

Virginia Regulatory Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	Article 9 (9 VAC 5-80-2000 et seq.) of 9 VAC 5 Chapter 80
Secondary Action(s):	None
Action Title:	Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas (Rev. D00)
Date:	November 2000

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary *

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.

The regulation applies to the construction or reconstruction of new major stationary sources or major modifications to existing ones. The owner must obtain a permit from the board prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable the board to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the board's final action (approval or disapproval) on the permit depending on the results of the preconstruction review. One of the program requirements requires a facility owner to obtain emission reductions from existing sources. The emission reductions must offset the increases from the proposed facility.

The proposed amendments (i) revise the emission reduction offset ratio; (ii) provide for state-only permit terms and conditions; (iii) clarify the regulation's applicability; and (iv) make the regulation consistent with the other new source review regulations.

Basis *

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation proposed. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that (i) the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments and that (ii) the proposed regulation amendments comport with the applicable state and/or federal law is available upon request.

Purpose *

Please provide a statement explaining the rationale or justification of the proposed regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulation is to require the owner of the proposed new or expanded facility to provide such information as may be needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality in order to protect public health and welfare. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The proposed amendments are being made to bring the regulation into compliance with federal regulations and policies with regard to designation of nonattainment areas for the 8-hour ozone air quality standard.

Substance *

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

1. The regulation has been revised to include a new offset ratio in response to imposition of the new 8-hour ozone standard. One of the requirements of the new source review program for nonattainment areas is that a facility owner obtain emission reductions from existing sources. The emission reductions must offset the increases from the proposed facility by the ratio specified in the Clean Air Act for that particular nonattainment classification. The current offset ratio specifications are 1.1 to 1 for areas classified as marginal, 1.15 to 1 for moderate areas, 1.2 to 1 for serious areas, and 1.3 to 1 for severe areas. For the new 8-hour ozone standard, the existing offset ratios based on the above classification system are likely to be retained, and possibly

an offset ratio of 1 to 1 will be added. The 1-to-1 ratio will also apply to areas designated nonattainment for pollutants other than ozone (such as PM_{2.5}) for which there is no classification system.

2. The regulation has been revised to remove federal enforceability of certain provisions that should be enforceable only by the state. This will prevent terms and conditions that are state-only enforceable from being designated as federally enforceable in the permit, thus preventing them from being enforced by EPA or citizens through the federal Clean Air Act.

3. The regulation has been revised to clarify that the regulation applies to the construction or reconstruction of a new major stationary source or a major modification to a major stationary source, if the source or modification would be major for the pollutant for which the area is designated as nonattainment. In order to achieve this distinction, all references to hazardous air pollutants--which are regulated elsewhere--have been eliminated.

4. The regulation has been revised to add or modify definitions for "applicable federal requirement," "complete application," "emissions cap," "enforceable as a practical matter," "federally enforceable," "fugitive emissions," "major new source review," "minor new source review," "new source review program" "public comment period," "state enforceable," "state operating permit program," and "synthetic minor" in order to be consistent with other new source review regulations.

5. The regulation has been revised in order to make the following provisions consistent with other new source review regulations: general, applications, application information required, and standards and conditions for granting permits.

6. The regulation has been revised to delete the following provisions in order to be consistent with other new source review regulations: circumvention, and reactivation and permanent shutdown.

7. The regulation has been revised to add the following sections in order to be consistent with other new source review regulations: changes to permits, administrative permit amendments, minor permit amendments, significant amendment procedures, and reopening for cause.

8. The regulation has been revised to make minor administrative revisions and corrections elsewhere in the regulation as necessary.

Issues *

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1. Public: There are no disadvantages to the public associated with the proposed action. Advantages to the public include a clearer understanding of what is required of a permit applicant, and thereby more efficient issuance of more accurate permits. It will also reduce the possibility of implementation of unnecessarily restrictive requirements.
2. Department: There are no disadvantages to the Department associated with the proposed action. Advantages to the Department include a clearer understanding of what is required of a permit applicant, and thereby more efficient issuance of more accurate permits.

