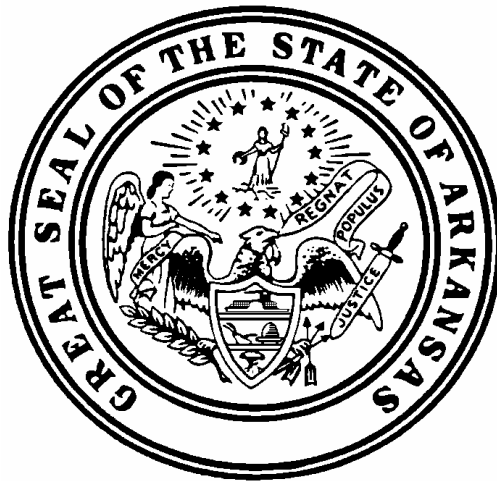


**ARKANSAS POLLUTION CONTROL
and ECOLOGY COMMISSION**

**REGULATION NO. 26
REGULATIONS OF THE ARKANSAS
OPERATING AIR PERMIT PROGRAM**



INITIAL DRAFT

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CHAPTER 1: TITLE AND PURPOSE

Reg. 26.101 Title

The following rules and regulations of the Arkansas Pollution Control and Ecology Commission, adopted in accordance with the provisions of Part II of the Arkansas Water and Air Pollution Control Act A.C.A. §§8-4-101 *et seq.*, shall be known as the “Regulations of the Arkansas Operating Air Permit Program”, hereinafter referred to as the “program”, the “regulations”, and “Regulation No. 26”.

Reg. 26.102 Purpose

Promulgation and enforcement of these regulations is intended to meet the requirements of title V of the federal Clean Air Act, 42 United States Code (U.S.C.) §§7401, *et seq.*, and 40 Code of Federal Regulations (CFR) part 70, as promulgated July 21, 1992 and last modified November 27, 2001, by establishing a comprehensive state air quality permitting program for major sources of air contaminant emissions. Permits issued under this program will address all applicable air contaminant emissions and regulatory requirements in a single document.

Reg. 26.103 Severability

If any provision of Regulation No. 26 is determined to be invalid, such invalidity shall not affect other provisions of Regulation No. 26.

CHAPTER 2: DEFINITIONS

The following definitions apply to these regulations. Except as specifically provided in this section, terms used in this regulation retain the meaning accorded them under the applicable requirements of the federal Clean Air Act or the Arkansas Pollution Control and Ecology Commission's Regulation Number 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control (Regulation 19, Regulation No. 19 or SIP).

“Acid rain source” shall have the meaning of “affected source” as defined in title IV of the Act.

“Act” means the Clean Air Act, 42 U.S.C. 7401 et seq., as amended by July 23, 1993.

“Administrator” or **“EPA”** means the Administrator of the United States Environmental Protection Agency or his/her designee.

“Affected States” are all States:

- (A) Whose air quality may be affected and that are contiguous to the State in which a part 70 permit, permit modification or permit renewal is being proposed; or
- (B) That are within 50 miles of the permitted source.

“Air contaminant” or “air pollutant” means any solid, liquid, gas, or combination thereof, other than water vapor, nitrogen (N₂), ~~carbon dioxide (CO₂)~~, and oxygen (O₂).

“Applicable requirement” means all of the following as they apply to emissions units in a part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

- (A) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;
- (C) Any standard or other requirement under section 111 of the Act, including section 111(d);
- (D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;
- (E) Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;

- (F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
- (G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
- (H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
- (I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
- (J) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;
- (K) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; ~~and~~
- (L) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act; and
- (M) Any standard or other requirement promulgated by EPA as of June 3, 2010, related to the permitting of GHG emissions as defined herein, except that in the event that any provisions of enabling federal law are overturned by a court of competent jurisdiction, such provisions adopted in this Regulation, are void and of no effect.

“CO₂ equivalent emissions” (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions in tons per year (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A - 1 to subpart A of 40 CFR part 98 - Global Warming Potentials (as of October 30, 2009), and summing the resultant value for each to compute a tpy CO₂ equivalent emissions.

“Department” means Arkansas Department of Environmental Quality or its successor.

“Designated representative” shall have the meaning given to it in section 402(26) of the Act and the regulations promulgated thereunder.

“Draft permit” means the version of a permit for which the Department offers public participation and affected State review.

“Emissions allowable under the permit” means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that

the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

“Emissions unit” means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term “unit” for purposes of title IV of the Act.

“Existing part 70 source” means:

(A) a part 70 source that ~~was is~~ in operation ~~as of on~~ September 13, 1993, or the effective date of these regulations.

(B) a facility that becomes a major source due to its GHG emissions as of July 1, 2011.

“Final permit” means the version of a part 70 permit issued by the Department that has completed all review procedures required by these regulations.

“Fugitive emissions” are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

“Greenhouse gases” (GHGs) is defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

“Initial permit” means a part 70 permit issued to a part 70 source that is in existence on the effective date of these regulations.

