

Title 8. Environmental Law

Chapter I. Arkansas Pollution Control and Ecology Commission, Department of Energy and Environment

Subchapter D. Air Quality

Part 42. Rules of the Arkansas Operating Air Permit Program

Subpart 1. General Provisions

8 CAR § 42-101. Title.

The following rules of the Arkansas Pollution Control and Ecology Commission, adopted in accordance with the provisions of Part 2 of the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., shall be known as the "Rules of the Arkansas Operating Air Permit Program", hereinafter referred to as the "program", the "rules", and "8 CAR pt. 42".

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-102. Purpose.

(a) Promulgation and enforcement of this part is intended to meet the requirements of Title V of the federal Clean Air Act, 42 U.S.C. § 7401 et seq., and 40 C.F.R. pt. 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.

(b) Permits issued under this program will address all applicable air contaminant emissions and regulatory requirements in a single document.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-103. Severability.

(a) If any provision of this part is determined to be invalid, such invalidity shall not affect other provisions of this part.

(b) If federal legislation or a federal court stays, invalidates, delays the effective date of, or otherwise renders unenforceable, in whole or in part, Environmental Protection Agency's regulation of greenhouse gases, then the provisions of this part concerning greenhouse gases based thereon shall be stayed and shall not be enforceable until such time as the Arkansas Pollution Control and Ecology Commission makes a final decision on whether or not to revise this part due to the federal legislation or federal court order.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-104. Definitions.

(a) The following definitions apply to this part.

(b) Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the federal Clean Air Act or the Arkansas Pollution Control and Ecology Commission's Rules of the Arkansas Plan of Implementation for Air Pollution Control, 8 CAR pt. 41:

(1) "Acid rain source" shall have the meaning of "affected source" as defined in Title IV of the Act;

(2) "Act" means the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended July 23, 1993;

(3) "Administrator" or "EPA" means the Administrator of the Environmental Protection Agency or his or her designee;

(4) "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 fifty (50) miles of the permitted source;

(5) "Air contaminant" or "air pollutant" means any solid, liquid, gas, or combination thereof, other than water vapor, nitrogen (N₂), and oxygen (O₂);

(6) "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 the Environmental Protection Agency 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 the Environmental Protection Agency 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 C.F.R. pt. 52;

(B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Part C or Part 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 of the Environmental Protection Agency 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;

(7) "CO₂ equivalent emissions (CO₂e)" shall represent an amount of greenhouse gases (GHGs) emitted, and shall be computed by multiplying the mass amount of emissions tons per year (tpy), for each of the six (6) greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 C.F.R. pt. 98 – Global Warming Potentials, which is incorporated by reference as of the effective date of the federal rule published by the Environmental Protection Agency in the Federal Register on November 29, 2013 (78 FR 71948), and summing the resultant value for each to compute a tpy CO₂ equivalent emissions;

(8) "Designated representative" shall have the meaning given to it in Section 402(26) of the Act and the regulations promulgated thereunder;

(9) "Division" means the Division of Environmental Quality or its successor;

(10) "Draft permit" means the version of a permit for which the Division of Environmental Quality offers public participation and affected state review;

(11) "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;

(12)(A) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant.

(B) This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act;

(13) "Existing part 70 source" means a:

(A) Part 70 source that was in operation as of September 13, 1993;

(B) Facility that becomes a major source due to its GHG emissions as of July 1, 2011; or

(C) Part 70 source that is in operation on the effective date of this part;

(14) "Final permit" means the version of a part 70 permit issued by the Division of Environmental Quality that has completed all review procedures required by this part;

(15) "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening;

(16) "Greenhouse gases (GHGs)" means the aggregate group of six (6) greenhouse gases:

- (A) Carbon dioxide;
- (B) Nitrous oxide;
- (C) Methane;
- (D) Hydrofluorocarbons;
- (E) Perfluorocarbons; and
- (F) Sulfur hexafluoride;

(17) "Initial permit" means a part 70 permit issued to a part 70 source that is in existence on the effective date of this part;

(18)(A) "Major source" means any stationary source, or any group of stationary sources that are located on one (1) 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 subdivision (b)(18)(C), (b)(18)(D), or (b)(18)(E) of this section.

(B) 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.

(C) A "major source" under Section 112 of the Act is defined as:

(i)(a) 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, ten (10) tpy or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act,

twenty-five (25) tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator of the Environmental Protection Agency may establish by rule.

(b) Notwithstanding subdivision (b)(18)(C)(i)(a) of this section, 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

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator of the Environmental Protection Agency by rule.

(D)(i) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, one hundred (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 of the Environmental Protection Agency.

(ii) 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 (1) of the following categories of stationary source:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plant;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers, or combination thereof, totaling more than two hundred fifty million British thermal units (250,000,000 BTUs) per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units (250,000,000 BTUs) per hour heat input; or
(aa) Any other stationary source category, which as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

(E) A major stationary source as defined in Part D of Title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit one hundred (100) tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate", fifty (50) tpy or more in areas classified as "serious", twenty-five (25) tpy or more in areas classified as "severe", and ten (10) tpy or more in areas classified as "extreme", except that the references in this subdivision (18)(E)(i) of this section to one hundred (100), fifty (50), twenty-five (25), and ten (10)

tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator of the Environmental Protection Agency 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;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit fifty (50) tpy or more of volatile organic compounds;

(iii) 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 of the Environmental Protection Agency, sources with the potential to emit fifty (50) tpy or more of carbon monoxide; and

(iv) For particulate matter (PM₁₀) nonattainment areas classified as "serious", sources with the potential to emit seventy (70) tpy or more of PM₁₀;

(19) "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 part;

(20) "Part 70 program" or "state program" means a program approved by the Administrator of the Environmental Protection Agency under 40 C.F.R. pt. 70, as promulgated July 21, 1992, and last modified November 27, 2001;

(21) "Part 70 source" means any source subject to the permitting requirements of this part;

(22) "Permit modification" means a revision to a part 70 permit that meets the requirements of Subpart 9 of this part;

(23) "Permit revision" means any permit modification or administrative permit amendment;

(24) "Permitting authority" means either of the following:

(A) The Division of Environmental Quality; or

(B) The Administrator of the Environmental Protection Agency, in the case

of Environmental Protection Agency-implemented programs;

(25)(A) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design.