Localities Particularly Affected *

Please provide the identity of any localities particularly affected by the proposed regulation.

The proposed regulation amendments affect sources located in nonattainment areas. Currently, the Commonwealth has one area that does not meet the 1-hour federal standard for ozone: the Northern Virginia Ozone Nonattainment Area, which consists of Arlington County, Alexandria City, Fairfax County, Fairfax City, Loudoun County, Falls Church City, Prince William County, Manassas City, Stafford County, and Manassas Park City.

The areas to be covered by the new 8-hour standard are yet to be determined; however, the state has submitted a list of recommended nonattainment areas to EPA. The recommended areas include the Frederick County Nonattainment Area (Frederick County, City of Winchester); the Fredericksburg Nonattainment Area (Caroline, Spotsylvania, and Stafford Counties, City of Fredericksburg); the Northern Virginia Nonattainment Area (Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford Counties, Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park); the Shenandoah National Park Nonattainment Area (the portions of the park located in Page and Madison counties); the Roanoke Nonattainment Area (Botetourt and Roanoke Counties, Cities of Roanoke and Salem, Town of Vinton); Hampton Roads Nonattainment Area (James City and York Counties, Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg).

This list is currently undergoing review by EPA, which, in accordance with the Clean Air Act, has the final authority for determining nonattainment area designations.

Public Participation *

Please indicate the nature of the comments the Department is soliciting pursuant to this notice.

The Department is seeking comment on the proposed regulation and the costs and benefits of the proposal.

Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and (e) the projected cost of the regulation for affected individuals, businesses, or other entities. Include a description of the beneficial impact the regulation is designed to produce.

1. Entities Affected

The entities affected by this action will be any owner who wishes to construct or modify a major source in a nonattainment area. Because the ozone standard has not yet been definitively determined, and because EPA has yet to issue its final designations of nonattainment areas, it is impossible at this point to accurately predict precisely how many sources will be affected. Further, the number of permits issued to new sources varies greatly from year to year and region to region for many reasons other than nonattainment area status.

In the Northern Virginia Ozone Nonattainment Area, which hitherto had been the only area in the state affected by the regulation, only one major source has applied for a permit modification under this regulation since 1995. (This permit modification is currently under development, so no cost data for this particular project is yet available.) Historically, this area has had very little large industrial development, and therefore this data cannot be reasonably extrapolated to the remainder of the state. The number, type, and size of sources to be affected by the revised regulation is impossible to predict, as such a prediction must be based on the unpredictable: the performance of the area's economy, the ability for new sources to be constructed, and the ability of existing sources to significantly expand operations.

2. Fiscal Impact

a. Costs to Affected Entities

As discussed above, because it is not possible to determine the number of affected sources, it is also not possible to quantify projected costs. Additionally, new source review is inherently case-by-case and source-by-source. Cost effectiveness, therefore, also depends on the type of source, the type of control equipment required, and so forth. Sources locating in nonattainment areas must meet the lowest achievable emission rate (LAER), which is the lowest possible emission rate currently in use by a source anywhere in the country, regardless of cost. The implementation of offsets does not affect the cost of utilizing a particular air pollution control technology.

The costs of this regulation for affected entities will depend entirely on the specific situation for each source. Costs will vary from source to source due to the size

and complexity of each source. Costs will also vary depending on the type of modification(s) or installation of new equipment. Since the permit will contain no expiration date (except for applications for phased construction) no renewal costs will be involved unless the owner wishes to renegotiate the terms and conditions of the permit.

For many sources, costs will likely increase over the years for reasons apart from the new source review program. Sources located in areas of high growth will incur costs as a result of changing air quality requirements and the air quality evaluations that result as a part of new source permitting process.

