years, ADEQ has expanded the scope of modeling analyses to include additional emission source types, such as potential fugitive dust from facility roads and infrequently operated equipment (e.g., emergency generator engines). While not offered for public notice or comment, this expansion of ADEQ policy has made passing modeling much more difficult for many Title V facilities. Commenters

state that AERMOD, EPA's regulatory default dispersion model for near-field applications, is documented to frequently over predict ambient concentrations due to various factors, including low-level intermittent sources, such as emergency generator engine stacks, dust from unloading a grain truck, or road dust, especially for short-term averaging periods and at low wind speeds. Commenters state that, from ADEQ's Modeling Protocol, "background" concentrations, as determined from a possibly distant ambient air monitor, must be added to the modeled results for ultimate comparison with the NAAQS.

Response: This Comment did not address any specific proposed revision; therefore, it is outside of the scope of this rulemaking. However, to be consistent with EPA and State law in regard to emergency generators, the Department will not require dispersion modeling for evaluating or issuing air permits under Arkansas state requirements when such generators are to be operated solely for the purpose of providing emergency power during outages. Emergency generators that are utilized to supplement power needs in other circumstances may be subject to emission evaluations in regard to NAAQS compliance.

No revisions to the final rule are necessary due to this Comment.

Comment 62: Commenters state that the proposed revisions to Regulations No. 18, No. 19 and No. 26, "when implemented through ADEQ's existing policies not made subject to public comment or consideration by the Commission, will have unacknowledged implications for permittees throughout the state, including healthcare facilities."

Response: This Comment did not address any specific proposed revision; therefore, it is outside of the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 63: Commenters believe there is no basis to be able to judge whether ADEQ is properly exercising its authority under Arkansas law, and states the Commission has not been provided a reasoned basis for determining whether ADEQ's proposed implementation of these NAAQS is necessary or appropriate. Commenters state that, because these factors may not be taken into account during a permitting proceeding, (see *W. Black Lumber Company v. Arkansas Department of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986)), the only forum for examining and weighing these factors is during a rulemaking proceeding before the Commission such as this one.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 64: Commenters believe ADEQ does not have authority to promulgate a regulation, and state that authority is reserved to the Commission (as per Ark. Code Ann. § 8-4-311).

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 65: Commenters state that ADEQ has not provided sufficient information on the proposed changes to Regulations No. 18, No. 19, and No. 26 to implement the 2006 NAAQS for $PM_{2.5}$, the 2010 1-hr NAAQS for SO_2, and the 2010 1-hr NAAQS for NO_2. Under ADEQ's current permitting strategy and practice, these revised NAAQS may result in strict new air permitting restrictions, limitations and obligations on stationary sources of air emissions operating in Arkansas. Commenters state that the costs associated with adoption of these NAAQS will depend on how ADEQ plans to implement the NAAQS, and believes that direct and indirect costs will be great, and the actual benefits will be insignificant. Commenters state that ADEQ's proposed changes do not indicate, for example, what sources ought to be controlled, what control strategies it intends to pursue, what criteria it will use to determine when and how to limit emissions in order to attain and maintain each of these NAAQS, what benefits will the strategy bring, and at what cost. In addition, Commenters do not believe ADEQ has provided sufficient information in the rulemaking packages to allow the Commission to carry out its duties under Arkansas law, or the public, to determine whether ADEQ or the Commission are properly exercising their authority.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 66: Commenters recommend that ADEQ and the Commission adopt a policy of implementing the NAAQS through a SIP development and promulgation process, as is envisioned by Arkansas law and the C.A.A. Commenters believe that neither the C.A.A. nor EPA air regulations make NAAQS applicable directly to individual stationary sources as emissions standards or limitations or applicable requirements, and state EPA holds the position that NAAQS should not be confused with emission standards. Commenters state that emission standards apply to individual sources of air pollution or categories of industrial sources, and explains that the NAAQS, on the other hand, serve as benchmarks from which each state derives the total emission reductions necessary to be accomplished in a given area. Therefore,