(B) 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 of the Environmental Protection Agency.

(C) 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;

(26) "Proposed permit" means the version of a permit that the Division of Environmental Quality proposes to issue and forwards to the Administrator of the Environmental Protection Agency for review;

(27) "Recognized air contaminant emissions" means 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;

(28) "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 Class II substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any hazardous air pollutant listed pursuant to Section 112 of the Act;

or

(F) GHGs, except that GHGs shall not be a regulated air pollutant unless the GHG emissions are from a part 70 source emitting, or having a potential to emit:

(i) One hundred thousand (100,000) tpy CO₂e emissions or more;

and

(ii) Amounts that equal or exceed one hundred (100) tpy calculated as the sum of the six (6) well-mixed GHGs on a mass basis;

(29) "Renewal" means the process by which a permit is reissued at the end of its term;

(30) "Renewal permit" means a part 70 permit that is reissued at the end of its term;

(31) "Responsible official" means one (1) 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 (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) in second quarter 1980 United States dollars; or

(ii) The delegation of authority to such representative is approved in advance by the Division of Environmental Quality;

(B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(C)(i) For a municipality, state, federal, or other public agency, either a principal executive officer or ranking elected official.

(ii) For the purposes of this part, 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 the Environmental Protection Agency; or

(D) For acid rain sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under part 70;

(32)(A) "State" means any nonfederal permitting authority, including any local agency, interstate association, or statewide program.

(B) 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.

(C) Where such meaning is clear from the context, "state" shall have its conventional meaning.

(D) For purposes of the acid rain program, the term "state" shall be limited to authorities within the forty-eight (48) contiguous states and the District of Columbia as provided in Section 402(14) of the Act;

(33) "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant; and

(34)(A) "Title I modification" means any modification as defined under any regulation promulgated pursuant to Title I of the federal Clean Air Act.

(B) De minimis changes under 8 CAR pt. 41, changes to state-only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 2. Requirement for a Permit — Applicability

8 CAR § 42-201. Requirement for a permit.

(a)(1) 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 this part.

(2) Existing part 70 sources shall submit initial applications according to the provisions of Subpart 3 of this part.

(3)(A) 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 part until the Division of Environmental Quality takes final action on the permit application, except as noted in this section.

(B) 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 division any additional information identified as being needed to process the application.

(4) If the division fails to act in a timely way on a permit renewal, the Environmental Protection Agency 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 this part and the division's draft permitting decision for such source has already proceeded to public notice in accordance with 8 CAR pt. 41.

(c)(1)(A) 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.

(B) 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.

(2) An existing part 70 source shall be subject to the permit modification procedures of 8 CAR pt. 41 until such time that an initial part 70 permit application is due from the source.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-202. Sources subject to permitting.

The following sources shall be subject to permitting under this part unless exempted by 8 CAR § 42-203:

(1) Any major source;

(2)(A) 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) regulations.

(B) 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 of the Environmental Protection Agency completes a rulemaking to determine how the program should be structured for nonmajor sources;

(3) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, i.e., hazardous air pollutant regulations, 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;

(4) Any source subject to Subpart 8 of the Arkansas Pollution Control and Ecology Commission's Rules of the Arkansas Plan of Implementation for Air Pollution Control, 8 CAR pt. 41;

(5) Any acid rain source, which shall be permitted in accordance with the provisions of the federal acid rain program; and

(6) Any source in a source category designated by the Administrator of the Environmental Protection Agency pursuant to this section.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-203. Source category exemptions.

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

(1) All sources listed in 8 CAR § 42-202 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 of the Environmental Protection Agency completes a rulemaking to determine how the program should be structured for nonmajor sources;

(2) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. pt. 60, subpt. AAA – Standards of Performance for New Residential Wood Heaters as of July 23, 1993;

(3) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. pt. 61, subpt. M – National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation as of July 23, 1993; and

(4) Any other nonmajor sources subject to a standard or other requirement under either Section 111 or 112 of the Act exempted by the Administrator of the Environmental Protection Agency.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-204. Emissions units subject to permitting.

(a) The Division of Environmental Quality shall include in the part 70 permit all applicable requirements for all relevant emissions units in the part 70 source.

(b) Some equipment with very small emission rates is exempt from permitting requirements as per Subpart 3 and Appendix A of 8 CAR pt. 41.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-205. Emissions subject to permitting.

(a) 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 one hundred thousand (100,000) tpy CO₂e shall not be included in a part 70 permit unless the part 70 source undertakes a physical change or change in the method

of operation that will result in an emissions increase of seventy-five thousand (75,000) tpy CO₂e or more.

(b) Only regulated air pollutants may trigger the need for a part 70 permit or a part 70 permit modification process.