“Major source” means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person [or persons under common control]) belonging to a single major industrial grouping and that are described in subsection (A), (B), or (C) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(A) A major source under section 112 of the Act, which is defined as:

- (1) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from

other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

- (2) For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.
- (B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100,000 tpy CO₂e, and 100 tpy or more of any regulated air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:
- (1) Coal cleaning plants (with thermal dryers);
 - (2) Kraft pulp mills;
 - (3) Portland cement plants;
 - (4) Primary zinc smelters;
 - (5) Iron and steel mills;
 - (6) Primary aluminum ore reduction plants;
 - (7) Primary copper smelters;
 - (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (9) Hydrofluoric, sulfuric, or nitric acid plants;
 - (10) Petroleum refineries;
 - (11) Lime plants;
 - (12) Phosphate rock processing plants;
 - (13) Coke oven batteries;
 - (14) Sulfur recovery plants;
 - (15) Carbon black plants (furnace process);
 - (16) Primary lead smelters;

- (17) Fuel conversion plant;
 - (18) Sintering plants;
 - (19) Secondary metal production plants;
 - (20) Chemical process plants;
 - (21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (23) Taconite ore processing plants;
 - (24) Glass fiber processing plants;
 - (25) Charcoal production plants;
 - (26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
 - (27) Any other stationary source category, which as of August 7, 1980, is being regulated under section 111 or 112 of the Act.
- (C) A major stationary source as defined in part D of title I of the Act, including:
- (1) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe,” and 10 tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;
 - (2) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;
 - (3) For carbon monoxide nonattainment areas
 - (a) that are classified as “serious,” and
 - (b) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the

Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

- (4) For particulate matter (PM₁₀) nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM₁₀.

“Part 70 permit” or **“permit”** (unless the context suggests otherwise) means any permit or group of permits covering a part 70 source that is issued, renewed, amended, or revised pursuant to this regulation.

“Part 70 program” or **“State program”** means a program approved by the Administrator under 40 CFR Part 70, as promulgated July 21, 1992, and last modified November 27, 2001.

“Part 70 source” means any source subject to the permitting requirements of this regulation.

“Permit modification” means a revision to a part 70 permit that meets the requirements of Chapter 10 of Regulation No. 26.

“Permit revision” means any permit modification or administrative permit amendment.

“Permitting authority” means either of the following:

- (A) The Arkansas Department of Environmental Quality; or
- (B) The Administrator, in the case of EPA-implemented programs.

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in title IV of the Act or the regulations promulgated thereunder.

“Proposed permit” means the version of a permit that the Department proposes to issue and forwards to the Administrator for review.

“Recognized air contaminant emissions” shall mean those air contaminant emissions which may reasonably be assumed to be present according to mass balance calculations or applicable published literature on air contaminant emissions or those air contaminant emissions which characteristics, toxicity, rate and quantity of emission, and duration of their presence in the atmosphere cause or present a threat of harm to human health or the environment.

“Regulated air pollutant” means the following:

- (A) Nitrogen oxides or any volatile organic compounds;

- (B) Any pollutant for which a national ambient air quality standard has been promulgated;
- (C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
- (D) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; ~~or~~
- (E) Any hazardous air pollutant listed pursuant to section 112 of the Act; or
- (F) GHGs.

“**Renewal**” means the process by which a permit is reissued at the end of its term.

“**Renewal permit**” means a part 70 permit that is reissued at the end of its term.

“**Responsible official**” means one of the following:

- (A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - (1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 United States dollars); or
 - (2) The delegation of authority to such representative is approved in advance by the Department;
- (B) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
- (C) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this regulation, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
- (D) For acid rain sources:
 - (1) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative for any other purposes under part 70.

“State” means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term “State” also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context, “State” shall have its conventional meaning. For purposes of the acid rain program, the term “State” shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant.

“Title I modification” means any modification as defined under any regulation promulgated pursuant to Title I of the federal Clean Air Act. *De Minimis* changes under Regulation 19, changes to state only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications.

CHAPTER 3: REQUIREMENT FOR A PERMIT, APPLICABILITY

Reg. 26.301 Requirement for a permit

- (A) No part 70 source may operate unless it is operating in compliance with a part 70 permit, or unless it has filed a timely and complete application for an initial or renewal permit as required under these regulations. Existing part 70 sources shall submit initial applications according to the provisions of section 4. If a part 70 source submits a timely and complete application for an initial or renewal permit, the source's failure to have a part 70 permit is not a violation of this regulation until the Department takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being needed to process the application. If the Department fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.
- (B) No proposed new part 70 source shall begin construction prior to obtaining a part 70 permit, unless the applicable permit application was submitted prior to the effective date of these regulations and the Department's draft permitting decision for such source has already proceeded to public notice in accordance with Regulation No. 19.
- (C) No part 70 source shall begin construction of a new emissions unit or begin modifications to an existing emissions unit prior to obtaining a modified part 70 permit. This applies only to significant modifications and does not apply to modifications that qualify as minor modifications or changes allowed under the operational flexibility provisions of a part 70 permit. An existing part 70 source shall be subject to the permit modification procedures of Regulation No. 19 until such time that an initial part 70 permit application is due from the source.

