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Proposed Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5 Chapter 80
Secondary action(s)	9VAC5-50-240, 9VAC5-50-250 and 9VAC5-50-260
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Minor New Source Review (Rev. H05)
Date this document prepared	March 30, 2009

This information is required for executive review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act, Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed substantive amendments to the existing regulation, or the regulation proposed to be repealed. If applicable, generally describe the existing regulation.

The regulation applies to the construction or reconstruction of new stationary sources or modifications (physical or operational changes) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as 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 net emissions from the facility on air quality. 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 regulation provides a source-wide perspective to determine applicability based upon the net emissions changes due to or directly resulting from the modification (physical or operational change at an existing stationary source). Procedures for making changes to permits are included. There are provisions which allow the use of a general permit. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review.

The primary change being made to the program is to convert from a permit applicability approach for modifications which looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from new and modified emissions units. Currently applicability is based on the net emissions increase based on all the source wide emissions changes due to or directly resultant from the physical or operational

change. The proposed program would base permit applicability on the emissions increases from only those emissions units that undergo a physical or operational change in the project.

Secondary changes include changes to the way that BACT determinations will be made, changes to the way that NSPS affected facilities are exempted, removal of transportable engines from a non-road engine exclusion, resolution of conflicting exemptions for reconstructed emissions units and modified emissions units, exemption of short term testing and remediation projects and aggregation of emissions units under some other exemptions, changes to the way that replacement emissions units are exempted, changes to certain exemption requirements for portable stationary sources, changes to the way that emission rates are calculated for certain exemptions, resolution of regulatory conflicts concerning open pit incinerators, and clarification of other provisions of the minor new source review program.

Legal 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.

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 the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

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

The purpose of the regulation is to protect public health, safety and welfare by establishing the procedural and legal basis for the issuance of new source permits for a proposed new stationary source or a project at an existing one that will (i) enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, (ii) to assess the impact of the emissions from the source on air quality, and (iii) provide a state and federally enforceable mechanism to enforce permit program requirements. The proposed amendments are being made to simplify the program requirements and reduce the complexity of the permit program, as well as, revise program requirements based on implementation experience.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

1. The program is being changed to convert from a permit applicability approach for modifications which looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from the affected emissions units that make up the project. Currently applicability is based on the net emissions increase based on all the source wide emissions changes due to or directly resultant from the physical or operational changes. The proposed program will base permit applicability on the emissions from only those emissions units that are new or that undergo a physical or operational change at a project. Debottlenecked emissions (collateral emissions increases and decreases from unchanged processes and equipment) and all emissions decreases from affected emissions units will no longer be considered in determining permit applicability.
2. The program is being changed such that Best Available Control Technology (BACT) determinations will be required for all emissions units that are subject to the minor new source review program. The requirement for a BACT determination will be applied to each pollutant emitted by the new source or project in amounts equal to or greater than the exempt emission rate threshold; however, permit terms

and conditions may be applied to any pollutant from the affected emissions units as may be necessary to support the BACT determination. Restrictions on the proportion of the potential emissions reductions that may be considered for a BACT cost-benefit analysis will be removed. The current minimum net emissions increase applicability thresholds for individual affected emissions units will also be eliminated.

3. In order to implement the program changes identified in items 1 and 2, the program is being changed to add definitions and other provisions that will facilitate the clear and consistent identification of the emissions units subject to the permit program (i.e., affected units). For a “new stationary source,” the affected emissions units will be all emissions units located to an undeveloped site. For a “project” at an existing stationary source, the affected emissions units will be all new or added emissions units and all modified emissions units that make up the project.

4. The program is being changed such that reconstruction of an emissions unit by the replacement of some of its components will no longer be treated differently from the modification of an emissions unit. Such changes will no longer be exempt if the potential to emit is not increased, but instead, will only be exempt if the increase in the emissions rate is less than the exempt emission rates for a modified stationary source, just like any other modified emissions unit. Reconstruction of an emissions unit by replacing the entire emissions unit will continue to be exempt as a “replacement of an emissions unit” as long as the potential to emit does not increase as a result of that replacement. Reconstruction will only exist in the minor new source review program as it pertains to its applicability under the federal new source performance standards in 40 CFR Part 60.

