

**ECONOMIC IMPACT STATEMENT  
PROPOSED RULES OR REGULATIONS  
EO 05-04 and Act 143 of 2007: Regulatory Flexibility**

Department: Arkansas Department of Environmental Quality (“ADEQ”)

Division: Air Division

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Title or Subject: Arkansas Pollution Control and Ecology Commission Regulation No. 26

**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.

The proposed changes are necessary for ADEQ to comply with current federal regulations on the National Ambient Air Quality Standards (“NAAQS”) and to update the Arkansas Pollution Control and Ecology Commission’s Regulations to correspond with federal regulations. Direct complaints have not motivated ADEQ to pursue regulatory action; compliance with federal regulation is the primary motivating factor for these changes.

Under the Clean Air Act (“CAA”), the United States Environmental Protection Agency (“EPA”) is required to set national air quality standards for criteria pollutants. The law also requires EPA to periodically review the standards. On January 15, 2013, the United States Environmental Protection Agency (“EPA”) published a final rule in the Federal Register that promulgated revised primary standards for fine particles and revised the annual PM<sub>2.5</sub> standard by lowering the level to 12 micrograms per cubic meter (µg/m<sup>3</sup>). EPA’s revised primary standard provides increased protection against health effects associated with long- and short-term exposures. In the same rule, EPA retained the 24-hour PM<sub>2.5</sub> standard at a level of 35 µg/m<sup>3</sup>. (78 FR 3086, January 15, 2013). In response, ADEQ proposes a limit of 10 tons per year of direct PM<sub>2.5</sub> 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 changes also include updates throughout No. 26 for the incorporation dates of 40 C.F.R. Part 70 (75 FR 31607, June 3, 2010), and for Global Warming Potentials (78 FR 71948, November 29, 2013), to reflect current federal law.

ADEQ is proposing to add a definition of “Emission increase” to Chapter 2 of Regulation No. 26 that is consistent with the definition currently proposed for Regulation No. 19. This revision is not a result of federal regulatory action, but serves to clarify the intention of the term as it is used in Regulation No. 26.

The proposed amendments to Regulation No. 26 will enable Arkansas to continue to permit emission sources in a way that is protective of the current NAAQS and compliant under the CAA.

2. What are the top three benefits of the proposed rule or regulation?
  - (i) The substantive proposed changes to Regulation No. 26 will allow ADEQ to comply with the CAA.
  - (ii) The substantive proposed changes will enable Arkansas to be in alignment with current federal rules and enable ADEQ's permitting process to flow more smoothly for the Department and permitted sources.
  - (iii) The substantive changes provide added insurance to the State Implementation Plan (SIP) for ADEQ to retain federal program approval for air pollution control.
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

By taking no action, Arkansas would be unable to implement the NAAQS satisfactorily. In addition, Arkansas's regulations would be less stringent than current federal rules, opening Arkansas up to third-party lawsuits.
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 those alternatives.

There are no known market-based alternatives or voluntary standards that can be considered in place of the proposed amendments to Regulation No. 26 due to the restrictive structure of the Clean Air Act.

### **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.

The costs of the proposed amendments to Regulation No. 26 to the state government are presumed to be minimal. Additional permit conditions resulting from this rule will be included in a source's permit when either the source proposes a modification to the facility or the permit comes due for renewal, so no additional work will be required of staff than is already necessary to process permits.
6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.

The proposed amendments do not create any new compliance requirements for small businesses. ADEQ estimates that small businesses will be affected, but that they will not be affected by the proposed revisions any more than large businesses.
7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

The proposed amendments will not create any barriers to entry. However, failure to protect the federal NAAQS can result in areas falling into nonattainment, a status which carries with it federal sanctions such as a reduction of federal transportation funding and severe limitation of new construction in the designated area for upwards of 25 years (during the 5-year attainment plan period and two subsequent 10-year maintenance plan periods). As such, failing to adopt these provisions could create "barriers to entry."

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

The proposed amendments will not create any new compliance requirements for small businesses.

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

The proposed regulation does not contain different requirements for different sized entities. The Arkansas air pollution control regulations and permitting conditions are primarily based on the volume of various air pollutants emitted, not the size of the emitting facility.

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

The proposed amendments do not create any new compliance requirements for small businesses. Accordingly, there are no changes that small businesses will need to implement.

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

This proposed rule will enable Arkansas to provide state regulation equivalent to that at the federal level. The proposed rule allows the revised NAAQS to be properly implemented under Arkansas Regulations.

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

ADEQ has not received any input from small businesses or small business advocates at this time. However, ADEQ collaborated with affected industries to draft equitable regulatory language for this rulemaking.