

DEPARTMENT OF ENVIRONMENTAL QUALITY, AIR DIVISION

SUBJECT: Regulation 26; Arkansas Operating Air Permit Program

DESCRIPTION: The proposed rule revises the state operating air permit program to be consistent with federal rule changes made after EPA's periodic reevaluation and revisions of the National Ambient Air Quality Standards and other federal air pollution control regulations. These changes will also clarify Regulation 26 and eliminate typographical and formatting errors. All other changes were made as updates, clarifications, and error corrections, and are non-substantive.

This proposed rule is necessary to ensure that the Arkansas regulation is not in conflict with federal rules that have been federally adopted. By revising Regulation 26 to be in line with federal rules, the goal is for sources to find it less difficult to understand permitting requirements. Additionally, ADEQ will be able to issue state-enforceable permits addressing fine particulate matter which will help protect Arkansas from falling into nonattainment (NA) status for the pollutant. NA designation is currently a real concern for the state because of monitored and modeled pollutant values, and because the status brings with it long-lasting economic sanctions and environmental obstacles, it is in the best interest of the state and the public to prevent NA designation. Because the primary NAAQS are health-based standards and secondary NAAQS standards are set to protect public welfare, this rule change will also allow ADEQ to protect Arkansans' health and the environment from detrimental effects caused by NAAQS pollutants.

PUBLIC COMMENT: A public hearing was held on January 12, 2015. The public comment period ended on February 17, 2015.

The following is a summary of the comments regarding the proposed amendments to Regulation No. 26 along with the Commission's response:

Comment 1: The Commenters state that the Arkansas Department of Environmental Quality (ADEQ or Department) proposes to add a definition for "Emission increase" to Regulation No. 26, Chapter 2. The Commenters believe that, instead of the proposed reference to 40 C.F.R. § 52.21, the definition of "Emission increase" should reference and clarify that the definition in no way supersedes the Prevention of Significant Deterioration (PSD) applicability determination calculation requirements found in Regulation No. 19, Chapter 9. The Commenters state that the proposed reference to 40 C.F.R. § 52.21 lacks a date certain and may represent an impermissible delegation of the Commission's authority. The Commenters suggest a revision consistent with the Commenters revision suggestion for the proposed revisions to Regulation No. 19, Chapter 2, to eliminate potential confusion among the regulated community and provide clarity to regulators and third parties. The Commenters suggestion revising the proposed definition of "Emission increase" as follows:

“Emissions increase” means, for emission changes not subject to Prevention of Significant Deterioration applicability under Chapter 9 of Regulation 19, the calculated sum for each air pollutant, based on the difference between the sum of the proposed permitted rates for all emissions units and the sum of the previously permitted emission rates for all emissions units.

Additionally, the Commenters state that ADEQ should provide an explanation or guidance to the regulated community regarding how this definition "Emission increase" is to be applied.

Response 1: The Department agrees with the Commenter that the addition of the definition of “emission increase” to Chapter 2 could cause potential confusion among the regulated community. The proposed definition for “emission increase” was intended to address the use of “emission increase” in relation to minor permit modification applicability; however, the definition does not necessarily apply to other uses of the phrase “emission increase” elsewhere in the regulation. Therefore, the Department will remove the proposed definition from Chapter 2 and clarify in Reg. 26.1002 that emission increases for each pollutant, for the purposes of minor permit modification applicability, are based on the differences between the sum of the proposed permitted rates for all emission units and the sum of the previously permitted emission rates for all units. No credit is allowed for emission units that have not actually operated or operated as permitted, emission reductions required by other rules or under an enforcement order, or old emission sources removed from service prior to initiation of this rulemaking on December 5, 2014.

Comment 2: The Commenters stated that these proposed regulations may create financial burdens on public utilities in the state of Arkansas, consequently affecting Arkansas rate payers. The Commenters noted that the accelerated timeframe under which these regulations are being considered is fairly problematic and affected stakeholders need some time to consider the impacts of these regulations. The Commenters pointed out, particularly on Regulation No. 19, that the potential changes to existing regulations include very complex matters. The Commenters stated, “As you know the Department is required to consider numerous factors before approving these changes to these regulations.” The Commenters also noted that “it is extremely difficult for the stakeholders to generate substantive comments regarding these complex amendments to these regulations in the timeframe that has been allotted by the Department.”