(c)(1) A permit modification involving only air contaminants other than regulated air pollutants shall be permitted according to the procedure of 8 CAR pt. 41.

(2) Such permits shall be incorporated into the part 70 permit by administrative permit amendment.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Codification Notes. “tpy” means tons per year.

8 CAR § 42-206. 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 3. Applications for Permits

8 CAR § 42-301. Duty to apply.

For each source subject to 40 C.F.R. pt. 70, as promulgated June 3, 2010 (75 FR 31607), the owner or operator shall submit a timely and complete permit application on forms supplied by the Division of Environmental Quality in accordance with this section.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-302. Standard application form and required information.

(a)(1) The Division of Environmental Quality shall provide a standard application form or forms and shall provide them to part 70 sources upon request.

(2) 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.

(b)(1) A list of insignificant activities that are exempted because of size or production rate must be included in the application.

(2) 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 Fee Regulation, 8 CAR pt. 12.

(c)(1) The division may use discretion in developing application forms that best meet program needs and administrative efficiency.

(2) The forms and attachments chosen, however, shall include the elements specified below:

(A) 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;

(B) 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;

(C) The following emission-related information:

(i)(a) A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under subdivision (b)(1) of this section.

(b) The division 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 8 CAR pt. 12;

(ii) 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;

(iii) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(iv) The following information to the extent it is needed to determine or regulate emissions:

(a) Fuels;

(b) Fuel use;

(c) Raw materials;

(d) Production rates; and

(e) Operating schedules;

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities;

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source;

(vii) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act; and

(viii) Calculations on which the information in subdivision (c)(2)(C) of this section is based;

(D) The following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement;

(E) 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;

(F) An explanation of any proposed exemptions from otherwise applicable requirements;

(G) Additional information as determined to be necessary by the division to define alternative operating scenarios identified by the source pursuant to 8 CAR § 42-601(9), or to define permit terms and conditions implementing 8 CAR § 42-702 or 8 CAR § 42-601(10);

(H) A compliance plan for all part 70 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements;

(ii) A description as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis; and

(c) 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;

(iii) A compliance schedule as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(b)(1) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(2) 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; and

(c)(1) A schedule of compliance for sources that are not in

compliance with all applicable requirements at the time of permit issuance.

(2) 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.

(3) 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.

(4) Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

(iv) A schedule for submission of certified progress reports no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation; and

(v) The compliance plan content requirements specified in this subdivision (c)(2)(H)(v) 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 or methods the source will use to achieve compliance with the acid rain emissions limitations;

(I) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with 8 CAR § 42-310 and Section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) 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 division; and

(iv) A statement indicating the source's compliance status with any

applicable enhanced monitoring and compliance certification requirements of the Act;
and

(J) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Codification Notes. “tpy” means tons per year.

8 CAR § 42-303. Initial applications from existing part 70 sources.

(a) A timely application for an initial part 70 permit for an existing part 70 source is one that is submitted:

(1) Within twelve (12) months after the source becomes subject to the permit program; or

(2) On or before such earlier date as the Division of Environmental Quality may establish.

(b) The earliest that the division may require an initial application from such an existing part 70 source is six (6) months after the division notifies the source in writing of its duty to apply for an initial part 70 permit.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-304. 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 this part and the Division of Environmental Quality’s draft permitting decision for such source has already proceeded to public comment in accordance with 8 CAR pt. 41.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-305. Applications for proposed significant modifications at part 70 sources.

(a) 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.

(b) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-306. Permit renewal applications.

(a)(1) For purposes of permit renewal, a timely application is one that is received by the Division of Environmental Quality at least six (6) months prior to the date of permit expiration or such other longer time as may be approved by the Administrator of the Environmental Protection Agency that ensures that the term of the permit will not expire before the permit is renewed.

(2) In no event shall this time be greater than eighteen (18) months.

(b) Renewal permits are subject to the same procedural requirements that apply to initial permit issuance.

(c) Permit expiration terminates a part 70 source's right to operate unless a timely and complete renewal application has been received by the division, in which case the existing permit shall remain in effect until the division takes final action on the renewal application.

(d) If the division fails to act in a timely way on a permit renewal, the Environmental Protection Agency may invoke its authority under Section 505(e) of the Act to terminate or revoke and reissue the permit.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-307. Complete application.

(a) To be deemed complete, an application must provide all information required by 8 CAR § 42-302, except that applications for permit revision need supply only that information related to the proposed change.

(b) Unless the Division of Environmental Quality determines that an application is not complete within sixty (60) days of receipt of the application, such application shall be deemed to be complete.

(c) If, while processing an application that has been determined or deemed to be complete, the division 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-308. Confidential information.

In the case where a source has submitted information to the state under a claim of confidentiality, the Division of Environmental Quality may also require the source to submit a copy of such information directly to the Administrator of the Environmental Protection Agency.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-309. Applicant's duty to supplement or correct application.

(a) 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.

(b) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-310. Certification by responsible official.

(a) Any application form, report, or compliance certification submitted pursuant to this part shall contain certification by a responsible official of truth, accuracy, and completeness.

(b) This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 4. Action on Applications

8 CAR § 42-401. 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:

(1) The Division of Environmental Quality 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;

(2) Except for modifications qualifying for minor permit modification procedures under Subpart 9 of this part, the division has complied with the requirements under Subpart 5 of this part, for public participation and for notifying and responding to affected states;

(3) The processing of the permit application and the conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(4) The Administrator of the Environmental Protection Agency has received a copy of the proposed permit and any notices required under Subpart 5 of this part, and has not objected to issuance of the permit within the time period specified therein.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-402. Final action on permit application.