Reg. 26.302 Sources subject to permitting

The following sources shall be subject to permitting under these regulations, unless exempted by Reg. 26.303 below:

- (A) Any major source;
- (B) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act (i.e., New Source Performance Standards [NSPS] regs.) However, nonmajor sources subject to section 111 of the Act are exempt from the obligation to obtain a part 70 permit until such time that the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources;

- (C) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act (i.e., hazardous air pollutant regs.), except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;
- (D) Any source subject to Arkansas Pollution Control and Ecology Commission's Regulation 19, Chapter 9."
- (E) Any acid rain source (which shall be permitted in accordance with the provisions of the federal acid rain program); ~~and~~
- (F) Any source in a source category designated by the Administrator pursuant to this section; ~~and~~
- (G) Any stationary source as of July 1, 2011, emitting or having the potential to emit 100,000 tpy CO₂e.

Reg. 26.303 Source category exemptions

The following source categories are exempted from the obligation to obtain a part 70 permit:

- (A) All sources listed in Reg. 26.302 that are not major sources, acid rain sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act, are exempted from the obligation to obtain a part 70 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources.
- (B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters as of July 23, 1993; and
- (C) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation as of July 23, 1993.
- (D) Any other nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act exempted by the Administrator.

Reg. 26.304 Emissions units subject to permitting

The Department shall include in the part 70 permit all applicable requirements for all relevant emissions units in the part 70 source. Some equipment with very small emission rates is exempt from permitting requirements as per Chapter 4 and Appendix A of Regulation No. 19.

Reg. 26.305 Emissions subject to permitting

All regulated air pollutant emissions and ~~recognized~~ air contaminant emissions from a part 70 source shall be included in a part 70 permit, except that GHG emissions less than 75,000 tpy CO₂e shall not be included in a part 70 permit, and. ~~However,~~ only regulated air pollutants may trigger the need for a part 70 permit or a part 70 permit modification process. A permit modification involving only air contaminants other than regulated air pollutants shall be permitted according to the procedure of Regulation No. 19. Such permits shall be incorporated into the part 70 permit by administrative permit amendment.

Reg. 26.306 Fugitive emissions subject to permitting

Fugitive emissions from a part 70 source shall be included in the permit application and the part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

CHAPTER 4: APPLICATIONS FOR PERMITS

Reg. 26.401 Duty to apply

For each source subject to 40 CFR part 70, as promulgated June 3, 2010, July 21, 1992, and last modified November 27, 2001, the owner or operator shall submit a timely and complete permit application (on forms supplied by the Department) in accordance with this section.

Reg. 26.402 Standard application form and required information

The Department shall provide a standard application form or forms and shall provide them to part 70 sources upon request. Information as described below for each emissions unit at a part 70 source shall be required by the application form and included by the applicant in the application.

- (A) Insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application.
- (B) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required by the Arkansas Pollution Control and Ecology Commission's Regulation Number 9, Fee Regulation (Regulation 9 or Regulation No. 9). The Department may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below:
 - (1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.
 - (2) A description of the source's processes and products (by Standard Industrial Classification Code or the North American Industry Classification System) including any associated with alternate scenario identified by the source.
 - (3) The following emission-related information:
 - (a) A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under Reg. 26.402(A). The Department shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule in Regulation No. 9.

- (b) Identification and description of all points of emissions described above in sufficient detail to establish the basis for fees and applicability of requirements of the Act.
 - (c) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.
 - (d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.
 - (e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.
 - (f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source.
 - (g) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).
 - (h) Calculations on which the information in Reg. 26.402(B)(3) is based.
- (4) The following air pollution control requirements:
 - (a) Citation and description of all applicable requirements, and
 - (b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.
 - (5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act, of this part or to determine the applicability of such requirements.
 - (6) An explanation of any proposed exemptions from otherwise applicable requirements.
 - (7) Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to Reg. 26.701(I) or to define permit terms and conditions implementing Reg. 26.802 or Reg. 26.701(J).
 - (8) A compliance plan for all part 70 sources that contains all the following:

- (a) A description of the compliance status of the source with respect to all applicable requirements.
- (b) A description as follows:
 - (i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - (ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
 - (iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
- (c) A compliance schedule as follows:
 - (i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - (ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
 - (iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

- (d) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.
 - (e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.
- (9) Requirements for compliance certification, including the following:
- (a) A certification of compliance with all applicable requirements by a responsible official consistent with Reg. 26.410 and section 114(a)(3) of the Act;
 - (b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - (c) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department; and
 - (d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.
- (10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.

(C) Reserved

Reg. 26.403 Initial applications from existing part 70 sources

A timely application for an existing part 70 source ~~existing on the effective date of these regulations~~ is one that is submitted within 12 months after the source becomes subject to the permit program, or on or before such earlier date as the Department may establish. The earliest that the Department may require an initial application from such an existing part 70 source is 6 months after the Department notifies the source in writing of its duty to apply for an initial part 70 permit.