Response 2: ADEQ asserts that this rulemaking process has not been accelerated and has followed state and federal requirements related to public comment period. ADEQ adhered to requirements of Reg. No. 8.812 and protocol, as found in the APC&EC Regulation Formatting and Drafting Guidelines (Guidelines), was followed for the proposed NAAQS rulemaking, which included the preparation and submission of the Economic Impact Statement (EIS), Financial Impact Statement (FIS), and Environmental Impact and Economic Benefit Analysis (EI/EBA) forms.

ADEQ does not agree that this rulemaking contains complex amendments, but revised federal requirements. ADEQ also asserts that the allotted time for public period was given as prescribed by per Reg. No. 8.805 and 8.806, "Administrative Procedures." APC&EC and ADEQ both acknowledge that the U. S. Congress, EPA, and the state intend for (more so, require) due public process for all proposed rulemakings, and that public input is encouraged. As such, APC&EC extended the public comment period for this proposed rulemaking as requested by the public. Under the CAA guidelines, once the SIP is prepared, ADEQ will schedule another public notice and comment period, and revisions will be considered based on public input prior to submitting a complete SIP package to EPA for review. All comments received through public hearings and comment periods (and the resulting responses from ADEQ) are included as part of the SIP package that is reviewed by EPA. Therefore, this rulemaking and consequent SIP process will provide stakeholders with extensive opportunity to provide their comments.

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this Department to discharge its duty to consider all of the facts and information pursuant to Arkansas Law for approving these changes in these proposed regulations.”

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Comment 5: The Commenters appreciate the opportunity to provide comments to the proposed revisions to the APC&EC Regulations No. 18, 19, and 26, proposed by ADEQ. The Commenters state that they have strong interests in the proposed revisions to the Regulations and the implementation of the NAAQS proposed for adoption as part of these rulemakings. The Commenters point out that these rulemakings affect the regulated community that own or operate sources that emit one or more of the pollutants and will be subjected to the new NAAQS should the Commission adopt the proposed revisions. Therefore, the Commenters state that they generally support the incorporation of the new standards into the State air pollution control regulations, and recognize that the Commission has an obligation to do so in the normal course of federal-state regulatory affairs to avoid imposition of a Federal Implementation Plan. However, the Commenters also state, “the Commission and ADEQ have an obligation under the CAA and the Arkansas Water & Air Pollution Control Act to develop a comprehensive State Implementation Plan (“SIP”) for attainment and maintenance of the NAAQS. [40 C.F.R. § 51.161 and Ark. Code Ann. § 8-4-318].”

Response 5: The Department acknowledges and appreciates this Comment and asserts that these rulemakings are necessary to include the revised PM_{2.5}, O₃, Pb, NO₂, and SO₂ NAAQS in APC&EC regulations. The Department is in the process of developing a SIP revision, concomitantly with these proposed rulemakings, to ensure attainment and maintenance of the revised NAAQS. The SIP revisions will be made available for public comment prior to its submission to EPA.

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

Comment 6: The Commenters state, “CAA requires that SIPs provide a pre-construction review process for new sources and modifications of existing sources that includes legally-enforceable procedures including the basis for determining the types and sizes of construction or modifications which will be subject to review, an application process disclosing the nature and amounts of emissions to be emitted, the permit approval and public-participation process, and the air quality data that will be used to facilitate such review [51.160].” The Commenters also state, “to ‘implement’ the NAAQS, the state must follow the process set forth in the CAA for SIP development, a process which requires the state to look at a variety of tools (from economic incentives to emissions standards) that can be applied to a range of sources (large and small, mobile and stationary), to meet the NAAQS.”

The Commenters state that EPA has emphasized that states should consider a wide range of options and their potential benefits while developing their SIPs. The Commenters understand that the SIP-development process is not intended to focus solely on large stationary sources, as those sources are already covered by other federal regulations, such as the New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and Prevention of Significant Deterioration /Nonattainment New Source Review programs. Instead, the Commenters state, “relevant ‘control strategies’ apply to all types of sources, stationary and mobile, and include, but are not limited to:

- Economic incentive or disincentive programs;
- Scheduling, relocation, and closure programs;
- Mobile source inspection and maintenance programs;
- Fuel or fuel additive programs for mobile sources; and
- Emissions limitations on stationary sources.”