Bearing in mind the variability among the entities affected by this proposed regulation, an estimation of costs is given as follows:

(1) Costs of preparing a permit application and providing data to the agency so that the application can be evaluated - The department's permit application parallels the federal requirements, which look at the changes from a source-wide perspective to determine applicability. The determination of applicability must look back at historical emissions changes in addition to the emissions changes directly resulting from the physical or operational change. Filling out a completely new permit application is considerably time-intensive for proposed new sources. However, each existing source now reports certain emissions and operational data to the department at specific intervals depending on the size of the source. This data is required to maintain the state's emissions inventory and to verify compliance with the regulations. For sources with fully permitted facilities, applying for a modification will mean organizing and verifying information already set out in the permits in effect for the source. While this effort may be time-consuming, it probably will not take as much effort as initially developing the data. The cost to prepare the permit application is approximately \$80,000, while the cost for an amendment is approximately \$4,200.

(2) Costs of determining LAER for new and modified sources - Currently, a LAER evaluation must be conducted for an application for a nonattainment area permit. This requirement can be very time consuming for both the source and the department staff due to the inherent nature of LAER evaluation. The cost of this negotiation varies, and is determined by the circumstances of the individual source.

(3) Costs of obtaining offsets – The cost of obtaining an offset would depend on the size, emissions, market, and the availability of emissions reductions, which are in turn dependent on the various strategies that would be used to control existing sources once the areas are officially designated and attainment plans are developed.

(4) Costs of fulfilling additional requirements such as testing, monitoring, and reporting - The regulation provides that the department may require as part of a source's permit conditions that testing, monitoring or reporting be required. The costs for testing, monitoring, and reporting vary considerably from one source to another and from one pollutant to another. These requirements are not new but are a reaffirmation of authority that exists elsewhere in the regulations. A single stack test for pollutants such

as particulate matter, sulfur oxides, or nitrogen dioxide may cost anywhere from \$2,000 to \$10,000 per pollutant depending on the pollutant emitted, stack size, and complexity of the test required. Installing continuous emission monitors for a single point in a facility may cost anywhere from \$25,000 to \$150,000 per pollutant, without a data acquisition system. The cost of additional reporting requirements depends entirely on the specific requirement for the source.

b. Costs to Localities

The projected cost of the regulation on localities is not expected to be beyond that of other affected entities and are addressed in paragraph 2a above.

c. Costs to Agency

This particular permit program has been in place for many years, and it is not expected that the changes to the regulation will result in any cost to the Department beyond that currently in the budget. Sources in regions newly designated nonattainment have always had to have new source permits; under the new designations, they will simply have to get a different type of permit. Regional permitting staff may experience a minor learning curve to make this adjustment. On the other hand, it is anticipated that the changes to the regulations will provide permit writers with unambiguous guidance with regard to offsets for this type of permit, and thus will enable them to prepare permits more efficiently. The sources of Department funds to carry out this regulation are the general fund and the federal trust (grant money provided by the U.S. Environmental Protection Agency under Section 105 of the federal Clean Air Act). The activities are budgeted under the following program (code)/subprogram (code): (i) Environmental and Resource Management (5120000)/Air Quality Stationary Source Permitting (5122000) and Air Quality Stationary Source Compliance Inspections (5122100). The costs are expected to be ongoing.

d. Benefits

The inclusion of a one-to-one offset for new nonattainment areas will ensure that the regulation has sufficient flexibility to meet EPA requirements as they are developed. Additionally, the revisions to the regulations will promote a clearer understanding of what is required of a permit applicant, and thereby more efficient issuance of more accurate permits. It will also prevent implementation of unnecessarily restrictive requirements.

It is also anticipated that sources as well as the department will benefit from the improved consistency of this regulation with other new source review regulations. Additionally, the sharpened focus of the regulation on new source review for nonattainment areas to the exclusion of other source types regulated elsewhere, such as hazardous air pollutants, will aid in the efficient and economical processing of permits.

e. Small Business Impact

The impact upon facilities that meet the definition of small business provided in § 9-199 of the Code of Virginia is addressed in paragraph 2a above.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the contemplated regulation. The discussion of these requirements should include a description of their scope and the extent to which the requirements are mandatory or discretionary. Full citations for the legal requirements and web site addresses, if available, for locating the text of the cited legal provisions should be provided.

