

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Department of Environmental Quality ("ADEQ")
DIVISION Air Division
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NAME OF PRESENTER AT COMMITTEE MEETING Becky Keogh, Director
PRESENTER E-MAIL keogh@adeq.state.ar.us

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Regulation No. 19
2. What is the subject of the proposed rule? Arkansas Plan of Implementation for Air Pollution Control
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☒ No ☐
76 FR 48208, August 8,
2011. 80 FR 33840, June
12, 2015, 81 FR 9339
February 25, 2016,
72 FR 20664, April 25,
2007.
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? Not applicable.

When does the emergency rule Not applicable.

expire?

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☒

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation. Not applicable.

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule?

Yes ☒

No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark.Code. Ann. §§ 8-4-201, 8-4-202, 8-4-304, and 8-4-311.

7. What is the purpose of this proposed rule? Why is it necessary?

This proposed rule is necessary for Arkansas to comply with an EPA rulemaking, which stated that certain provisions applying to excess emissions during periods of startup, shutdown, and malfunction were substantially inadequate to comply with the Clean Air Act. 80 FR 33840. EPA established a deadline of November 22, 2016 for states affected by this rulemaking, including Arkansas, to submit a corrective State Implementation Plan. Failure to comply with this rulemaking may lead to a Federal Implementation Plan.

As required by the SIP Call, the revisions alter factors in Reg. 19.602 and Reg. 19.1004(H) for determining whether an affirmative defense is appropriate during periods of startup, shutdown and malfunction. The revised language will allow the ADEQ Director to consider these factors in making a determination as to whether to exercise enforcement discretion. The revisions also include two rescission clauses to be located at Reg. 19.602(C) and Reg. 19.1004(H)(3), which would restore affirmative defense provisions in the event that EPA or a federal court stays, vacates, or withdraws EPA's SIP call to amend provisions applying to excess emissions during periods of startup, shutdown and malfunction.

In addition, this proposed rulemaking repeals provisions pertaining to the Clean Air Interstate Rule (CAIR), which is no longer in effect. On August 8, 2011, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) Federal Implementation Plan (FIP), which was intended to replace CAIR. However, CSAPR was stayed prior to implementation and later vacated by the U.S. Court of Appeals for the D.C. Circuit. On April 29, 2014, the Supreme Court reversed the D.C. Circuit's decision vacating CSAPR. In response, EPA published a rule on December 3, 2014, in which the compliance deadlines with CSAPR were revised in response to the D.C. Circuit Court decision, and CAIR remained in effect until the CSAPR FIP became effective on January 1, 2015 (79 FR 71663). Because CAIR is no longer in effect, this proposed rulemaking repeals the relevant CAIR provisions from Chapter 14 of Regulation No. 19.

This proposed rule also adds the definition of "Direct PM 2.5 emissions" to APC&EC Reg. 19 to ensure consistency with the EPA's "Clean Air Fine Particle Implementation Rule" (72 FR 20664). The term is used in APC&EC Reg. 19.407(C), but is presently undefined.

This proposed rulemaking also seeks to update the definition for Volatile Organic Compounds to include the exemption for t-Butyl Acetate found in the federal rule "Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds—Requirements for t-Butyl Acetate" (81 FR 9339).

All other changes were made as clarifications and error corrections, and are non-substantive.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

http://www.adeq.state.ar.us/regs/drafts/draft_regs.htm

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: June 6, 2016

Time: 2:00 p.m.

ADEQ Commission Room, 5301
Northshore Drive, North Little Rock,

Place: AR, 72118

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

June 20, 2016

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

October 2016

12. Do you expect this rule to be controversial? Yes ☐ No ☒

If yes, please explain. Not applicable

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?

Please provide their position (for or against) if known.

Representative of subject facilities above were consulted during the drafting process for this rulemaking, and it is unlikely that those facilities will object to this rulemaking. However, the specific persons, groups, or organizations expected to comment and the exact nature of those comments are unknown at this time.