Reg. 26.404 Applications for proposed new part 70 sources

The owner or operator proposing to construct a new part 70 source shall apply for and obtain a part 70 permit prior to the construction of the source, unless the applicable permit application was submitted prior to the effective date of these Regulations and the Department's draft permitting decision for such source has already proceeded to public comment in accordance with Regulation No. 19.

Reg. 26.405 Applications for proposed significant modifications at part 70 sources

Part 70 sources proposing to construct a new emissions unit or modify an existing emissions unit shall apply for and obtain a modified part 70 permit prior to the construction or modification of such emissions unit. This applies only to significant modifications and does not apply to modifications that qualify as minor modifications or changes allowed under the operational flexibility provisions of a part 70 permit.

Reg. 26.406 Permit renewal applications

For purposes of permit renewal, a timely application is one that is received by the Department at least 6 months prior to the date of permit expiration or such other longer time as may be approved by the Administrator that ensures that the term of the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months. Renewal permits are subject to the same procedural requirements that apply to initial permit issuance. Permit expiration terminates a part 70 source's right to operate unless a timely and complete renewal application has been received by the Department, in which case the existing permit shall remain in effect until the Department takes final action on the renewal application. If the Department fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

Reg. 26.407 Complete application

To be deemed complete, an application must provide all information required by Reg. 26.402, except that applications for permit revision need supply only that information related to the proposed change. Unless the Department determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete. If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

Reg. 26.408 Confidential information

In the case where a source has submitted information to the State under a claim of confidentiality, the Department may also require the source to submit a copy of such information directly to the Administrator.

Reg. 26.409 Applicant's duty to supplement or correct application

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

Reg. 26.410 Certification by responsible official

Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these regulations shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

CHAPTER 5: ACTION ON APPLICATIONS

Reg. 26.501 Action on part 70 permit applications

A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

- (A) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit.
- (B) Except for modifications qualifying for minor permit modification procedures under Chapter 10 of Regulation No. 26, the Department has complied with the requirements under Chapter 6 of Regulation No. 26 for public participation and for notifying and responding to affected States.
- (C) The processing of the permit application and the conditions of the permit provide for compliance with all applicable requirements and the requirements of this regulation; and
- (D) The Administrator has received a copy of the proposed permit and any notices required under Chapter 6 of Regulation No. 26 and has not objected to issuance of the permit within the time period specified therein.

Reg. 26.502 Final action on permit application

The Department shall take final action on each permit application (including a request for permit modification or renewal) as expeditiously as practicable, but no later than 18 months after receiving a complete application, unless a different time period is provided for in these regulations (i.e., initial permitting of existing part 70 sources and minor permit modifications). Failure of the Department to act upon an application shall not constitute approval of the permit application. An aggrieved applicant may seek relief from Department inaction on a permit application in accordance with the procedures of Arkansas Code Annotated §§ 8-4-311 (b)(10)(F).

Reg. 26.503 Priority for application review

Priority shall be given by the Department to taking action on applications for construction and modification over applications for permit renewal to the extent practicable.

Reg. 26.504 Notification of application completeness

The Department shall promptly provide notice to the applicant of whether the application is complete. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures,

the program shall not require a completeness determination, but shall be subject to an eligibility determination.

Reg. 26.505 Source's ability to operate prior to final permit action

A part 70 source's ability to operate without a permit prior to initial permit issuance (to existing part 70 sources) or permit renewal shall be in effect from the date the timely and complete application for initial permit or permit renewal is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Department. However, the installation of new emissions units and the modification of existing emissions units may not commence until a final permit for such activity is issued, unless such activity involves equipment exempt from permitting requirements or modifications eligible to be processed through minor permit modification procedures.

Reg. 26.506 —Basis for draft permit conditions

The Department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Department shall send this statement to EPA and to any other person who requests it.

CHAPTER 6: PERMIT REVIEW BY THE PUBLIC, AFFECTED STATES, AND EPA

Reg. 26.601 Applicability

All initial permits, renewal permits, and significant permit modifications shall meet the permit review requirements of this chapter.

Reg. 26.602 Public participation

All initial permit issuances, significant modifications, minor modifications, and renewals shall afford the public the opportunity to comment.

(A) Public notice shall be given:

- (1) By publication of notice of application receipt by the Department, in a newspaper of general circulation in the county in which the proposed facility or activity is to be located, in accordance with the Arkansas Pollution Control and Ecology Commission's Regulation Number 8, Administrative Procedures (Regulation No. 8) (minor permit modification applications are exempt from this requirement). In the event the local newspaper is unable or unwilling to publish the notice, notice may be published in a newspaper in general circulation through the State;
- (2) By the availability for public inspection in at least one location in the area where the source is located and in the Department's central offices of the permit application submitted by the owner or operator and the Department's draft permitting decision and analysis of the effect of the proposed emissions on air quality;
- (3) By publication of a notice of the Department's draft permitting decision in a newspaper of general circulation in the county in which the proposed facility or activity is to be located, in accordance with Regulation No. 8. In the event the local newspaper is unable or unwilling to publish the notice, notice may be published in a newspaper in general circulation through the State;
- (4) To the mayor of the community in which the source is located;
- (5) To the county judge of the county in which the source is located;
- (6) To persons on a mailing list developed by the Department, including those who request in writing to be on the list; and
- (7) By other means if necessary to assure adequate notice to the affected public.