5. The program is being changed such that certain transportable engines will no longer be considered as nonroad engines that are excluded from the definition of a stationary source. Emissions from such engines may now be subject to the provisions of the minor new source review program and subject to emissions control requirements.

6. The exemption for certain sized fuel burning equipment is being changed to (i) expand the exemption to include space heaters, (ii) reduce the maximum exemption size for natural gas-fired fuel burning equipment, and (iii) in ozone nonattainment and maintenance areas, aggregate similar types of fuel burning equipment that are included in a single project for the purpose of comparison with the exempt size criteria.

7. Exemptions are being added for (i) vegetative waste recycling/mulching operations, (ii) open pit incinerators subject to the open burning rule, and (iii) certain process testing and remediation projects that remain in existence for less than a year.

8. The program is being changed to remove the prohibition against exempting NSPS facilities.

9. Provisions are being added to provide for processing and issuing informational permit applicability determinations.

10. Provisions are being added to incorporate the federal requirements for the new PM_{2.5} air quality standard.

11. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program are being restructured to increase clarity.

12. Provisions are being added to allow terms and conditions of permits to be combined.

13. Finally, a number of other provisions have been rewritten to increase clarity, including: clarifying when to include fugitive emissions in determining permit applicability, clarifying how changes in stack height are subject to permit review requirements, clarifying how regulatory changes affect new and previous permit applications, clarifying which modifications are subject to public participation requirements, and clarifying how to make permit changes to accommodate exempt equipment replacements.

Issues

Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Public: The advantages to the affected entities will vary widely according to source size and type and the particular options chosen by each source in order to comply with the regulation. The current regulation poses many challenges to the affected entities in making applicability determinations, particularly for smaller businesses for which the program is mainly intended. Implementation of the current regulation has placed a significant administrative burden upon the affected entities. Under the current regulation, determination of permit applicability cannot be made with any reasonable degree of efficiency, effectiveness or consistency. Interpreting the new regulation is a major time-consuming workload for the affected entities. However, the affected entities will lose the increased flexibility inherent in the more complex regulation.

2. Department: The problems cited above relative to making applicability determinations also place a similar burden upon the Department. The primary benefit as a result of the changes to this regulation will be a reduction in the complexity of the regulation and associated reduction in workload of the permit writers and field inspectors who make compliance determinations. There are no disadvantages to the Department.

Localities particularly affected

Please identify any locality particularly affected by the proposal. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on (i) the costs and benefits of the proposal, (ii) effects of the proposal on farm and forest land preservation, and (iii) impacts of the proposal on small businesses. Also indicate whether a public hearing is to be held to receive comments on the proposal. If a public hearing is to be held, indicate that the date, time and place of the hearing may be found in the calendar of events section of the Virginia Register of Regulations.

In addition to any other comments, the Department is seeking comments on (i) the costs and benefits of the proposal, (ii) the potential impacts of the proposal on the regulated community, (iii) the effects of the proposal on farm and forest land preservation, and (iv) the impacts of the proposal on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting,

recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the proposal.

The Department is specifically seeking information on three issues concerning the exemption of certain emissions units from applicability under the minor new source review (NSR) program:

- (1) The costs and benefits of the proposed exemption for open pit incinerators.
- (2) The costs and benefits of the proposal to aggregate the capacities of all similar equipment at a new source or a project that is now individually exempted by source type and size, when considering whether or not that equipment should be exempt from permitting.
- (3) The costs and benefits of limiting the aggregation of the equipment capacities for this exemption to sensitive areas (such as nonattainment areas or maintenance areas) as opposed to allowing use of the exemption state-wide.

The Department is specifically seeking comment concerning the adequacy of the proposed regulation to address separate requests for exempt changes that would be subject to the new source review program if considered together.