The Commenters state, “EPA further stipulates that nothing in its regulations should be construed, among other things, ‘[t]o 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,’ ‘[t]o encourage a State to prepare, adopt or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan,’ or ‘[t]o encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.’”

The Commenters believe these federal factors are echoed by some of those found at the Arkansas legislature, which requires the Commission to consider when exercising its powers and responsibilities as found at Ark. Code Ann. § 8-4-312(12) “[i]nterference with reasonable enjoyment of life by persons in the area and conduct of established enterprises that can reasonably be expected from air contaminants,” a factor it can only truly explore through the SIP development process. The Commenters believe the

information provided in the SIP development steps will inform the Commission whether emissions are interfering with business and human health and will help ADEQ to determine what steps to propose to maintain (or, where needed, to achieve) compliance with the revised NAAQS.

Response 6: The Department acknowledges and appreciates this Comment.

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

Comment 7: The Commenters state that the use of the terms “State Implementation Plan” and “Plan” should be consistent across regulations. The Commenters point out that existing regulations include a definition of “Plan” in Chapter 2 of Regulation No. 19, which states that the term means the Arkansas Plan of Implementation for Air Pollution Control. However, the Commenters further point out, there are instances across Regulations No. 18, 19, and 26 where the terms “Plan,” “State Implementation Plan,” and “Regulation 19” appear to be used interchangeably (see, e.g., introduction paragraph to Chapter 2 of Regulation No. 26). The Commenters suggest that the Commission review the use of those terms throughout Regulations No. 18, 19, and 26 for consistency and to ensure that those terms are appropriately incorporated.

Response 7: The Department has reviewed the use of the terms “State Implementation Plan,” “Plan,” and “Regulation 19” in Regulations No. 18, 19, and 26. The Department agrees with the Commenters’ suggestion for clarification of these terms in Regulation No. 26 and will consider including clarifying revisions in a future rulemaking so that such revisions may be open to public comment. However, the terms used in Regulations No. 18 and 19 are not used interchangeably but applied throughout the regulations according to the description in the Definitions chapter.

Comment 8: The Commenters support the adoption of the NAAQS into Arkansas air rules and recognize proposing a common-sense approach to maintaining Arkansas’s clean air. In addition, the Commenters support ADEQ’s proposed changes to current state regulations, which will allow flexibility in the permitting process and would give business owners the choice to make cost-effective reductions in emissions from current operations in order to more quickly obtain new permit modifications for those changes.

Response 8: The Department acknowledges and appreciates this Comment.

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

Comment 9: The Commenters are aware and respect that ADEQ has the challenge to maintain ever more stringent air quality standards imposed by the EPA. In addition, the Commenters state that this is especially true considering that ADEQ’s authority over only stationary sources limits the Department’s ability to control major contributing sources such as fires and traffic. Despite this limitation, the Commenters believe that ADEQ has

created a valuable long-term tool to promote the growth of jobs in Arkansas through its modified permitting process and support the proposed modifications to the regulations.

Response 9: The Department acknowledges and appreciates this Comment.

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

Comment 10: The Commenters recognize that implementation details, policies, and procedures will be defined in the State Implementation Plans currently under development and encourage ADEQ to continue to use a public process in the development of those implementation details.

Response 10: The Department acknowledges and appreciates this Comment.

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

Comment 11: The Commenters state that they have an ongoing interest in the adoption and implementation of the NAAQS in accordance with the requirements of State and federal law and regulations and sound scientific and engineering practices. The Commenters understand that updating the State's regulations to refer to the national standards is required in the normal course of federal-state regulatory affairs. However, the Commenters state that the revised NAAQS are very stringent by historical standards and believe that due to the complexity of sources that contribute to ambient concentrations of the pollutants in question, it is critical that the State develop a comprehensive plan for implementation of the standards in question, consistent with the requirements of Arkansas statute and the CAA.