Federal Requirements

Federal Clean Air Act (CAA):

<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):

http://www.gpo.gov/su_docs/aces/aces140.html

Sections 109 (a) and (b) of the Clean Air Act require EPA to prescribe primary and secondary air quality standards to protect public health and welfare, respectively, for each air pollutant for which air quality criteria were issued before the enactment of the 1970 Clean Air Act. These standards are known as the National Ambient Air Quality Standards (NAAQS). Section 109 (c) requires EPA to prescribe such standards simultaneously with the issuance of new air quality criteria for any additional air pollutant. The primary and secondary air quality criteria are authorized for promulgation under Section 108.

Section 110(a) of the Clean Air Act mandates that each state adopt and submit to EPA a plan which provides for the state's implementation, maintenance, and enforcement of the NAAQS. Among the primary elements of the state implementation plan (SIP) are (1) enforceable emission limitations and other control measures; (2) a program for enforcement of the emission limitations and schedules for compliance; and (3) programs for the regulation and permitting of the modification and construction of stationary sources, including a permit program as required by Part D of the Clean Air Act.

Part D describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1 provides the overall framework of what nonattainment plans are to contain, while Subpart 2 provides more detail on what is required of areas designated nonattainment for ozone, including requirements for new source review programs. It mandates a new and modified major stationary source permit program that meets the requirements of §§ 172 and 173.

Section 173(a) requires that permits meet the following criteria:

- (1) Offsets must be obtained by new or expanding sources from existing sources so that total allowable emissions (i) from existing sources in the region, (ii) from new or modified sources which are not major emitting facilities, and (iii) from the proposed new source, will be less than total emissions from existing sources prior to the application for the permit.
- (2) The proposed source must comply with the lowest achievable emission rate.
- (3) The owner of the proposed source must demonstrate that all of their affected major stationary sources in the state either comply or are on a schedule for compliance with the emission limitations.
- (4) The SIP must be adequate for the area in which the source is to be located.
- (5) An analysis of alternative sites, sizes, processes, and environmental controls for the proposed source must demonstrate that its benefits significantly outweigh environmental and social costs.

Section 173(c) provides that the owner of the proposed new or modified source may obtain offsets only from the nonattainment area in which the proposed source is to be located. Offsets may be obtained from other nonattainment areas whose emissions affect the area where the proposed source is to be located, provided the other nonattainment area has an equal or higher classification and the offsets are based on actual emissions.

Section 182(a) sets out the offset ratio requirements for nonattainment areas, providing for a minimum ratio of total emissions reduction of VOCs to total increased emissions of VOCs. Currently, these offsets are 1.1 to 1 for marginal areas, 1.15:1 for moderate areas, and 1.2 to 1 for serious areas.

40 CFR Part 50 specifies the NAAQS: sulfur dioxide, particulate matter, carbon monoxide, ozone (and its precursors, volatile organic compounds) nitrogen dioxide, and lead.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. Section 51.160 of Subpart I specifies that the SIP must stipulate legally enforceable procedures that enable the permitting agency to determine whether the construction or modification of a facility will result in a violation of a control strategy or interfere with attainment or maintenance of a NAAQS. Owners must submit information on the nature and amounts of emissions and on the location, construction and operation of the facility, and must comply with control strategies after permit approval. Section 51.163 requires that the SIP include administrative procedures to be followed in determining whether the construction or modification of a facility will violate control strategies or interfere with the attainment or maintenance of a NAAQS.

Section 51.165 of Subpart I describes what permitting requirements are to be contained in the SIP, and provides specific definitions of key terms such as "potential to emit," "major stationary source," "major modification," "allowable emissions," and "lowest achievable

emission rate. This section requires that the SIP include a preconstruction review program to satisfy the requirements of §§ 172(b)(6) and 173 of the Act, and must apply to any new source or modification locating in a nonattainment area.