The Department is specifically seeking information on two issues concerning emissions from debottlenecked emissions units. Debottlenecked emissions units are generally considered to be emissions units that are not physically or operationally changed, but may be affected by physical or operational changes to other equipment in a project such that emissions from the unchanged emissions units may also increase:

- (1) The costs and benefits of the proposal to discontinue the practice of considering emissions increases from debottlenecked emissions units when evaluating a project for minor NSR program permit applicability.
- (2) The costs and benefits of continuing to apply best available control technologies only to the physically or operationally changed emissions units and not to debottlenecked emissions units.

The Department is specifically seeking information on three issues concerning permit emissions limits that may be placed on new or changed emissions units as part of this proposal:

- (1) The costs and benefits of the proposal to apply permit emissions limitations representing best available control technology (BACT) to any regulated pollutant emitted by any emissions unit at a new stationary source when the uncontrolled emissions rate of that pollutant from the source is greater than the exempt emission rate threshold.
- (2) The costs and benefits of the proposal to apply permit emissions limits representing BACT to any regulated pollutant emitted by any new or changed emissions unit in a project when the uncontrolled emissions rate increase of that pollutant from the project is greater than the exempt emission rate threshold.
- (3) The costs and benefits of the proposal to apply such permit emissions limits to other pollutants emitted by new or changed emissions units that may not exceed the exempt emission rate threshold as may be necessary to implement a BACT determination.

The Board may take these comments under consideration along with the Department's recommendation, but will decide for or against the proposals, or will modify the proposals, based upon its own deliberations.

The Department accepts written comments by e-mail, facsimile transmission and postal mail. In order to be considered, written comments must include the full name, address and telephone number of the person commenting and be received by the Department by 5:00 p.m. on the last day of the comment period. Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. Both oral and written comments are accepted at the public hearing. The Department prefers that comments be provided in writing, along with any

supporting documents or exhibits. All testimony, exhibits and documents received are part of the public record.

All comments requested by this document must be submitted to the agency contact: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (e-mail: gegraham@deq.virginia.gov) (fax number: 804-698-4510). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Requests for documents and additional information may also be submitted to the agency contact.

A public hearing will be held and the notice of the public hearing, along with the comment period closing date, will appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposal and at a minimum provide the information specified below. Also include a description of the beneficial impact the proposal is designed to produce.

<p>a. Description of the individuals, businesses or other entities likely to be affected by the regulation.</p>	<p>Any owner who wishes to construct or modify a stationary source. Certain exemptions are provided for the smaller sources covered by the program.</p>
<p>b. Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Historical data suggests that, statewide, hundreds of minor new source permits are issued annually. Approximately 335 permits were issued in 2001, 350 in 2002, 250 in 2003, and 170 in the first half of 2004. Due to all the variables that may impact economic growth in the Commonwealth in the future it is difficult at best to estimate the number of permits that may be issued; however, if historical trends continue, hundreds of sources, annually, will continue to be impacted by the program.</p>
<p>c. Projected cost of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>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 from source to source 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.</p> <p>For many sources, costs will increase over the years for reasons apart from the minor new source review (MNSR) 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. These costs will be</p>