- (B) The notice of Reg. 26.602(A)(3) shall identify the affected facility; the name and address of the permittee; the name and address of the Department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials and all other materials available to the Department that are relevant to the permit decision; a brief description of the comment procedures required by this regulation; and a statement of procedures to request a hearing.
- (C) The Department shall provide such notice and opportunity for participation by affected States as is provided for in this section.
- (D) The Department shall provide at least 30 days for public comment on its draft permitting decision and shall give notice of any public hearing at least 30 days in advance of the hearing.
- (E) The Department shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and such records shall be available to the public.

Reg. 26.603 Transmission of permit information to the Administrator

- (A) The Department shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 70 permit. The applicant may be required by the Department to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the Department may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan.
- (B) The Department shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of 40 CFR part 70, as promulgated July 21, 1992, and last modified November 27, 2001.

Reg. 26.604 Review of draft permit by affected States

- (A) The Department shall give notice of each draft permit to any affected State on or before the time that the Department provides this notice to the public, except to the extent that minor permit modification procedures requires the timing of the notice to be different.
- (B) The Department, as part of the submittal of the proposed permit to the Administrator (or as soon as possible after the submittal for minor permit

modification procedures), shall notify the Administrator and any affected State in writing of any refusal by the Department to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements or the requirements of 40 CFR part 70, as promulgated July 21, 1992, and last modified November 27, 2001.

Reg. 26.605 EPA objection to proposed permit

- (A) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this regulation. No permit for which an application is required to be transmitted to the Administrator may be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.
- (B) Any EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.
- (C) Failure of the Department to follow proper permit issuance procedural requirements or to submit required information necessary to review the proposed permit also shall constitute grounds for an objection.
- (D) If the Department fails, within 90 days after the date of an objection under Reg. 26.605(A) to revise and submit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of the Federal program promulgated under title V of the Act.

Reg. 26.606 Public petitions to the Administrator

If the Administrator does not object in writing to a proposed part 70 permit, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the Department shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued a permit prior to receipt of an EPA objection under this subsection, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in Chapter 10 of Regulation No. 26 except in unusual circumstances, and the Department may thereafter issue only a revised

permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

Reg. 26.607 Prohibition on default issuance

No part 70 permit (including a permit renewal or modification) shall be issued until affected States and EPA have had an opportunity to review the proposed permit as required under this chapter.

CHAPTER 7: PERMIT CONTENT

Reg. 26.701 Standard permit requirements

Each permit issued under this program shall include the following elements:

- (A) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.
 - (1) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
 - (2) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.
 - (3) If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the Department elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
- (B) The Department shall issue permits for a fixed term of 5 years in the case of acid rain sources, and for a term not to exceed 5 years in the case of all other part 70 sources. Notwithstanding this requirement, the Department shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.
- (C) Monitoring and related recordkeeping and reporting requirements.
 - (1) Each permit shall contain the following requirements with respect to monitoring:
 - (a) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate

to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

- (b) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Reg. 26.701(C)(3). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph; and
 - (c) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.
- (2) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:
- (a) Records of required monitoring information that include the following:
 - (i) The date, place as defined in the permit, and time of sampling or measurements;
 - (ii) The date(s) analyses were performed;
 - (iii) The company or entity that performed the analyses;
 - (iv) The analytical techniques or methods used;
 - (v) The results of such analyses; and
 - (vi) The operating conditions as existing at the time of sampling or measurement;
 - (b) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

- (3) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:
 - (a) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Reg. 26.410 and section 114(a)(3) of the Act.
 - (b) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Department shall define in each permit “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements.
- (D) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder.
 - (1) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.
 - (2) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
 - (3) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act.
- (E) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
- (F) Provisions stating the following:
 - (1) The permittee must comply with all conditions of the part 70 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
 - (2) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 - (3) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit

modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

- (4) The permit does not convey any property rights of any sort, or any exclusive privilege.
 - (5) The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.
- (G) A provision to ensure that a part 70 source pays fees to the Department consistent with the fee schedule approved pursuant to Regulation No. 9.
- (H) A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.
- (I) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Department. Such terms and conditions:
- (1) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
 - (2) May extend the permit shield described in Reg. 26.704 to all terms and conditions under each such operating scenario; and
 - (3) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.
- (J) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:
- (1) Shall include all terms required under Reg. 26.701 and Reg. 26.703 to determine compliance;
 - (2) May extend the permit shield described in Reg. 26.704 to all terms and conditions that allow such increases and decreases in emissions; and

- (3) Must meet all applicable requirements and requirements of this part.

