

EXECUTIVE SUMMARY

The Division of Environmental Quality (DEQ) is proposing various amendments to Rule 19, Rules of the Arkansas Plan of Implementation for Air Pollution Control. The Arkansas Pollution Control and Ecology Commission has general authority to adopt these amendments as specified in Ark. Code Ann. § 8-1-203. The Commission has specific authority to promulgate amendments to the rule as set forth in Ark. Code Ann. § 8-4-304, Ark. Code Ann. § 8-4-201 and 202, and Ark. Code Ann. § 8-4-311.

DEQ is proposing to add section 19.105 Incorporation by Reference, which would clarify what Rule 8.817(C) already requires of referenced law in other APC&EC Rules: that those federal requirements that are incorporated into Rule 19 with no explicit “as of” date will auto-update to the effective date of Rule 19 with each subsequent revision of the Rule. No new requirements result from this revision. For reference, DEQ has included in the online docket for this rulemaking a list of updates to regulations incorporated by reference in Rule 19 as a result of this amendment.

DEQ is proposing to move the section Effective Date from Chapter 16 to (new) Chapter 18 so that the clause is located in the final Chapter of the Rule, consistent with conventional APC&EC Rule-drafting practice. No new requirements are associated with this revision.

DEQ is proposing revisions to several definitions in Chapter 2:

- Clean Air Act – changed from “Federal Clean Air Act,” and replaced the use of “Federal Clean Air Act,” “The Act,” and “FCAA” in the Rule text.
- CO2 equivalent emissions – updated the reference date to federal citation Table A-1 to Subpart A of 40 C.F.R. Part 98 to the most recent version. (79 FR 73750)
- Part 70 source – added a definition for the term, which was previously used in Rule 19 but undefined in the Rule.
- Plan – removed this term from Definitions and specified “state implementation plan” or “Rule 19,” as applicable, within the proposed Rule text.
- Twelve-month period – removed previous term “12-month period” from Definitions, and replaced it with “Twelve-month period.”
- Volatile organic compounds – updated the definition of this term based on recent federal exemptions to the list of compounds. (83 FR 61127)

DEQ is proposing to include verbatim the provisions of Rule 8.204(B) related to Disclosure Statements, where it was previously incorporated by reference in Rule 19 at 19.407(B), Administrative Procedures-Changes in Ownership. This rolls back changes made in 2010 that were not approvable into the Arkansas state implementation plan because Rule 8.204(B) is not part of the state implementation plan.

DEQ is proposing to remove the provisions at Rule 19.405(B)(1)(c), and 19.407(C)(3), which have already been withdrawn from the state implementation plan due to EPA concerns of approvability of the provisions.

DEQ is proposing to remove Rule 19.409 Transition, as this provision is outdated, and was only necessary when the Rule was first adopted.

DEQ is proposing to remove the effective date associated with Appendix W of 40 C.F.R. Part 51 (Guideline on Air Quality Models) in Rule 19.412(A). Striking this language has the effect of ensuring that updates to Rule 19 capture the most recent reference to Appendix W as of the effective date of the Rule 19 amendment. This change is necessary because DEQ is required under the Clean Air Act to use the most recent version of Appendix W when performing air quality modeling. This is done in practice pursuant to DEQ's authority to approve alternative models with concurrence of EPA. For the purposes of this rulemaking, removal of the date would explicitly require the use of the most recent update to Appendix W, which was effective on February 16, 2017 (82 FR 5182).

DEQ is proposing updates to Chapter 8 111(d) Designated Facilities to include facility closures, name changes, and other minor corrections. Substantive changes include proposed revisions to 19.804(B), so that Rule 19 compliance testing provisions for designated facilities are no more stringent on existing sources than EPA's regulation of new sources. Removing the effective date cited for 40 C.F.R. § 60.8 has the effect of referring to the federal provision as it exists on the effective date of Rule 19. 40 C.F.R. § 60.8 was last updated on August 30, 2016 with an effective date of October 3, 2016 (81 FR 59809).

DEQ is proposing to add section 19.904(H) to clarify air quality modeling requirements for the Prevention of Significant Deterioration. This section is taken verbatim from Rule 19.412, applicable to minor sources, to make explicit the requirement to use the latest EPA-approved models, which was not clear from the incorporation by reference of 40 C.F.R. 52.21(l) as of November 29, 2005. Appendix W, the modeling guidelines, has been updated since that time. (82 FR 5182)

DEQ is proposing to repeal provisions pertaining to the control of volatile organic compounds in Pulaski County (Chapter 10, entire). The provisions are outdated and based on expired federal standards for nonattainment areas. All areas of the state are in attainment of the national ambient air quality standards. DEQ has prepared an anti-backsliding demonstration to support EPA approval of removal of this Chapter from the state implementation plan. The anti-backsliding demonstration is included in a technical supporting document available in the online docket for this rulemaking.

DEQ is proposing to repeal provisions pertaining to the Clean Air Interstate Rule (CAIR, Chapter 14, entire), 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. 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 Rule 19.

DEQ is proposing to revise Rule 19, Chapter 15 Regional Haze, to remove informational language related to Subject-to-BART sources and BART-eligible sources and to remove emission limits that were disapproved by EPA. EPA-approved requirements pertaining to Planning Period 1 of the Regional Haze program are retained.

DEQ is proposing to reserve Chapter 16 because the effective date provision currently contained there is proposed to be moved to Chapter 18 (proposed new Chapter) in this Rulemaking.

DEQ is proposing to include in Chapter 17 (proposed new Chapter) federal requirements related to standards of performance, monitoring, recordkeeping, and reporting for municipal solid waste landfills pursuant to 40 C.F.R. Part 60 Subpart Cf, 111(d) Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, for inclusion in a state 111d plan (81 FR 59313, final rule effective date October 28, 2016). In a Federal Register document dated August 29, 2016, the EPA promulgated new emission guidelines (EG) EG for municipal solid waste (MSW) Landfills (81 FR 59332). Additionally, on August 26, 2019, the EPA revised the MSW Landfills EG to update the timing requirements for the submission, review, and approval of state plans and promulgation of a federal plan (84 FR 44547). Pursuant to 40 C.F.R. 60.30f(b), states were required to submit state plans for the MSW Landfills EG by August 29, 2019. Revisions in the proposed Chapter 17 serve to fulfill Arkansas's obligation, and include provisions necessary for approvability of the state plan. This proposed revision incorporates the federal rule verbatim in most sections, with clarifying sections that outline how DEQ will implement federal requirements through the state plan. A technical support document describing how the revisions in Chapter 17 meet federal requirements is available in the online docket for this rulemaking.

This proposed rulemaking also includes non-substantive changes to update style and usage, and corrections of grammatical and typographic errors. DEQ is also proposing to remove arbitrary dates in Rule 19 (July 1, 1997; February 15, 1999; July 27, 2012; September 12, 1986) that do not relate to federal or state regulatory provisions, as these have no real effect on the provisions, and cause confusion for the public, the regulated community, and EPA.