



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2019-0301; FRL-9997-81-Region 6]

Air Plan Approval; Arkansas; Revisions to State Implementation Plan Permitting Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the Arkansas State Implementation Plan (SIP) Permitting Programs submitted on October 24, 2002, July 26, 2010, November 6, 2012, and March 24, 2017. Most of the revisions are administrative in nature and make the SIP current with Federal rules. In addition, the revisions add permit flexibility provisions to the NSR program. This final action is consistent with the requirements of section 110 of the CAA.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2019-0301. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically through <https://www.regulations.gov> or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Ashley Mohr, EPA Region 6 Office, Air Permits Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214-665-7289, mohr.ashley@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Mohr or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our May 31, 2019 proposal (84 FR 25218). In that document we proposed to approve SIP revisions submitted by Arkansas on October 24, 2002, July 26, 2010, November 6, 2012, and March 24, 2017. The revisions addressed in that action include administrative revisions, revisions that make the Arkansas SIP current with Federal rules, and revisions that add permit flexibility provisions to the NSR program.¹ Also, included in that action was the proposed approval of revisions to the Arkansas SIP that address EPA’s previous 2016 disapproval related to biomass deferral language. We did not receive any relevant comments regarding our proposal.

¹ The permit flexibility provisions are found in Reg. 19.414, 415, and 416. Reg. 19.414 – Operational Flexibility-Applicant’s Duty to Apply for Alternative Scenarios, allows permittees to implement alternative scenarios that were initially included in their permit application, without a permit revision or notification to the Department. Reg. 19.415– Changes Resulting in No Emissions Increases, allows permittees to make certain changes within the facility that otherwise contravene permit terms without a permit revision if the changes are not modifications under Title I, do not exceed emissions allowed under the permit, do not violate applicable requirements, and do not contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements. Reg. 19.416 – Permit Flexibility, codifies ADEQ’s discretion to grant extensions to testing, compliance or other dates in a permit; to grant a request to allow temporary emissions and/or testing that would otherwise exceed a limit in a facility’s permit; and to allow an alternative to monitoring specified in a facility’s operating permit.

II. Final Action

We are approving portions of the revisions to the Arkansas SIP submitted on October 24, 2002, July 26, 2010, November 6, 2012, and March 24, 2017. Specifically, we are approving the following revisions:

- Revisions to Regulation 19, Chapter 4 adopted on December 5, 2008 (effective January 25, 2009), June 22, 2012 (effective July 9, 2012), October 26, 2012 (effective November 18, 2012), and February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 19, Chapter 7 adopted on February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 19, Chapter 9 adopted on February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 19, Chapter 11 adopted on February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 19, Appendix A adopted on December 5, 2008 (effective January 25, 2009), June 22, 2012 (effective July 9, 2012), October 26, 2012 (effective November 18, 2012), and February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 26, Chapter 3 adopted on August 23, 2002 (effective September 26, 2002), December 5, 2008 (effective January 25, 2009), and February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 26, Chapter 4 adopted on August 23, 2002 (effective September 26, 2002), December 5, 2008 (effective January 25, 2009), June 22, 2012 (effective July 9, 2012), October 26, 2012 (effective November 18, 2012), and February 26, 2016 (effective March 14, 2016);

- Revisions to Regulation 26, Chapter 5 adopted on December 5, 2008 (effective January 25, 2009) and February 26, 2016 (effective March 14, 2016);
- Revisions to Regulation 26, Chapter 6 adopted on August 23, 2002 (effective September 26, 2002), December 5, 2008 (effective January 25, 2009), and February 26, 2016 (effective March 14, 2016); and
- Non-substantive revisions throughout the current SIP-approved portions of Regulation 19 and 26 that replace “Section” with “Reg.” within section headings (e.g., “Section 26.101” revised to “Reg. 26.101”) that were adopted on December 5, 2008 (effective January 25, 2009).

This action is being taken under section 110 of the Act. EPA is not taking any action on the portions of the July 26, 2010 and November 6, 2012 SIP revision submittals that were listed in the letter from Arkansas dated March 28, 2019, that requested the withdrawal of those revisions from EPA’s consideration for approval into the Arkansas SIP.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Arkansas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 6 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable

under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days

after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 13, 2019.

Kenley McQueen,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E – Arkansas

2. In §52.170, the table in paragraph (c), entitled “EPA-Approved Regulations in the Arkansas SIP,” is amended by

a. Revising the entries for Reg. 19.405, Reg. 19.406, Reg. 19.407, Reg. 19.411, Reg. 19.412, and Reg. 19.413;

b. Adding entries for Reg. 19.414, Reg. 19.415, and Reg. 19.416;

c. Revising the entries for Reg. 19.702, Reg. 19.703, Reg. 19.901, and Reg. 19.903;

d. Removing the entry for Section 19.904;

e. Adding an entry for Reg. 19.904;

f. Revising the entries for Chapter 11 and Appendix A;

g. Removing the entries for Section 26.301, Section 26.302, Section 26.401, Section 26.402, Section 26.407, Section 26.409, Section 26.410, Section 26.501, Section 26.502, Section 26.601, Section 26.602, Section 26.603, and Section 26.604; and

h. Adding entries for Reg. 26.301, Reg. 26.302, Reg. 26.401, Reg. 26.402, Reg. 26.407, Reg. 26.409, Reg. 26.410, Reg. 26.501, Reg. 26.502, Reg. 26.601, Reg. 26.602, Reg. 26.603, and Reg. 26.604.

The additions and revisions read as follows:

§52.170 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP

State Citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control				
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Chapter 4: Minor Source Review				
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Reg. 19.405	Action on Application	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 19.406	Public Participation	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 19.407	Permit Amendments	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Reg. 19.411	General Permits	07/26/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

Reg. 19.412	Dispersion Modeling	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 19.413	Confidentiality	07/26/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 19.414	Operational Flexibility- Applicant's Duty to Apply for Alternative Scenarios	07/26/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 19.415	Changes Resulting in No Emissions Increases	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 19.416	Permit Flexibility	07/26/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Chapter 7: Sampling, Monitoring, and Reporting Requirements				
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Reg. 19.702	Air Emissions Sampling	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 19.703	Continuous Emissions Monitoring	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Chapter 9: Prevention of Significant Deterioration				
Reg. 19.901	Title	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Reg. 19.903	Definitions	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 19.904	Adoption of Regulations	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Chapter 11: Major Source Permitting Procedures				

Chapter 11	Major Source Permitting Procedures	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Appendix A: Insignificant Activities List				
Appendix A	Insignificant Activities List	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Regulation 26: Regulations of the Arkansas Operating Permit Program				
Chapter 3: Requirements for Permit Applicability				
Reg. 26.301	Requirement for a permit	07/26/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 26.302	Sources subject to permitting	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Chapter 4: Applications for Permits				

Reg. 26.401	Duty to apply	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 26.402	Standard application form and required information	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 26.407	Complete application	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 26.409	Applicant's duty to supplement correct application	07/26/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 26.410	Certification by responsible official	07/26/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

Chapter 5: Action on Application

Reg. 26.501	Action on part 70 permit applications	07/26/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 26.502	Final action on permit application	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Chapter 6: Permit Review by the Public, Affected States, and EPA				
Reg. 26.601	Applicability	07/26/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 26.602	Public participation	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Reg. 26.603	Transmission of permit information to the Administrator	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

Reg. 26.604	Review of draft permit by affected States	03/24/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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[FR Doc. 2019-18146 Filed: 8/22/2019 8:45 am; Publication Date: 8/23/2019]