Reg. 26.702 Federally-enforceable requirements

- (A) All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.
- (B) Notwithstanding Reg. 26.702(A), the Department shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of Chapters 6 and 10 of Regulation No. 26, other than those contained in this section.

Reg. 26.703 Compliance requirements

All part 70 permits shall contain the following elements with respect to compliance:

- (A) Consistent with Reg. 26.701(C), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official consistent with Reg. 26.410 and section 114(a)(3) of the Act.
- (B) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Department or an authorized representative to perform the following:
 - (1) Enter upon the permittee's premises where a part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
 - (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - (3) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
 - (4) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
- (C) A schedule of compliance consistent with Reg. 26.402(B)(8).
- (D) Progress reports consistent with an applicable schedule of compliance and Reg. 26.402(B)(8) to be submitted at least semiannually, or at a more frequent period if

specified in the applicable requirement or by the Department. Such progress reports shall contain the following:

- (1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and
 - (2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
- (E) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
- (1) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the Department) of submissions of compliance certifications;
 - (2) In accordance with Reg. 26.701(C), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;
 - (3) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):
 - (a) The identification of each term or condition of the permit that is the basis of the certification;
 - (b) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under Reg. 26.701(C). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;
 - (c) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in Reg. 26.703(E)(3)(b). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which

compliance is required and in which an excursion or exceedance occurred; and

- (d) Such other facts as the Department may require to determine the compliance status of the source.
- (4) A requirement that all compliance certifications be submitted to the Administrator as well as to the Department.
- (F) Such other provisions as the Department may require.

Reg. 26.704 Permit shield

- (A) Except as provided in this regulation, the Department shall, if requested by the applicant, expressly include in a part 70 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:
 - (1) Such applicable requirements are included and are specifically identified in the permit; or
 - (2) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
- (B) A part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (C) Nothing in this subsection or in any part 70 permit shall alter or affect the following:
 - (1) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;
 - (2) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
 - (3) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or
 - (4) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.
- (D) Permit shield provisions shall not extend to minor permit modifications.

Reg. 26.705 General permits

- (A) The Department may, after notice and opportunity for public participation provided under Chapter 6 of Regulation No. 26, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 70 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Department shall grant the conditions and terms of the general permit. Notwithstanding the permit shield provisions of this section, the source shall be subject to enforcement action for operation without a part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for acid rain sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Act.
- (B) Part 70 sources that would qualify for a general permit must apply to the Department for coverage under the terms of the general permit or must apply for a part 70 permit consistent with Chapter 4 of Regulation No. 26. The Department may, in the general permit, provide for applications which deviate from the requirements of Chapter 4 of Regulation No. 26, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures, the Department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

Reg. 26.706 Temporary sources

The Department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No acid rain source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

- (A) Conditions that will assure compliance with all applicable requirements at all authorized locations;
- (B) Requirements that the owner or operator notify the Department at least 10 days in advance of each change in location; and
- (C) Conditions that assure compliance with all other provisions of this section.

Reg. 26.707 Emergency provision

- (A) An “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency

- (B) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the following conditions are met. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
 - (2) The permitted facility was at the time being properly operated;
 - (3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 - (4) The permittee submitted notice of the emergency to the Department by the next working day after the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
- (C) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- (D) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

CHAPTER 8: OPERATIONAL FLEXIBILITY PROVISIONS

Reg. 26.801 Applicant's duty to apply for alternative scenarios

Any operating scenario allowed for in a permit may be implemented by the facility without the need for any permit revision or any notification to the Department. It is incumbent upon the permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of permit application. The Department shall include approved alternative operating scenarios in the permit.

Reg. 26.802 Changes resulting in no emissions increases

A permitted source may make changes within the facility that contravene permit terms without a permit revision if the changes:

- (A) Are not modifications under any provision of title I of the Act;
- (B) Do not exceed emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions);
- (C) Do not violate applicable requirements; and
- (D) Do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements;

provided that the facility provides the Administrator and the Department with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, or such shorter time frame that Department allows for emergencies. The source, Department, and EPA shall attach each such notice to their copy of the relevant permit. For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield described in Chapter 7 of Regulation No. 26 does not apply to any change made pursuant to this subsection.

Reg. 26.803 Emissions trading in permit

The Department shall, if a permit applicant requests it, issue permits that contain terms and conditions, including all terms required under 40 CFR 70.6(a) and (c), as promulgated July 21, 1992, and last modified November 27, 2001, to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Department shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable

procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. The permittee shall provide 7-days written notice to the Department which shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit. The permit shield described in Chapter 7 of Regulation No. 26 shall extend to terms and conditions that allow such increases and decreases in emissions.