Comparison with Federal Requirements

Please describe the provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

Need

Please provide an explanation of the need for the proposed regulation and potential consequences that may result in the absence of the regulation. Also set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens or would be essential for the efficient and economical performance of an important governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.

One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS.

The Act gives the U.S. Environmental Protection Agency (EPA) the authority to establish the NAAQS, which are designed to protect the health of the general public with an adequate margin of safety. The NAAQS establish the maximum limits of pollutants that are permitted in the ambient air. The Act requires that each state submit a plan (called a State Implementation Plan or SIP), including any laws and regulations necessary to enforce the plan, showing how the air pollution concentrations will be reduced to levels at or below these standards (i.e., attainment). Once the pollution levels are within the standards, the plan must also demonstrate how the state will maintain the air pollution concentrations at reduced levels (i.e., maintenance).

In 1979, EPA established a NAAQS for ozone of 0.12 parts per million (ppm). This standard was based on a 1-hour averaging period and is commonly called the 1-hour standard. When concentrations of ozone in the ambient air exceed the federal standard the area is considered to be out of compliance and is designated as "nonattainment." Numerous counties and cities within the Commonwealth have at one time been identified as ozone nonattainment areas according to the Act. Currently, all but the Northern Virginia area have reached attainment of the 1-hour standard.

The Act has a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution

problem. There are five nonattainment area classifications called marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of its own class. If a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements. The Northern Virginia Ozone Nonattainment Area is classified as serious and therefore has to meet the requirements for the marginal, moderate, and serious classes.

The Act contains comprehensive air quality planning requirements for areas that do not attain the federal air quality standard for ozone (that is, nonattainment areas). Once the nonattainment areas were defined, each state was then obligated to submit a SIP revision or plan demonstrating how it would attain the air quality standard in each nonattainment area. Failure to develop adequate plans to meet the ozone air quality standard: (i) will result in continued violations of the standard, (ii) may result in assumption of air quality programs by EPA, at which time the Commonwealth would lose authority over matters affecting its citizens, and (iii) may result in the implementation of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction.

The heart of the SIP is the control strategy. The control strategy describes the measures to be used by the state to attain and maintain the air quality standards. There are three basic types of measures: stationary source control measures, mobile source control measures, and transportation source control measures. Stationary source control measures are directed at emissions primarily from commercial/industrial facilities and operations. Mobile source control measures are directed at tailpipe and other emissions from motor vehicles, and transportation source control measures affect motor vehicle location and use. The Act mandates that all such plans require the implementation of all reasonably available control measures (RACM). One of the RACMs is to require preconstruction approval of new major facilities or modifications to existing ones.

In 1997, EPA established a more stringent NAAQS for ozone of 0.08 parts per million (ppm). This standard is based on an 8-hour averaging period and is commonly called the 8-hour standard. The establishment of this new standard triggered the need for EPA to designate new nonattainment areas. Northern Virginia is the only area that has not attained the 1-hour standard. If the standard is changed to a stricter 8-hour ozone standard, then more areas of the Commonwealth will be designated for ozone. EPA has indicated that, for the new 8-hour standard, the five-class system created under the Clean Air Act will not apply to these new areas.

A key control measure for managing the growth of new emissions is the permit program for new and modified stationary sources. The program requires that owners obtain a

permit from DEQ prior to the construction of a new industrial or commercial facility or the expansion of an existing one. Program requirements differ according to the facility's potential to emit a certain amount of a specific pollutant and the air quality status of the area where the facility is or will be located. Requirements for facilities considered major due to their potential to emit a specified pollutant are more stringent than for less polluting facilities. Requirements for major facilities in nonattainment areas are considerably more stringent than for those in areas which meet the standard.