(a) The Division of Environmental Quality shall take final action on each permit application, including a request for permit modification or renewal, as expeditiously as practicable, but no later than eighteen (18) months after receiving a complete application, unless a different time period is provided for in this part, i.e., initial permitting of existing part 70 sources and minor permit modifications.

(b) Failure of the division to act upon an application shall not constitute approval of the permit application.

(c) An aggrieved applicant may seek relief from division inaction on a permit application in accordance with the procedures of Arkansas Code § 8-4-311(b)(10)(F).

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-403. Priority for application review.

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

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-404. Notification of application completeness.

(a)(1) The Division of Environmental Quality shall promptly provide notice to the applicant of whether the application is complete.

(2) Unless the division requests additional information or otherwise notifies the

applicant of incompleteness within sixty (60) days of receipt of an application, the application shall be deemed complete.

(b) For modifications processed through minor permit modification procedures, the program shall not require a completeness determination but shall be subject to an eligibility determination.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-405. Source's ability to operate prior to final permit action.

(a) 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 Division of Environmental Quality.

(b) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-406. Basis for draft permit conditions.

(a) The Division of Environmental Quality 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.

(b) The division shall send this statement to the Environmental Protection Agency and to any other person who requests it.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 5. Permit Review by the Public, Affected States, and the Environmental Protection Agency

8 CAR § 42-501. Applicability.

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

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-502. Public participation.

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

(b) Public notice shall be given:

(1)(A) By publication of notice of application receipt by the Division of Environmental Quality 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 Administrative Procedures, 8 CAR pt. 11.

(B) Minor permit modification applications are exempt from this requirement.

(C) 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 (1) location in the area where the source is located and in the division's central offices of the permit application submitted by the owner or operator and the division's draft permitting decision and analysis of the effect of the proposed emissions on air quality;

(3)(A) By publication of a notice of the division'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 8 CAR pt. 11.

(B) 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 division, including those who request in writing to be on the list; and

(7) By other means if necessary to ensure adequate notice to the affected public.

(c) The notice of subdivision (b)(3) of this section shall:

(1) Identify the affected facility;

(2) Identify the name and address of the permittee;

(3) Identify the name and address of the division;

(4) Identify the activity or activities involved in the permit action;

(5) Identify the emissions change involved in any permit modification;

(6) Identify the name, address, and telephone number of a person from whom interested persons may obtain additional information, including:

(A) Copies of the permit draft;

(B) The application;

(C) All relevant supporting materials; and

(D) All other materials available to the division that are relevant to the permit decision;

(7) Include a brief description of the comment procedures required by this part; and

(8) Include a statement of procedures to request a hearing.

(d) The division shall provide such notice and opportunity for participation by affected states as is provided for in this section.

(e) The division shall provide at least thirty (30) days for public comment on its draft permitting decision and shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

(f) The division shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator of the Environmental

Protection Agency may fulfill his or her 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-503. Transmission of permit information to the Administrator of the Environmental Protection Agency.

(a)(1) The Division of Environmental Quality shall provide to the Administrator of the Environmental Protection Agency:

(A) A copy of each permit application, including any application for permit modification;

(B) Each proposed permit; and

(C) Each final part 70 permit.

(2) The applicant may be required by the division to provide a copy of the permit application, including the compliance plan, directly to the Administrator of the Environmental Protection Agency.

(3) Upon agreement with the Administrator of the Environmental Protection Agency, the division may submit to the Administrator of the Environmental Protection Agency 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 division shall keep for five (5) years such records and submit to the Administrator of the Environmental Protection Agency such information as the Administrator of the Environmental Protection Agency may reasonably require to ascertain whether the state program complies with the requirements of the Act or of 40 C.F.R. pt. 70, as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607).

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-504. Review of draft permit by affected states.

(a) The Division of Environmental Quality shall give notice of each draft permit to any affected state on or before the time that the division provides this notice to the public, except to the extent that minor permit modification procedures require the timing of the notice to be different.

(b)(1) The division, as part of the submittal of the proposed permit to the Administrator of the Environmental Protection Agency, or as soon as possible after the submittal for minor permit modification procedures, shall notify the Administrator of the Environmental Protection Agency and any affected state in writing of any refusal by the division to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period.

(2) The notice shall include the division's reasons for not accepting any such recommendation.

(3) The division is not required to accept recommendations that are not based on applicable requirements or the requirements of 40 C.F.R. pt. 70, as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607).

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-505. Environmental Protection Agency objection to proposed permit.

(a)(1) The Administrator of the Environmental Protection Agency will object to the issuance of any proposed permit determined by the Administrator of the Environmental Protection Agency not to be in compliance with applicable requirements or requirements under this part.

(2) No permit for which an application is required to be transmitted to the Administrator of the Environmental Protection Agency may be issued if the Administrator of the Environmental Protection Agency objects to its issuance in writing within forty-five (45) days of receipt of the proposed permit and all necessary

supporting information.

(b)(1) Any Environmental Protection Agency objection shall include a statement of the Administrator of the Environmental Protection Agency's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections.

(2) The Administrator of the Environmental Protection Agency will provide the permit applicant a copy of the objection.

(c) Failure of the Division of Environmental Quality 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 division fails, within ninety (90) days after the date of an objection under subsection (a) of this section to revise and submit a proposed permit in response to the objection, the Administrator of the Environmental Protection Agency will issue or deny the permit in accordance with the requirements of the federal program promulgated under Title V of the Act.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-506. Public petitions to the Administrator of the Environmental Protection Agency.