Commenters believe that the NAAQS attainment and maintenance is a state obligation intended to be addressed through the development of a SIP.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 67: Commenters point out that the state has a broad array of tools to consider as part of the SIP development process, and does not believe that the development process is intended to focus solely on large stationary sources, as those sources are already covered by the "NSPS," "NESHAP" and "PSD"/nonattainment "NSR" programs. Commenters believe relevant "control strategies" apply to all types of sources. Commenters state EPA stipulates that nothing in its regulations should be construed, among other things, "to encourage a state to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies." Commenters state the Arkansas legislature requires the Commission to consider when exercising its powers and responsibilities, and Ark. Code Ann. § 8-4-312 requires the Commission to consider "interference with reasonable enjoyment of life by persons in the area and conduct of established enterprises that can reasonably be expected from air contaminants," and believe it is a factor that can only truly be explored through the SIP development.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 68: Commenters state that the Commission has an obligation to adopt the revised NAAQS as promulgated by EPA in order to maintain delegation of the air permit program under the C.A.A. and expresses concern with how the NAAQS are utilized by ADEQ during the review of individual air permit actions. Commenters believe the Commission cannot satisfy its obligations just by adding the revised NAAQS to the air regulations without also considering how the NAAQS are implemented by ADEQ through the air permitting program. Commenters state that ADEQ's implementation of the NAAQS cannot be considered apart from the NAAQS themselves.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 69: Commenters state that if ADEQ continues to implement the NAAQS at the individual permit level through the Modeling Protocol, then it should be promulgated in accordance with the statutory requirements found at Ark. Code Ann. §§ 8-4-202 and 8-4-311(b). Thus, Commenters believe that ADEQ's application and enforcement of the Modeling Protocol as a regulatory requirement goes beyond its authority since the Commission did not promulgate the Protocol.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 70: Commenters believe incorporation of the NAAQS into the air regulations is appropriate, but are concerned with ADEQ's implementation. Commenters remind the Commission of duties and conditions to consider under Ark. Code Ann. § 8-4-312 regarding the process of rulemaking action. These factors include, but are not limited to, quantity and characteristics of air contaminants in a particular area, predominant character of development of the area, availability and economic feasibility of air cleaning devices, effect on human health, effect on efficiency of industrial operation, volume of air contaminants emitted from a particular class of sources, economic and industrial development, and socio-economic value of air contamination sources.

Commenters point out that ADEQ has stated the new NAAQS, once incorporated into the air regulations, will be immediately implemented, and "that means that any permit…in-house for a major source, a renewal or a modification, even a pollution control modification, would be compared to the new standards." Commenters believe the new NAAQS, thereby, will be implemented in absence of a SIP. Commenters state ADEQ should consider what action is needed to assure attainment and maintenance of the NAAQS across the state. Commenters conclude that federal law says NAAQS are not "applicable requirements until incorporated into a SIP."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 71: Commenters state that "maintenance of the NAAQS under the C.A.A. is a substantive statute charged to ADEQ for administration, and the Commission has the authority and obligation to promulgate rules and regulations for implementation of the same." Thus,

Commenters state "ADEQ and the Commission should consider the total effect of ADEQ's planned implementation of the NAAQS on all Arkansans, including the regulated community." Commenters also state "planned implementation of the NAAQS through existing policies, particularly the Air Dispersion Modeling Protocol, will have an immediate and negative effect on the ability of healthcare facilities with high social and economic value to obtain the requisite air permits."

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

Comment 72: Commenters believe ambient monitoring is sufficient for attainment of the NAAQS, and is the required method of determining attainment and maintenance of the NAAQS. Commenters believe Arkansas will be required to place additional monitors within the state [for new NO_2 and SO_2 standards]. Commenters state all ambient monitoring data in Arkansas for the period of 2009-2011 indicated compliance with the NAAQS for $PM_{2.5}$, SO_2, and NO_2.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 73: Commenters state that Arkansas's air quality is satisfactory to attain these new revised NAAQS, and ADEQ has not explained what efforts are necessary to implement these new NAAQS. Commenters state that daily measurements of air samples, rather than computer models, indicate that Arkansas will still comply with the new NAAQS proposed through these rulemakings. Commenters state that "implementation of these NAAQS will not improve existing air quality in Arkansas as currently measured, since ADEQ's air monitors show air quality below these new levels." Commenters state that, consequently, "there will be no significant environmental benefit in Arkansas from adopting and implementing the new NAAQS."

Response: ADEQ disagrees with the Commenters' assertions that because Arkansas's air quality is satisfactory to attain the revised NAAQS the implementation of the revised NAAQS will not improve air quality in Arkansas as currently measured. To state that *any* reduction of pollutant emissions into the environment "will not improve existing air quality" is a contradictory argument. Any *reduction* in pollutant levels will improve *existing* air quality, and ADEQ is charged with preventing, controlling, and abating pollution that could harm the health of Arkansans and the state's valuable natural resources. The Department asserts that this

rulemaking is necessary for the prevention, control, and abatement of air pollution in the state, and that by adopting the proposed revisions into regulation, the Commission will be fulfilling its duty to promulgate the federally required elements of the PSD program. See also Response to Comment 1.

No revisions to the final rule are necessary due to this Comment.

Comment 74: Commenters state the complexity, impact, and implementation of rules are of major concern for the oil and natural gas industry, which is active in one-third of Arkansas counties.

Response: This Comment did not address any specific proposed revision; therefore, it is outside the scope of this rulemaking.

No revisions to the final rule are necessary due to this Comment.

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