Permits issued in nonattainment areas require the facility owner to apply control technology that meets the lowest achievable emission rate and to obtain emission reductions from existing sources. The emission reductions must offset the increases from the proposed facility by the ratio specified in the Act for that particular nonattainment classification. The offset ratio for areas classified as marginal is 1.1 to 1, for moderate areas 1.15 to 1, for serious areas 1.2 to 1, and for severe areas 1.3 to 1. For the new 8-hour standard, since no classification system exists, the offset ratio is 1 to 1. The 8-hour standard has been subject to litigation, which was recently addressed by the U.S. Supreme Court. In this case EPA prevailed on most issues, with the exception of its implementation policy. EPA is currently in the process of revising the implementation policy; it is important that Virginia's regulation be flexible enough to accommodate whatever policy EPA develops. Furthermore, the regulation must be flexible enough to address the potential for the establishment of PM 2.5 nonattainment areas in the Commonwealth and the concurrent lack of a classification system for this pollutant. The current regulations do not address the 1 to 1 offset ratio and therefore must be changed to do so.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description of changes implemented by the proposed regulatory action. Where applicable, include cross-referenced citations when the proposed regulation is intended to replace an existing regulation.

1. Provisions concerning applicability have been revised in order to clarify which new source review activities are covered by this article. [9 VAC 5-80-2000 A]
2. Provisions relating to new source review of hazardous air pollutants have been deleted. [throughout]
3. The applicability of the regulation has been revised to provide that any pollutants not subject to this article may be subject to other provisions of the new source review program, and to update the reference to other potentially applicable regulations. [9 VAC 5-80-2000 E 2]
4. Provisions have been added to allow permit terms and conditions that are state-enforceable to be designated as such in the permit, thus preventing their ability to

be enforced by EPA or citizens through the federal Clean Air Act. [9 VAC 5-80-2000 E 3 and 9 VAC 5-80-2020 E]

5. The provision regarding relocation of emissions units has been revised to clarify that no relocation of an emissions unit from one stationary source to another is allowed without a permit. [9 VAC 5-80-2020 B]
6. A provision enabling the board to incorporate the terms and conditions of a state operating permit into a permit issued by this article has been added. This permit may supercede the state operating permit if the public participation provisions of the state operating permit program are followed. [9 VAC 5-2020 D]
7. A provision has been added to allow for permits to be granted for programs of construction or modification in planned incremental phases. [9 VAC 5-80-2020 F]
8. The provisions regarding applications have been revised to specify that a separate application is required for each stationary source. [9 VAC-5-80-2030]
9. Provisions have been added to clearly identify the information needed in the application in order for the board to determine impact on air quality and compliance with emission standards. [9 VAC 5-80-2040]
10. Provisions have been revised in order to require that a permit may not be granted unless it is shown that the source will comply with certain specified standards. Provisions have been added to allow for permits to be granted to stationary sources or emissions units that contain emission caps provided the caps are made enforceable as a practical matter. Permits may contain emissions standards as necessary to implement the provisions of the NSR program and certain specified criteria must be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter. Permits must contain, but not be limited to, certain specified elements as necessary to ensure that the permits are enforceable as a practical matter. [9 VAC 5-80-2050 and 9 VAC 5-80-2010 C, definition of “enforceable as a practical matter”]
11. The processing time for a complete application has been extended from 90 to 180 days. The time may be extended if additional information is required. [9 VAC 5-80-2060 B]
12. A provision has been added to enable the permit applications to be processed, upon request of the applicant, using the public participation procedures of the federal operating permit program. [9 VAC 5-80-2070 G]
13. A provision has been added to clarify that granting of a waiver from testing requirements does not shield the source from the enforcement of other applicable requirements. [9 VAC 5-80-2080 E]