(a)(1) If the Administrator of the Environmental Protection Agency does not object in writing to a proposed part 70 permit, any person may petition the Administrator of the Environmental Protection Agency within sixty (60) days after the expiration of the Administrator of the Environmental Protection Agency's forty-five-day review period to make such objection.

(2) 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.

(b)(1) If the Administrator of the Environmental Protection Agency objects to the

permit as a result of a petition filed under this section, the Division of Environmental Quality shall not issue the permit until the Environmental Protection Agency'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 forty-five-day review period and prior to an Environmental Protection Agency objection.

(2) If the division has issued a permit prior to receipt of an Environmental Protection Agency objection under this section, the Administrator of the Environmental Protection Agency will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in Subpart 9 of this part, except in unusual circumstances, and the division may thereafter issue only a revised permit that satisfies the Environmental Protection Agency's objection.

(3) In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-507. Prohibition on default issuance.

No part 70 permit, including a permit renewal or modification, shall be issued until affected states and the Environmental Protection Agency have had an opportunity to review the proposed permit as required under this subpart.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 6. Permit Content

8 CAR § 42-601. Standard permit requirements.

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

(1)(A) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(B) 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.

(C) 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 of the Environmental Protection Agency.

(D) 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 Division of Environmental Quality 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:

- (i) Quantifiable;
- (ii) Accountable;
- (iii) Enforceable; and
- (iv) Based on replicable procedures;

(2)(A) The division shall issue permits for a fixed term of five (5) years in the case of acid rain sources, and for a term not to exceed five (5) years in the case of all other part 70 sources.

(B) Notwithstanding this requirement, the division 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 twelve (12) years and shall review such permits at least every five (5) years;

(3)(A) Monitoring and related recordkeeping and reporting requirements.

(B) Each permit shall contain the following requirements with respect to monitoring:

(i)(a) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 C.F.R. pt. 64, and any other procedures and methods that may be promulgated pursuant to Sections

114(a)(3) or 504(b) of the Act.

(b) If more than one (1) 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;

(ii)(a) 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 subdivision (3)(C) of this section.

(b) Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(c) Recordkeeping provisions may be sufficient to meet the requirements of this subdivision (3)(B)(ii); and

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(C) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(a) The date, place as defined in the permit, and time of sampling or measurements;

(b) The date or dates analyses were performed;

(c) The company or entity that performed the analyses;

(d) The analytical techniques or methods used;

(e) The results of such analyses; and

(f) The operating conditions as existing at the time of sampling or measurement; and

(ii)(a) Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application.

(b) Support information includes:

(1) All calibration and maintenance records;

(2) All original strip-chart recordings for continuous monitoring instrumentation; and

(3) Copies of all reports required by the permit.

(D) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(i)(a) Submittal of reports of any required monitoring at least every six (6) months.

(b) All instances of deviations from permit requirements must be clearly identified in such reports.

(c) All required reports must be certified by a responsible official consistent with 8 CAR § 42-310 and Section 114(a)(3) of the Act; and

(ii)(a) 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.

(b) The division shall define in each permit "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements;

(4)(A) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(B) 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.

(C)(i) No limit shall be placed on the number of allowances held by the source.

(ii) The source may not, however, use allowances as a defense to

noncompliance with any other applicable requirement.

(D) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act;

(5) 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;

(6) Provisions stating the following:

(A)(i) The permittee must comply with all conditions of the part 70 permit.

(ii) Any permit noncompliance constitutes a violation of the Act and is grounds for:

(a) Enforcement action;

(b) Permit termination;

(c) Revocation and reissuance, or modification; or

(d) Denial of a permit renewal application;

(B) 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;

(C)(i) The permit may be modified, revoked, reopened, and reissued, or terminated for cause.

(ii) 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;

(D) The permit does not convey any property rights of any sort, or any exclusive privilege; and

(E)(i) The permittee shall furnish to the division, within a reasonable time, any information that the division 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.

(ii) Upon request, the permittee shall also furnish to the division 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 of the

Environmental Protection Agency along with a claim of confidentiality;

(7) A provision to ensure that a part 70 source pays fees to the division consistent with the fee schedule approved pursuant to 8 CAR pt. 12;

(8) 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;

(9)(A) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the division.

(B) Such terms and conditions:

(i) 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;

(ii) May extend the permit shield described in 8 CAR § 42-604 to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part; and

(10)(A) 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.

(B) Such terms and conditions:

(i) Shall include all terms required under 8 CAR §§ 42-601 and 42-603 to determine compliance;

(ii) May extend the permit shield described in 8 CAR § 42-604 to all terms and conditions that allow such increases and decreases in emissions; and

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

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-602. 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 of the Environmental Protection Agency and citizens under the Act.

(b)(1) Notwithstanding subsection (a) of this section, the Division of Environmental Quality 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.

(2) Terms and conditions so designated are not subject to the requirements of Subparts 5 and 9 of this part, other than those contained in this section.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-603. Compliance requirements.

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

(1)(A) Consistent with 8 CAR § 42-601(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

(B) Any document, including reports, required by a part 70 permit shall contain a certification by a responsible official consistent with 8 CAR § 42-310 and Section 114(a)(3) of the Act;

(2) 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 Division of Environmental Quality or an authorized representative to perform the following:

(A) 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;

(B) Have access to and copy, at reasonable times, any records that must

be kept under the conditions of the permit;

(C) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(D) 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;

(3) A schedule of compliance consistent with 8 CAR § 42-302(c)(2)(H);

(4)(A) Progress reports consistent with an applicable schedule of compliance and 8 CAR § 42-302(c)(2)(H) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the division.