Response 11: The Department acknowledges and appreciates this Comment. ADEQ has carefully considered all the elements to comply with State and federal requirements and is diligently seeking stakeholders' participation for a transparent and effective process to develop an approvable SIP.

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

The proposed effective date of this rule will be in March 2016.

CONTROVERSY: This is not expected to be controversial. Stakeholders were consulted prior to initiation of the proposed changes, and ADEQ collaborated with industry groups to craft language acceptable to all interested parties. Additionally, during the public comment period, ADEQ took comments on when an analysis would be required to evaluate impacts on the National Ambient Air Quality Standards during the permitting process. Additionally, ADEQ took comment on requirements for such an analysis, when required.

FINANCIAL IMPACT: Parties subject to this proposed rule will be those facilities with emissions of criteria pollutants and precursor pollutants such as PM2.5, that are subject to state and federal regulation and are permitted for those pollutant emissions.

It is reasonable to anticipate some increase in costs associated with compliance and permitting with revised National Ambient Air Quality Standards and PM2.5/PSD implementation; however, these costs are associated with the permitting of these entities when a modification or permit renewal requires department review of the facility's emissions. Because each facility's emission rates, potential to emit, existing permit conditions, current pollution control devices, number of and type of permitted units, etc., are unique to each source, providing an exact estimate for the cost to affected sources is unrealistic given the department's resources, and is unduly burdensome for the department. ADEQ does not expect for facilities who are not currently permitted to trigger requirements for new permitting due to this rule.

ADEQ's estimated cost to implement this rule is unknown at this time, but is anticipated to remain the same, as the requirements of the regulation will be integrated into existing permits for affected facilities when they either request permit review due to a modification or when the facility's permit comes due for renewal.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 8-4-311(b), the Arkansas Pollution Control and Ecology Commission has the power to promulgate rules and regulations it deems necessary to implement the law in relation to air quality standards. See also, Ark. Code Ann. §§ 8-4-304, 8-4-201, and 8-4-202.

**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
DIVISION DIRECTOR Stuart Spencer
CONTACT PERSON Stuart Spencer
ADDRESS 5301 Northshore Drive, North Little Rock, AR 72118-5317
PHONE NO. 501-682-0744 FAX NO. 501-682-0753 E-MAIL spencer@adeq.state.ar.us
Stuart Spencer, Associate Director,
NAME OF PRESENTER AT COMMITTEE MEETING Office of Air Quality
PRESENTER E-MAIL spencer@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
Room 315, State Capitol
Little Rock, AR 72201**

1. What is the short title of this rule? Regulation No. 26

2. What is the subject of the proposed rule? Regulations of the Arkansas Operating Air Permit Program

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No

If yes, please provide the federal rule, regulation, and/or statute citation.
Revisions to this state regulation propose to adopt currently effective federal rules, as listed: PM2.5 NAAQS revision--January 15, 2013 (78 Fed. Reg. 3086); updated Global Warming Potentials--November 29, 2013 (78 Fed. Reg. 71948); updating references to 40 C.F.R. Part 70--June 3, 2010 (75 FR 31607).

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 expire? Not applicable

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.

Not applicable

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 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 revises the state operating air permit program to be consistent with federal rule changes made after EPA's periodic reevaluation and revisions of the National Ambient Air Quality Standards and other federal air pollution control regulations. These changes will also clarify Regulation No. 26 and eliminate typographical and formatting errors. All other changes were made as updates, clarifications, and error corrections, and are non-substantive.

This proposed rule is necessary to ensure that the Arkansas regulation is not in conflict with federal rules that have been federally adopted. By revising Regulation No. 26 to be in line with federal rules, the goal is for sources to find it less difficult to understand permitting requirements. Additionally, ADEQ will be able to issue federally compliant permits addressing fine particulate matter which will help protect Arkansas from falling into nonattainment (NA) status for the pollutant. NA designation is currently a real concern for the state because of monitored and modeled pollutant values, and because the status brings with it long-lasting economic sanctions and environmental obstacles, it is in the best interest of the State and the public to prevent NA designation. Because the primary NAAQS are health-based standards and secondary NAAQS standards are set to protect public welfare, this rule change will also allow ADEQ to protect Arkansans' health and the environment from detrimental effects caused by NAAQS pollutants.

