

Compliance with Act 143 of 2007 (formerly Executive Order 05-04)

Act 143 of 2007 requires that “[b]efore submitting proposed rules for adoption, amendment, or repeal, the agency shall first determine whether the proposed rules affect small businesses.” The agency shall consider “whether a means exists to make the rules less costly for small businesses without compromising the objective of the rules.” If the agency determines that the proposed rule will affect small businesses, the agency must prepare an economic impact statement in accordance with Act 143 of 2007.

The Act is not applicable to rules that are federally mandated, or that substantially codify existing state or federal laws. ADEQ determines that Act 143 of 2007 is not applicable to this proposed rule because the amendments to Regulation No. 23 included in this proposed rulemaking substantially codify existing state and federal regulations. (Ark. Code of 1987, Ann., § 25-15-302(a)(1)(C)). This proposal incorporates a number of revisions to the federal hazardous waste regulations previously promulgated by the U.S. EPA to the corresponding sections of Regulation No. 23, and additionally makes a number of typographic corrections to existing state provisions in the Regulation.

Pursuant to the Federal Resource Conservation and Recovery Act (“RCRA”), 33 U.S.C. §1251 *et seq.*, Arkansas has been delegated the authority to establish and administer the federal hazardous waste management program within its borders. This program is administered through the Arkansas Hazardous Waste Management Act, and state and federal regulations codified in the Arkansas Pollution Control & Ecology Commission’s Regulation No. 23. RCRA requires that states authorized to carry out the hazardous waste management program in lieu of EPA must review their program regulations on an annual basis and adopt new federal revisions to ensure that the state program regulations remain consistent with and no less stringent than the corresponding federal regulations. As a result of this review process, ADEQ proposes to adopt specific federal regulations promulgated by EPA between August 2005 and December 2007, and incorporate these provisions into portions of Regulation No. 23, Hazardous Waste Management. The regulatory revisions that are subject of this rulemaking have been deemed necessary through this federally mandated review. In addition to these federal revisions, a number of typographic corrections are made to existing state provisions in the regulation. No additional requirements are being proposed that substantially affect small businesses beyond the current requirements.

In August through December of 2007, ADEQ initiated a series of meetings with affected stakeholders to evaluate the impact of adopting (or not adopting) the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas Highway and Transportation Department, Arkansas Department of Emergency Management, and the Arkansas Department of Economic Development, in addition to representatives from the Arkansas Environmental Federation, Audubon Society, and the Arkansas Municipal League. The revisions brought forward in this proposal represent the consensus of that stakeholder group.