(B) Such progress reports shall contain the following:

(i) 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

(ii) 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;

(5)(A) Requirements for compliance certification with terms and conditions contained in the permit, including:

(i) Emission limitations;

(ii) Standards; or

(iii) Work practices.

(B) Permits shall include each of the following:

(i) The frequency, not less than annually or such more frequent periods as specified in the applicable requirement or by the division, of submissions of compliance certifications;

(ii) In accordance with 8 CAR § 42-601(3), a means for monitoring the compliance of the source with its:

(a) Emissions limitations;

(b) Standards; and

(c) Work practices;

(iii) 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)(1) The identification of the method or methods 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.

(2) Such methods and other means shall include, at a minimum, the methods and means required under 8 CAR § 42-601(3).

(3) 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)(1) 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 subdivision (5)(B)(iii)(b) of this section.

(2) The certification shall identify each deviation and take it into account in the compliance certification.

(3) 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 division may require to determine the compliance status of the source; and

(iv) A requirement that all compliance certifications be submitted to the Administrator of the Environmental Protection Agency as well as to the division; and

(6) Such other provisions as the division may require.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-604. Permit shield.

(a) Except as provided in this part, the Division of Environmental Quality 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 division, 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 section 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 of the Environmental Protection Agency 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 the Environmental Protection Agency to obtain information from a source pursuant to Section 114 of the Act.

(d) Permit shield provisions shall not extend to minor permit modifications.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-605. General permits.

(a)(1) The Division of Environmental Quality may, after notice and opportunity for public participation provided under Subpart 5 of this part, issue a general permit covering numerous similar sources.

(2) 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.

(3) To sources that qualify, the division shall grant the conditions and terms of the general permit.

(4) 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.

(5) 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)(1) Part 70 sources that would qualify for a general permit must apply to the division for coverage under the terms of the general permit or must apply for a part 70 permit consistent with Subpart 3 of this part.

(2) The division may, in the general permit, provide for applications which deviate from the requirements of Subpart 3 of this part, 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.

(3) Without repeating the public participation procedures, the division 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-606. Temporary sources.

(a)(1) The Division of Environmental Quality may issue a single permit authorizing

emissions from similar operations by the same source owner or operator at multiple temporary locations.

(2) The operation must be temporary and involve at least one (1) change of location during the term of the permit.

(3) No acid rain source shall be permitted as a temporary source.

(b) Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the division at least ten (10) days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-607. Emergency provision.

(a)(1) 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.

(2) An emergency shall not include noncompliance to the extent caused by:

(A) Improperly designed equipment;

(B) Lack of preventative maintenance;

(C) Careless or improper operation; or

(D) Operator error.

(b)(1) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the following conditions are met.

(2) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(A) An emergency occurred and that the permittee can identify the cause or causes of the emergency;

(B) The permitted facility was at the time being properly operated;

(C) 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

(D)(i) The permittee submitted notice of the emergency to the Division of Environmental Quality by the next working day after the emergency.

(ii) This notice must contain:

(a) A description of the emergency;

(b) Any steps taken to mitigate emissions; and

(c) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 7. Operational Flexibility Provisions

8 CAR § 42-701. Applicant's duty to apply for alternative scenarios.

(a) 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 Division of Environmental Quality.

(b)(1) It is incumbent upon the permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of permit application.

(2) The division shall include approved alternative operating scenarios in the permit.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-702. Changes resulting in no emissions increases.

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

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

(b)(1) Provided that the facility provides the Administrator of the Environmental Protection Agency and the Division of Environmental Quality with written notification as required below in advance of the proposed changes, which shall be a minimum of seven (7) days, or such shorter time frame that the division allows for emergencies.

(2) The source, division, and Environmental Protection Agency shall attach each such notice to their copy of the relevant permit.

(3) For each such change, the written notification required above shall include:

- (A) A brief description of the change within the permitted facility;
- (B) The date on which the change will occur;
- (C) Any change in emissions; and
- (D) Any permit term or condition that is no longer applicable as a result of the change.

(4) The permit shield described in Subpart 6 of this part does not apply to any change made pursuant to this subsection.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-703. Emissions trading in permit.

(a) The Division of Environmental Quality shall, if a permit applicant requests it, issue permits that contain terms and conditions, including all terms required under 40 C.F.R. § 70.6(a) and (c), as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607), 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.

(b)(1) The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable.

(2) The division 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.

(c) The permit shall also require compliance with all applicable requirements.

(d) The permittee shall provide seven (7) days' written notice to the division 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.

(e) The permit shield described in Subpart 6 of this part shall extend to terms and conditions that allow such increases and decreases in emissions.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-704. Emissions trading allowed under 8 CAR pt. 41.

(a)(1) A permitted part 70 source may trade increases and decreases in emissions within the permitted facility, where 8 CAR pt. 41 provides for such emissions trades without requiring a permit revision.

(2) The permittee shall provide seven (7) days' written notice to the Division of Environmental Quality which shall state:

(A) When the proposed change will occur;

(B) A description of such change;

(C) Any change in emissions;

(D) The permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan; and

(E) The pollutants emitted subject to the emissions trade.

(3) 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.

(b) The permit shield described in Subpart 6 of this part shall not extend to any change made pursuant to this section.