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:

January 12,
Date: 2015

Time: 2:00 p.m.

Place: ADEQ Commission Room, 5301 Northshore Drive, North Little Rock, AR, 72118

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

4:30 p.m., January 27,
2015

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

March 2016

12. Do you expect this rule to be controversial?

Yes No

Stakeholders were consulted prior to initiation of the proposed changes, and ADEQ collaborated with industry groups to craft language acceptable to all interested parties. Additionally, during the public comment period, ADEQ will take comments on when an analysis would be required to evaluate impacts on the National Ambient Air Quality Standards during the permitting process. Additionally, ADEQ will take comment on requirements for such an analysis, when required.

If yes, please explain.

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.

Organizations which typically comment on proposed revision to Arkansas's air pollution control regulations include:

Arkansas Environmental Federation

Arkansas Forest and Paper Council

Arkansas Independent Producers and Royalty Owners

Audubon Arkansas

The Energy and Environmental Alliance of Arkansas

The Sierra Club

The United States Environmental Protection Agency

In general, it is thought that the facilities subject to air permitting requirements will not object to this rulemaking, as several of the representative entities listed above were involved in the drafting process for this rulemaking. However, the overall consensus towards this proposed rule is unknown at this time.



BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 26, REGULATIONS OF THE) DOCKET NO. 14-011-R
ARKANSAS OPERATING AIR PERMIT PROGRAM)

RESPONSIVE SUMMARY FOR
REGULATION NO. 26, REGULATIONS OF THE ARKANSAS OPERATING AIR
PERMIT PROGRAM

Pursuant to Arkansas Code Annotated (Ark. Code Ann.) § 8-4-202(d)(4)(C) and Regulation¹ 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 November 21, 2014, the Arkansas Department of Environmental Quality (Department, ADEQ) filed a Petition to Initiate Rulemaking to Amend Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program. Administrative Law Judge Charles Moulton conducted a public hearing on January 12, 2015. The following is a summary of the comments regarding the proposed amendments to Regulation No. 26 along with the Commission's response.

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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.

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

Comment 5: The Commenters appreciate the opportunity to provide comments to the proposed revisions to the APC&EC Regulations No. 18, 19, and 26, proposed by ADEQ. The Commenters state that they have strong interests in the proposed revisions to the Regulations and the implementation of the NAAQS proposed for adoption as part of these rulemakings. The Commenters point out that these rulemakings affect the regulated community that own or operate sources that emit one or more of the pollutants and will be subjected to the new NAAQS should the Commission adopt the proposed revisions. Therefore, the Commenters state that they

generally support the incorporation of the new standards into the State air pollution control regulations, and recognize that the Commission has an obligation to do so in the normal course of federal-state regulatory affairs to avoid imposition of a Federal Implementation Plan. However, the Commenters also state, “the Commission and ADEQ have an obligation under the CAA and the Arkansas Water & Air Pollution Control Act to develop a comprehensive State Implementation Plan (“SIP”) for attainment and maintenance of the NAAQS. [40 C.F.R. § 51.161 and Ark. Code Ann. § 8-4-318].”

Response 5: The Department acknowledges and appreciates this Comment and asserts that these rulemakings are necessary to include the revised PM_{2.5}, O₃, Pb, NO₂, and SO₂ NAAQS in APC&EC regulations. The Department is in the process of developing a SIP revision, concomitantly with these proposed rulemakings, to ensure attainment and maintenance of the revised NAAQS. The SIP revisions will be made available for public comment prior to its submission to EPA.

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

Comment 6: The Commenters state, “CAA requires that SIPs provide a pre-construction review process for new sources and modifications of existing sources that includes legally-enforceable procedures including the basis for determining the types and sizes of construction or modifications which will be subject to review, an application process disclosing the nature and amounts of emissions to be emitted, the permit approval and public-participation process, and the air quality data that will be used to facilitate such review [51.160].” The Commenters also state, “to ‘implement’ the NAAQS, the state must follow the process set forth in the CAA for SIP development, a process which requires the state to look at a variety of tools (from economic incentives to emissions standards) that can be applied to a range of sources (large and small, mobile and stationary), to meet the NAAQS.”