14. A provision has been added to indicate that the ratio of total emissions reductions of the nonattainment pollutant to total increased emissions of the nonattainment pollutant in nonattainment areas (other than ozone nonattainment areas) is at least 1 to one. [9 VAC 5-80-2120 B]
15. A provision clarifying that noncompliance of any provision of the permit is grounds for enforcement action or revocation has been added. [9 VAC 5-80-2180]
16. Provisions have been added to allow permit changes in a manner similar to that under the Title V permit program. These procedures allow a permittee to initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment, or a significant permit amendment. This request for a change must include a statement of the reason for the proposed change. The board may initiate a change to a permit through the use of permit reopenings. [9 VAC 5-80-2200]
17. Provisions governing administrative permit amendments have been added. These procedures are used for the correction of typographical or other error which does not substantially affect the permit; change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source; change in ownership or operational control of a source; or the combining of permits. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request, incorporating the changes without providing notice to the public. The owner may implement the changes requested immediately upon submittal of the request. [9 VAC 5-80-2210]
18. Provisions governing minor permit amendment procedures have been added. These procedures are used for permit amendments that do not violate any applicable regulatory requirement; do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit; do not require or change a case-by-case determination of an emission limitation or other standard; do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable regulatory requirement; are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and are not required to be processed as a significant amendment or as an administrative permit amendment. Under certain conditions, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives and emissions trading; to require more frequent monitoring or reporting by the permittee or to reduce the level of an emissions cap; or to rescind a provision of a permit. Normally within 90 days of receipt by the board of a request under minor permit amendment procedures, the board will issue the permit amendment as proposed; deny the permit amendment request; or determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed. Until the board takes action on the request, the source must comply with the applicable regulatory requirements governing the change and the proposed permit terms and

conditions. During this time, the owner need not comply with the existing permit terms and conditions the owner seeks to modify, but if the owner fails to comply with the proposed permit terms and conditions during this time, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner. [9 VAC 5-80-2220]

19. Provisions governing significant amendment procedures have been added. These procedures are used for permit amendments that involve significant changes to existing monitoring, reporting, or record keeping requirements; require or change a case-by-case determination of an emission limitation or other standard; or seek to establish or change a permit term or condition for which there is no corresponding underlying applicable regulatory requirement. The board will normally take final action on significant permit amendments within 90 days after receipt of a request. The owner may not make the change applied for in the significant amendment request until the amendment is approved by the board. [9 VAC 5-80-2230]

20. A provision has been added to allow for a permit to be reopened and revised if additional regulatory requirements or changes to existing requirements become applicable to emissions units or pollutants covered by the permit; if the board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or if the board determines that the permit must be revised to assure compliance with the applicable regulatory requirements or that the conditions of the permit will not be sufficient to meet all applicable standards and requirements; or if a new standard prescribed under 40 CFR Parts 60, 61 or 63 becomes effective after a permit is issued but prior to startup. Proceedings to reopen and reissue a permit must follow the same procedures as apply to initial permit issuance and may affect only those parts of the permit for which cause to reopen exists. Reopenings may not be initiated before a notice of intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency. [9 VAC 5-80-2240]

Alternatives

Please describe the process by which the agency has considered less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

As provided in the public participation procedures of the State Air Pollution Control Board, the Department included, in the Notice of Intended Regulatory Action, a description of the Department's alternatives and a request for comments on other alternatives and the costs and benefits of the Department's alternatives or any other alternatives that the commenters provided.

Following the above, alternatives to the proposed regulation amendments were considered by the Department. The Department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets

the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to bring the regulation into compliance with federal regulation and policy pursuant to the federal Clean Air Act.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it will not ensure consistency with federal requirements.
3. Take no action to amend the regulations. This option is not being selected because it will result in the imposition of a federal program or of unnecessarily restrictive requirements.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No public input was received during the public comment period for this intended regulatory action.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated within three years after its effective date.

The specific and measurable goals the proposed regulation amendments are intended to achieve are as follows:

1. To protect public health and/or welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To prevent the construction, modification, or operation of major new facilities that will prevent or interfere with the attainment or maintenance of any ambient air quality standard.
3. To ensure that major new facilities or major expansions to existing facilities will be designed, built, and equipped to operate without causing or exacerbating a violation of any ambient air quality standard.
4. To ensure that major new facilities or major expansions to existing facilities will be designed, built, and equipped to comply with case-by-case control technology determinations and other requirements.
5. To ensure that emission increases from new major facilities or major expansions to existing facilities are offset by emission reductions from existing facilities by an equal or greater amount.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.