(c) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 8. Administrative Permit Amendments

8 CAR § 42-801. Administrative permit amendment applicability.

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

(1) Corrects typographical errors;

(2) 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;

(3) Requires more frequent monitoring or reporting by the permittee;

(4) Allows for a change in ownership or operational control of a source, which has been permitted under the Rules of the Arkansas Plan of Implementation for Air Pollution Control, 8 CAR pt. 41, where the Division of Environmental Quality 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 division;

(5) Incorporates a change in the permit involving air contaminants other than regulated air pollutants which has been processed under permitting provisions of the Arkansas Pollution Control and Ecology Commission's Arkansas Air Pollution Control Code, 8 CAR pt. 40, and 8 CAR pt. 41;

(6) Incorporates a change in the permit solely involving the retiring of an emissions unit; and

(7) Incorporates a change to the facilities' insignificant activities list.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-802. 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-803. Administrative permit amendment procedures.

An administrative permit amendment shall be made by the Division of Environmental Quality consistent with the following:

(1) The division shall take no more than sixty (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;

(2) The division shall submit a copy of the revised permit to the Administrator of the Environmental Protection Agency; and

(3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 9. Permit Modification — Reopenings

8 CAR § 42-901. Permit modification.

(a) A permit modification is any revision to a part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments.

(b) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-902. Minor permit modification applicability.

(a) The minor permit modification process is an expedited procedure that allows a source to make trivial changes involving limited emission increases, based on the differences between the sum of the proposed permitted rates for all emissions units and the sum of previously permitted emission rates for all units, without a public notice process or a preconstruction permit.

(b) Minor permit modification procedures may be used only for those permit modifications that:

- (1) Involve an emission increase of less than:
 - (A) Seventy-five (75) tons per year of carbon monoxide (CO);
 - (B) Forty (40) tons per year of nitrogen oxides (NO_x);
 - (C) Forty (40) tons per year of sulfur dioxide (SO₂);
 - (D) Twenty-five (25) tons per year of particulate matter (PM);
 - (E) Ten (10) tons per year of direct PM_{2.5};
 - (F) Fifteen (15) tons per year of PM₁₀;
 - (G) Forty (40) tons per year of volatile organic compounds (VOCs);
 - (H) Six-tenths (0.6) tons per year of lead; and
 - (I) Seventy-five thousand (75,000) tons per year of CO_{2e};
- (2) Involve the installation or modification of emissions units which do not

require a Title I emissions netting procedure to determine eligibility;

(3) Do not violate any applicable requirement;

(4) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(5) 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;

(6)(A) 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.

(B) Such terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and

(ii) An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act; and

(7) Are not modifications under any provision of Title I of the Act.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-903. Prohibition on multiple related minor permit modification application submittals.

(a) 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.

(b) The Division of Environmental Quality may, in its discretion, require that multiple related minor permit modification applications be processed as a significant permit modification.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-904. Minor permit modification application.

An application requesting the use of minor permit modification procedures shall:

- (1) Meet the standard part 70 permit application requirements; and
- (2) 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 Division of Environmental Quality to use to notify the Administrator of the Environmental Protection Agency and affected states as required under Subpart 5 of this part.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-905. Environmental Protection Agency and affected state notification of minor permit modification application.

(a) Within five (5) working days of receipt of a complete minor permit modification application, the Division of Environmental Quality shall meet its obligation to notify the Administrator of the Environmental Protection Agency and affected states of the requested permit modification.

(b) The division promptly shall send any notice required under Subpart 5 of this part to the Administrator of the Environmental Protection Agency.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-906. Timetable for issuance of minor permit modification.

(a) The Division of Environmental Quality may not issue a final minor permit

modification until after the Environmental Protection Agency's forty-five-day review period or until the Environmental Protection Agency has notified the division that the Environmental Protection Agency will not object to issuance of the permit modification, although the division can approve the permit modification prior to that time.

(b) Within ninety (90) days of the division's receipt of an application under minor permit modification procedures, or fifteen (15) days after the end of the Administrator of the Environmental Protection Agency's forty-five-day review period under Subpart 5 of this part, whichever is later, the division shall:

(1) Issue the permit modification as proposed;

(2) Deny the permit modification application;

(3) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(4) Revise the draft permit modification and transmit to the Administrator of the Environmental Protection Agency the new proposed permit modification as required by Subpart 5 of this part.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-907. Source's ability to make minor modification.

(a) A source may make the change proposed in its minor permit modification application upon receipt of written notification from the Division of Environmental Quality.

(b)(1) The division shall have fifteen (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.

(2)(A) If the division does not respond within this fifteen-day period, the source may proceed with the proposed modification at its own risk.

(B)(i) After the source makes the change allowed by subdivision (b)(2)(A) of this section, and until the division takes action on the application, the source must

comply with both the applicable requirements governing the change and the proposed permit terms and conditions.

(ii) During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify.

(iii) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-908. Group processing of minor permit modifications.

Multiple applications for different minor permit modifications may be processed as a single minor permit modification by the Division of Environmental Quality if the group of multiple permit applications as a whole meets the eligibility requirements of 8 CAR § 42-902.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-909. Permit shield not applicable to minor permit modifications.

The permit shield under Subpart 6 of this part does not extend to minor permit modifications.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-910. Significant modification procedures.

Significant modifications involving the procedures of Subpart 5 of this part shall be used for applications that:

- (1) Involve new applicable requirements;
- (2) Are modifications under any provision of Title I of the Act;

(3) Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(4) 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;

(5) Involve an increase in regulated air pollutant emissions that cannot be processed under minor permit modification procedures;

(6)(A) 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.

(B) Such terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and

(ii) An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-911. Reopening for cause by the division.

(a)(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit.