Reg. 26.804 Emissions trading allowed under Regulation No. 19

A permitted part 70 source may trade increases and decreases in emissions within the permitted facility, where Regulation No. 19, the State Implementation Plan, provides for such emissions trades, without requiring a permit revision. The permittee shall provide 7-days written notice to the Department which shall state when the proposed change will occur, a description of such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade. The permit shield described in Chapter 7 of Regulation No. 26 shall not extend to any change made pursuant to this subsection. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

CHAPTER 9: ADMINISTRATIVE PERMIT AMENDMENTS

Reg. 26.901 Administrative permit amendment applicability

An “administrative permit amendment” is a permit revision, requested by the permittee, that:

- (A) Corrects typographical errors;
- (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- (C) Requires more frequent monitoring or reporting by the permittee;
- (D) Allows for a change in ownership or operational control of a source, which has been permitted under Regulation No. 19, where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;
- (E) Incorporates a change in the permit involving air contaminants other than regulated air pollutants which has been processed under permitting provisions of Regulations the Arkansas Pollution Control and Ecology Commission’s Regulation Number 18, Arkansas Air Pollution Control Code (Regulation 18) and Regulation No. 19.
- (F) Incorporates a change in the permit solely involving the retiring of an emissions unit.
- (G) Incorporates a change to the facilities’ insignificant activities list.

Reg. 26.902 Acid Rain administrative permit amendments

Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

Reg. 26.903 Administrative permit amendment procedures

An administrative permit amendment shall be made by the Department consistent with the following:

- (A) The Department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this section.

- (B) The Department shall submit a copy of the revised permit to the Administrator.
- (C) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

CHAPTER 10: PERMIT MODIFICATIONS, REOPENINGS

Reg. 26.1001 Permit modification

A permit modification is any revision to a part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

Reg. 26.1002 Minor permit modification applicability

The minor permit modification process is an expedited procedure that allows a source to make changes involving limited emissions increases without a public notice process or a preconstruction permit. Minor permit modification procedures may be used only for those permit modifications that:

- (A) Involve emissions increases of less than:
 - (1) 75 tons per year of carbon monoxide (CO)
 - (2) 40 tons per year of nitrogen oxides (NO_x)
 - (3) 40 tons per year of sulfur dioxide (SO₂)
 - (4) 25 tons per year of particulate matter (PM)
 - (5) 15 tons per year of PM₁₀
 - (6) 40 tons per year of volatile organic compounds (VOCs)
 - (7) 0.6 tons per year of lead
 - (8) 75,000 tons per year of CO₂e
- (B) Involve the installation or modification of emissions units which do not require a title I emissions netting procedure to determine eligibility;
- (C) Do not violate any applicable requirement;
- (D) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
- (E) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (F) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed

to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

- (1) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I; and
 - (2) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act;
- (G) Are not modifications under any provision of title I of the Act.

Reg. 26.1003 Prohibition on multiple related minor permit modification application submittals

A part 70 source may not submit multiple minor permit modification applications that are designed to conceal a larger modification that would not be eligible for minor permit modification procedures. The Department may, in its discretion, require that multiple related minor permit modification applications be processed as a significant permit modification.

Reg. 26.1004 Minor permit modification application

An application requesting the use of minor permit modification procedures shall meet the standard part 70 permit application requirements and shall additionally include the following:

- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- (B) The source's suggested draft permit conditions;
- (C) Certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
- (D) Completed forms for the Department to use to notify the Administrator and affected States as required under Chapter 6 of Regulation No. 26.

Reg. 26.1005 EPA and affected State notification of minor permit modification application

Within 5 working days of receipt of a complete minor permit modification application, the Department shall meet its obligation to notify the Administrator and affected States of the requested permit modification. The Department promptly shall send any notice required under Chapter 6 of Regulation No. 26 to the Administrator.

Reg. 26.1006 Timetable for issuance of minor permit modification

The Department may not issue a final minor permit modification until after EPA's 45-day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, although the Department can approve the permit modification prior to that

time. Within 90 days of the Department's receipt of an application under minor permit modification procedures or 15 days after the end of the Administrator's 45-day review period under Chapter 6 of Regulation No. 26, whichever is later, the Department shall:

- (A) Issue the permit modification as proposed;
- (B) Deny the permit modification application;
- (C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- (D) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by Chapter 6 of Regulation No. 26.

Reg. 26.1007 Source's ability to make minor modification

A source may make the change proposed in its minor permit modification application upon receipt of written notification from the Department. The Department shall have 15 days after its receipt of the application to determine if the minor permit modification application is complete and is eligible for minor permit modification procedures. If the Department does not respond within this 15-day period, the source may proceed with the proposed modification at its own risk. After the source makes the change allowed by the preceding sentence, and until the Department takes action on the application, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

Reg. 26.1008 Group processing of minor permit modifications

Multiple applications for different minor permit modifications may be processed as a single minor permit modification by the Department if the group of multiple permit applications as a whole meets the eligibility requirements of Reg. 26.1002.

Reg. 26.1009 Permit shield not applicable to minor permit modifications

The permit shield under Chapter 7 of Regulation No. 26 does not extend to minor permit modifications.