The Commenters state that EPA has emphasized that states should consider a wide range of options and their potential benefits while developing their SIPs. The Commenters understand that the SIP-development process is not intended to focus solely on large stationary sources, as those sources are already covered by other federal regulations, such as the New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and Prevention of Significant Deterioration /Nonattainment New Source Review programs. Instead, the Commenters state, “relevant ‘control strategies’ apply to all types of sources, stationary and mobile, and include, but are not limited to:

- Economic incentive or disincentive programs;
- Scheduling, relocation, and closure programs;
- Mobile source inspection and maintenance programs;

- Fuel or fuel additive programs for mobile sources; and
- Emissions limitations on stationary sources.”

The Commenters state, “EPA further stipulates that nothing in its regulations should be construed, among other things, ‘[t]o 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,’ ‘[t]o encourage a State to prepare, adopt or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan,’ or ‘[t]o encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.’”

The Commenters believe these federal factors are echoed by some of those found at the Arkansas legislature, which requires the Commission to consider when exercising its powers and responsibilities as found at Ark. Code Ann. § 8-4-312(12) “[i]nterference with reasonable enjoyment of life by persons in the area and conduct of established enterprises that can reasonably be expected from air contaminants,” a factor it can only truly explore through the SIP development process. The Commenters believe the information provided in the SIP development steps will inform the Commission whether emissions are interfering with business and human health and will help ADEQ to determine what steps to propose to maintain (or, where needed, to achieve) compliance with the revised NAAQS.

Response 6: The Department acknowledges and appreciates this Comment.

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

Comment 7: The Commenters state that the use of the terms “State Implementation Plan” and “Plan” should be consistent across regulations. The Commenters point out that existing regulations include a definition of “Plan” in Chapter 2 of Regulation No. 19, which states that the term means the Arkansas Plan of Implementation for Air Pollution Control. However, the Commenters further point out, there are instances across Regulations No. 18, 19, and 26 where the terms “Plan,” “State Implementation Plan,” and “Regulation 19” appear to be used interchangeably (see, e.g., introduction paragraph to Chapter 2 of Regulation No. 26). The Commenters suggest that the Commission review the use of those terms throughout Regulations No. 18, 19, and 26 for consistency and to ensure that those terms are appropriately incorporated.

Response 7: The Department has reviewed the use of the terms “State Implementation Plan,” “Plan,” and “Regulation 19” in Regulations No. 18, 19, and 26. The Department agrees with the Commenters’ suggestion for clarification of these terms in Regulation No. 26 and will consider including clarifying revisions in a future rulemaking so that such revisions may be open to public

comment. However, the terms used in Regulations No. 18 and 19 are not used interchangeably but applied throughout the regulations according to the description in the Definitions chapter.

Comment 8: The Commenters support the adoption of the NAAQS into Arkansas air rules and recognize proposing a common-sense approach to maintaining Arkansas's clean air. In addition, the Commenters support ADEQ's proposed changes to current state regulations, which will allow flexibility in the permitting process and would give business owners the choice to make cost-effective reductions in emissions from current operations in order to more quickly obtain new permit modifications for those changes.

Response 8: The Department acknowledges and appreciates this Comment.

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

Comment 9: The Commenters are aware and respect that ADEQ has the challenge to maintain ever more stringent air quality standards imposed by the EPA. In addition, the Commenters state that this is especially true considering that ADEQ's authority over only stationary sources limits the Department's ability to control major contributing sources such as fires and traffic. Despite this limitation, the Commenters believe that ADEQ has created a valuable long-term tool to promote the growth of jobs in Arkansas through its modified permitting process and support the proposed modifications to the regulations.

Response 9: The Department acknowledges and appreciates this Comment.

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

Comment 10: The Commenters recognize that implementation details, policies, and procedures will be defined in the State Implementation Plans currently under development and encourage ADEQ to continue to use a public process in the development of those implementation details.

Response 10: The Department acknowledges and appreciates this Comment.