(2) A permit shall be reopened and revised under any of the following circumstances:

(A)(i) Additional applicable requirements under the Act become applicable to a major part 70 source with a remaining permit term of three (3) or more years.

(ii) Such a reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement.

(iii) 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 Division of Environmental Quality to take action on a renewal permit;

(B)(i) Additional requirements, including excess emissions requirements, become applicable to an acid rain source under the acid rain program.

(ii) Upon approval by the Administrator of the Environmental Protection Agency, excess emissions offset plans shall be deemed to be incorporated into the permit;

(C) The division or the Environmental Protection Agency 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; or

(D) The Administrator of the Environmental Protection Agency or the division determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(b)(1) 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.

(2) 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 division at least thirty (30) days in advance of the date that the permit is to be reopened, except that the division may provide a shorter time period in the case of an emergency.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-912. Reopenings for cause by the Environmental Protection Agency.

(a) If the Administrator of the Environmental Protection Agency finds that cause exists to terminate, modify, or revoke and reissue a permit, the Administrator of the Environmental Protection Agency shall notify the Division of Environmental Quality and the permittee of such finding in writing.

(b)(1) The division shall, within ninety (90) days after receipt of such notification,

forward to the Environmental Protection Agency a proposed determination of termination, modification, or revocation and reissuance, as appropriate.

(2) The Administrator of the Environmental Protection Agency may extend this ninety-day period for an additional ninety (90) days if he or she finds that a new or revised permit application is necessary or that the division must require the permittee to submit additional information.

(c) The Administrator of the Environmental Protection Agency will review the proposed determination from the division within ninety (90) days of receipt.

(d) The division shall have ninety (90) days from receipt of an Environmental Protection Agency objection to resolve any objection that the Environmental Protection Agency makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator of the Environmental Protection Agency's objection.

(e) If the division fails to submit a proposed determination pursuant to this section, or fails to resolve any objection pursuant to this section, the Administrator of the Environmental Protection Agency will terminate, modify, or revoke and reissue the permit after the following actions:

(1) Providing at least thirty (30) days' notice to the permittee in writing of the reasons for any such action; and

(2) Providing the permittee an opportunity for comment on the Administrator of the Environmental Protection Agency's proposed action and an opportunity for a hearing.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-913. Permit flexibility.

(a)(1)(A) The Division of Environmental Quality may grant an extension to any testing, compliance, or other dates in the permit.

(B) No extensions shall be authorized until the permittee of the facility receives written approval from the division.

(2) The division may grant such a request, at its discretion, in the following

circumstances:

(A) The permittee of the facility makes such a request in writing at least fifteen (15) days in advance of the deadline specified in the facility's permit;

(B) The extension does not violate a federal requirement;

(C) The permittee of the facility demonstrates the need for the extension;

and

(D) 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)(1)(A) The division 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.

(B) No such activities shall be authorized until the permittee of the facility receives written approval from the division.

(2) The division may grant such a request, at its discretion, in the following circumstances:

(A) The permittee of the facility makes such a request in writing at least thirty (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;

(B) Such a request does not violate a federal requirement;

(C) Such a request is temporary in nature;

(D) Such a request will not result in a condition of air pollution;

(E) The request contains such information necessary for the division to evaluate the request, including but not limited to, quantification of such emissions and the date and time such emissions will occur;

(F) Such a request will result in increased emissions less than five (5) tons of any individual criteria pollutant, one (1) ton of any single HAP, and two and one-half (2.5) tons of total HAPs; and

(G) The permittee of the facility maintains records of the dates and results

of such temporary emissions and/or testing.

(c)(1)(A) The division may grant a request to allow an alternative to the monitoring specified in a facility's operating permit.

(B) No such activities shall be authorized until the permittee of the facility receives written approval from the division.

(2) The division may grant such a request, at its discretion, in the following circumstances:

(A) The permittee of the facility makes such a request in writing at least thirty (30) days in advance of the first date that the monitoring alternative will be used at the facility;

(B) Such a request does not violate a federal requirement;

(C) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the facility's operating permit; and

(D) Any such request, if approved by the division, is incorporated into the next permit modification application by the permittee of the facility.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Codification Notes. "HAP" means hazardous air pollutant.

Subpart 10. Permit Fees

8 CAR § 42-1001. Fee requirement.

(a) In accordance with 40 C.F.R. § 70.9, as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607), the owners or operators of part 70 sources shall pay initial and annual fees that are sufficient to cover the permit program costs.

(b) The Division of Environmental Quality shall ensure that any fee required by these regulations will be used solely for permit program costs.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-1002. Fee schedule.

The fee schedule for part 70 permits is contained in 8 CAR pt. 12.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 11. Acid Rain Sources Provisions

8 CAR § 42-1101. Purpose.

The purpose of this subpart 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 42-1102. Adoption by reference.

(a) The Arkansas Pollution Control and Ecology Commission hereby adopts and incorporates by reference those provisions of 40 C.F.R. pts. 72 and 76 (including all provisions of pts. 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.

(b) The term "permitting authority" shall mean the Division of Environmental Quality, and the term "administrator" shall mean the Administrator of the United States Environmental Protection Agency.

(c) If the provisions or requirements of 40 C.F.R. pt. 72 or 76 conflict with or are not included in this part, the 40 C.F.R. pt. 72 or 76 provisions and requirements shall apply and take precedence.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 12. Effective Date

8 CAR § 42-1201. Effective date.

This part is effective ten (10) days after filing with the:

- (1) Secretary of State;
- (2) Arkansas State Library; and
- (3) Bureau of Legislative Research.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.