Reg. 26.1010 Significant modification procedures

Significant modifications involving the procedures of Chapter 6 of Regulation No. 26 shall be used for applications that:

- (A) Involve new applicable requirements;

- (B) Are modifications under any provision of title I of the Act;
- (C) Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
- (D) Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (E) Involve an increase in regulated air pollutant emissions that cannot be processed under minor permit modification procedures.
- (F) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
 - (1) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I and
 - (2) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act.

Reg. 26.1011 Reopening for cause by the Department

- (A) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
 - (1) Additional applicable requirements under the Act become applicable to a major part 70 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended due to failure of the Department to take action on a renewal permit.
 - (2) Additional requirements (including excess emissions requirements) become applicable to an acid rain source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.
 - (3) The Department or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

- (4) The Administrator or the Department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.
- (B) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
- (C) Reopenings shall not be initiated before a notice of such intent is provided to the part 70 source by the Department at least 30 days in advance of the date that the permit is to be reopened, except that the Department may provide a shorter time period in the case of an emergency.

Reg. 26.1012 Reopenings for cause by EPA

- (A) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit, the Administrator shall notify the Department and the permittee of such finding in writing.
- (B) The Department shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the Department must require the permittee to submit additional information.
- (C) The Administrator will review the proposed determination from the Department within 90 days of receipt.
- (D) The Department shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.
- (E) If the Department fails to submit a proposed determination pursuant to this subsection, or fails to resolve any objection pursuant to this subsection, the Administrator will terminate, modify, or revoke and reissue the permit after the following actions:
 - (1) Providing at least 30 days notice to the permittee in writing of the reasons for any such action.
 - (2) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

Reg. 26.1013 Permit Flexibility

- (A) The Department may grant an extension to any testing, compliance or other dates in the permit. No extensions shall be authorized until the permittee of the facility

receives written approval from the Department. The Department may grant such a request, at its discretion, in the following circumstances:

- (1) The permittee of the facility makes such a request in writing at least 15 days in advance of the deadline specified in the facility's permit;
 - (2) The extension does not violate a federal requirement;
 - (3) The permittee of the facility demonstrates the need for the extension; and
 - (4) The permittee of the facility documents that all reasonable measures have been taken to meet the current deadline and documents reasons the current deadline cannot be met.
- (B) The Department may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limit in a facility's permit. No such activities shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant such a request, at its discretion, in the following circumstances:
- (1) The permittee of the facility makes such a request in writing at least 30 days in advance of the date that temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limit in a facility's permit;
 - (2) Such a request does not violate a federal requirement;
 - (3) Such a request is temporary in nature;
 - (4) Such a request will not result in a condition of air pollution;
 - (5) The request contains such information necessary for the Department to evaluate the request, including but not limited to, quantification of such emissions and the date and time such emission will occur;
 - (6) Such a request will result in increased emissions less than five tons of any individual criteria pollutant, one ton of any single HAP and 2.5 tons of total HAPs; and
 - (7) The permittee of the facility maintains records of the dates and results of such temporary emissions and/or testing.
- (C) The Department may grant a request to allow an alternative to the monitoring specified in a facility's operating permit. No such activities shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant such a request, at its discretion, in the following circumstances:

- (1) The permittee of the facility makes such a request in writing at least 30 days in advance of the first date that the monitoring alternative will be used at the facility;
- (2) Such a request does not violate a federal requirement;
- (3) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the facility's operating permit; and
- (4) Any such request, if approved by the Department, is incorporated into the next permit modification application by the permittee of the facility.

CHAPTER 11: PERMIT FEES

Reg. 26.1101 Fee requirement

In accordance with 40 CFR 70.9, as promulgated July 21, 1992, and last modified November 27, 2001, the owners or operators of part 70 sources shall pay initial and annual fees that are sufficient to cover the permit program costs. The Department shall ensure that any fee required by these regulations will be used solely for permit program costs.

Reg. 26.1102 Fee schedule

The fee schedule for part 70 permits is contained in Regulation No. 9.

CHAPTER 12: ACID RAIN SOURCES PROVISIONS

Reg. 26.1201 Purpose

The purpose of this section is to ensure that acid rain sources located within the state will be permitted in accordance with the regulations promulgated pursuant to title IV of the federal Clean Air Act.

Reg. 26.1202 Adoption by reference

The Arkansas Pollution Control and Ecology Commission hereby adopts and incorporates by reference those provisions of 40 CFR parts 72 and 76 (including all provisions of parts 73, 74, 75, 77, and 78 referenced therein) as in effect on October 15, 1999, for purposes of implementing an Acid Rain Program that meets the requirements of title IV of the Clean Air Act. The term “permitting authority” shall mean the Arkansas Department of Environmental Quality, and the term “Administrator” shall mean the Administrator of the United States Environmental Protection Agency. If the provisions or requirements of 40 CFR parts 72 or 76 conflict with or are not included in Regulation No. 26, the part 72 or 76 provisions and requirements shall apply and take precedence.

CHAPTER 13: EFFECTIVE DATE

Reg. 26.1301 Effective Date

This regulation is effective ten (10) days after filing with the Secretary of State, the State Library and the Bureau of Legislative Research.