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

Comment 11: The Commenters state that they have an ongoing interest in the adoption and implementation of the NAAQS in accordance with the requirements of State and federal law and regulations and sound scientific and engineering practices. The Commenters understand that updating the State's regulations to refer to the national standards is required in the normal course of federal-state regulatory affairs. However, the Commenters state that the revised NAAQS are very stringent by historical standards and believe that due to the complexity of sources that

contribute to ambient concentrations of the pollutants in question, it is critical that the State develop a comprehensive plan for implementation of the standards in question, consistent with the requirements of Arkansas statute and the CAA.

Response 11: The Department acknowledges and appreciates this Comment. ADEQ has carefully considered all the elements to comply with State and federal requirements and is diligently seeking stakeholders' participation for a transparent and effective process to develop an approvable SIP.

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

Prepared by:
Arkansas Department of Environmental Quality

By: _____
Stuart Spencer, Associate Director, Office of Air Quality

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 26) DOCKET NO. 14-011-R**

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY'S
STATEMENT OF BASIS AND PURPOSE**

The Arkansas Pollution Control and Ecology Commission (the "Commission") is given the power and responsibility to promulgate rules and regulations. Under Ark. Code Ann. § 8-1-203(b)(1), the Commission is granted the power and responsibility to promulgate rules and regulations implementing the substantive statutes which are administered by the Arkansas Department of Environmental Quality (ADEQ).

This rulemaking was initiated to incorporate the revised 2012 federal National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM_{2.5}). On January 15, 2013, the Environmental Protection Agency (EPA) published a final rule in the Federal Register which promulgated revised primary (health-based) standards for fine particles and revised the annual PM_{2.5} standard by lowering the level to 12.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). EPA's revised primary standard provides increased protection against health effects associated with long- and short-term exposures (including premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease). EPA retained the 24-hour PM_{2.5} standard at a level of 35 $\mu\text{g}/\text{m}^3$. (78 FR 3086, January 15, 2013.) In response, ADEQ proposes a limit of 10 tons per year of direct PM_{2.5} emissions as a threshold for allowing a source to make changes without a public notice process or a preconstruction permit at Reg. 26.1002.

The proposed regulatory amendments also include:

- i. Updates to the incorporation date for 40 C.F.R. Part 70 throughout Regulation No. 26

to reflect current federal law (75 FR 31607, June 3, 2010);

- ii. Updates to the incorporation dates for Global Warming Potentials to include the federal revisions, as published in the Federal Register on November 29, 2013 (78 FR 71948, November 29, 2013);
- iii. Changes to Chapter 2 to include a definition of “Emission increase” consistent with the definition currently proposed for Regulation No. 19;
- iv. Removal of language related to the temporary carbon dioxide “biomass exemption” which was adopted into Regulation No. 26 on October 26, 2012. On July 21, 2014, the exemption language expired automatically and the exemption is not currently effective; and
- v. Additional minor changes for clarification and consistency such as correction of typographical errors and adding non-substantive changes throughout Regulation No. 26.

On November 21, 2014, ADEQ filed a Petition to Initiate Rulemaking to Amend Regulation No. 26 to incorporate these changes. At its regularly scheduled meeting on December 5, 2014, the Commission initiated this rulemaking on Regulation No. 26. A public hearing was held in North Little Rock, Arkansas on January 12, 2015. During the public hearing, the public comment period was extended to February 17, 2015. Due to comments received, the following substantive revisions were made to these proposed regulatory amendments:

- i. Removed proposed definition of “Emission increase” in Chapter 2 of Regulation No. 26 and language was included in Reg. 26.1002 to clarify that, for the purposes of determining whether a change can be considered De Minimis, emission increases are based on the differences between the sum of the proposed permitted rates for all

emission units and the sum of previously permitted emission rates for all units.

ADEQ noted in its Responsive Summary that no credit is allowed for emission units that have not actually operated or operated as permitted, emission reductions required by other rules or under an enforcement order, or old emission sources removed from service prior to initiation of this rulemaking on December 5, 2014.

These rules are in the public interest, and are necessary to ensure compliance with both state and federal law.

Respectfully submitted,

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ENVIRONMENTAL QUALITY
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