

ECONOMIC IMPACT STATEMENT OF PROPOSED RULES OR REGULATIONS

EO 05-04: Regulatory Flexibility

Department: Dept. of Environmental Quality

Division: Hazardous Waste

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Title or Subject: APC&EC Regulation No. 23 (Hazardous Waste Management) 2009 Update

Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

ADEQ has been delegated responsibility for implementing both federal and state provisions for the RCRA hazardous waste management program in Arkansas. This delegation is contingent upon the State maintaining a regulatory program that is consistent with and no less stringent than the corresponding federal requirements. Annually, ADEQ initiates rulemaking procedures via the Arkansas Pollution Control and Ecology Commission to incorporate and adopt recent changes to the federal regulations in order to maintain equivalence and consistency between the state and federal hazardous waste management regulations. This proposal seeks to incorporate relevant changes to federal regulations published since July 2009. Complaints played no role in the development of these draft revisions.

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

- Maintains equivalence between State and new or revised Federal hazardous waste management regulations;
- Adopts a federal delisting decision which benefits an Arkansas manufacturer.

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

The delegation and program cooperative agreements between ADEQ and U.S. EPA require that the Department make an earnest effort to maintain consistency between State and Federal regulations. While all components proposed in this revision are optional for the state to adopt them or not, the current State requirements corresponding to these proposed revisions are in the main more stringent, and Arkansas businesses would face a greater burden in maintaining compliance than those in neighboring and other states.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting these alternatives.

This rulemaking substantially codifies existing, revised Federal regulations into the corresponding State regulation. As such, they are not subject to the provisions of Sections 3-5 of Executive Order 05-04. As this proposal seeks to adopt and incorporate federal regulations into corresponding state rules in order to implement a federally authorized program, market-based or other alternatives were not considered.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

Actions & activities required pursuant to these revisions will be carried out with existing Departmental staff and resources. No additional costs are anticipated other than the current costs of implementing the program.

6. What types of small businesses will be required to comply with the new rule or regulation? Please estimate the number of small businesses affected.

Small businesses which generate and/or manage hazardous wastes, used oils, and universal wastes are required to comply with the provisions of Regulation No. 23 in managing, shipping, treating, and disposing of these wastes. As of July 1, 2010, 4,555 businesses fall within the regulated universe of the RCRA waste management program. ADEQ does not track whether regulated businesses fall within the definition of a "small business," but the RCRA regulations provide for varying degrees of regulatory requirements and compliance oversight based upon the amount of waste that a business generates at any time. Small businesses in Arkansas typically fall within those categories regulated as small quantity generators (SQGs) and conditionally-exempt small quantity generators (CESQGs). As of July 1, 2010, 279 SQGs and 1,504 CESQGs were known to be active in Arkansas. However, only a small number of these facilities fall within the economic definition of "small business."

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

Regulation No. 23 does not create any barrier to entry for small businesses, and the proposed revisions will not affect this. Businesses subject to this regulation are obligated to comply pursuant to federal and state law.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

Small businesses which accumulate and subsequently ship spent lead-acid batteries overseas or outside the United States, whether under the hazardous waste or universal waste management rules, will be required to meet the new international treaty requirements for documentation and tracking of these shipments. EPA published its cost estimate and benefit analysis for this rule at 75 FR 1249-1250, anticipating a nationwide impact (all 50 states, plus territories) of \$910,000 for the first year of implementation and \$460,000 for each subsequent year. ADEQ staff have reviewed this analysis and the federal rulemaking docket, and compared this to Arkansas annual hazardous waste report data for the foreign export of batteries, and determined that this revision will have minimal effect on Arkansas handlers.

9. State whether the regulation contains different requirements for different-sized entities, and explain why this is, or is not, necessary.

As noted above, requirements under Regulation No. 23 are not based upon the size of a particular business, but upon the amount of wastes which a particular business generates from month to month, regardless of the business' size or number of employees. This is consistent with the corresponding federal regulations for managing hazardous wastes.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

ADEQ does not anticipate any difficulty for small businesses implementing these revised rules. In most cases since many of the proposed revisions will reduce the reporting and administrative burden of compliance in comparison to the existing regulations, small businesses should realize reduced administrative burdens and costs in carrying out these provisions within their operations.

11. How does this rule or regulation compare to similar rules or regulations in other states or the federal government?

The revisions proposed here are equivalent to the corresponding federal rules in Title 40, Code of Federal Regulations. Surrounding states are also required as a condition of their program delegation to consider adoption of these revisions and update their regulations appropriately so there is and will be no significant differences in the compliance requirements from those in adjacent states. Note that for easy reference, ADEQ identifies specific provisions in the body of Regulation No. 23 which are more stringent than or in addition to the corresponding federal regulations by printing them in italic text.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

In September 2010, ADEQ met with the Hazardous Waste Subcommittee of the Arkansas Environmental Federation, which represents industry and small businesses affected by the federal and state waste management programs. No objection was raised to the revisions proposed in this rulemaking.