	<p>incurred whether or not the state MNSR program exists.</p> <p>Due to the variability among the entities affected by this proposed regulation, an estimation of costs is given by a range from small to large or more complex sources or facilities. To estimate the costs to affected entities, the MNSR regulation requirements that will increase costs are listed below by category. Each category is then described along with the costs that can be estimated.</p> <ol style="list-style-type: none"> 1. Costs of preparing a permit application and providing data to the agency so that the application can be evaluated. 2. Costs of negotiating BACT for new and modified sources. <p><u>Category 1.</u> The current state MNSR permit application parallels the federal requirements for new source review under PSD, which looks at the changes from a source wide perspective to determine applicability. However, unlike PSD the determination of applicability does not look back at historical emissions changes but looks only at the emissions changes resulting directly from the physical or operational change. Determining permit applicability and filling out the MNSR permit application takes considerable time, especially for existing sources. The proposal is expected to reduce the complexity of the applicability determination process and reduce the cost and difficulty of filling out the associated application.</p> <p>The cost to prepare the permit application varies considerably depending on the situation surrounding the need for a permit; however, the estimate ranges from \$800 for a small source to \$80,000 for a large source. The cost for a permit amendment ranges from \$160 for a small source to \$4,200 for a large source. For the purposes of this evaluation, a small source is assumed to be one site where one stack from a simple process emits either one or a few pollutants and a large source is assumed to be one site where many stacks emit many pollutants and where the processes creating these pollutant emissions are complex.</p> <p><u>Category 2.</u> Currently, BACT evaluation must be conducted for an application for an MNSR permit. This requirement can be very time consuming for both the source and the department staff due to the inherent nature of BACT evaluation. The cost of this negotiation varies and is determined by the</p>
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	<p>circumstances of the individual source.</p> <p>The proposed regulation should reduce the difficulty and cost of making the BACT determination due to the changes in the permit applicability approach because the numbers of sources that are subject to a BACT determination may decrease somewhat the number of sources that are required to get a permit may be reduced. However, the net impact of the change in permit applicability on the environment may be small. Because of changes to how BACT applicability is determined, the proportion of those sources that must obtain a permit that must also implement BACT controls and reduce emissions may increase. As before, BACT may be determined by what has been recently applied to similar sources of that source type (presumptive BACT) and, as before, the owner may opt instead to do the BACT cost-benefit analysis (at some increased cost to the owner). Because a presumptive BACT represents recent cost-effective BACT determinations and an optional BACT cost-benefit analysis will identify which other controls are cost effective and reject those that are not, it is prudent to require that BACT determinations be made for more of the sources that are subject to permitting. Because there is a presumptive BACT for most of the sources types that are subject to minor NSR permitting, there is likely to be little impact of the proposed changes to the BACT determination process in terms of the cost of making the application or the speed of reviewing and issuing the permit unless the owner specifically chooses to do a more expensive BACT cost-benefit analysis.</p>
<p>d. Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>It is not expected that the regulation will result in any cost to the Department of Environmental Quality beyond that currently in the budget. It is expected, however, that the work load will be reduced for the permit writers and inspectors responsible for determining compliance. 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 or permit fees charged to affected entities under the permit program). 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) and (ii) Environmental Research and Planning (5130000)/Air Quality Research and Planning (5130700). The costs are expected to be ongoing.</p>

<p>e. Projected cost of the regulation on localities.</p>	<p>The projected cost of the regulation on localities is not expected to be beyond that of other affected entities and is addressed in item c above.</p>
<p>f. Beneficial impact the regulation is designed to produce.</p>	<p>The primary benefits as a result of the changes to this program are simpler requirements to make applicability determinations which will reduce the administrative burden of the permit program.</p>

Legal requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the proposal, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal requirements and the extent to which the requirements are mandatory or discretionary.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

(1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

(2) establish a program for the enforcement of the emission limitations and schedules for compliance; and

(3) establish programs for the regulation and permitting of the modification and construction of any stationary source within the areas covered by the plan to assure the achievement of the ambient air quality standards.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, as summarized below.

Subpart F (Procedural Requirements) specifies definitions of key terms, stipulations and format for plan submission, requirements for public hearings, and conditions for plan revisions and federal approval.

Subpart G (Control Strategy) specifies the description of emissions reductions estimates sufficient to attain and maintain the standards, the description of control measures and schedules for implementation, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart I (Review of New Sources and Modifications) specifies legally enforceable procedures, public availability of information on sources, identification of responsible agency, and administrative procedures.

Section 51.160 of Subpart I specifies that the plan must stipulate legally enforceable procedures that enable the permitting agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in either a violation of any part of a control strategy or interference with attainment or maintenance of a national standard and, if such violation or interference would occur, the means by which the construction or modification can be prevented. The procedures must identify types and sizes of facilities, buildings, structures or installations which will be subject to review and discuss the basis for determining which facilities will be subject to review. The procedures must provide that owners of facilities, buildings, structures or installations must submit information on the nature and amounts of emissions and on the location, construction and operation of the facility. The procedures must ensure that owners comply with applicable control strategies after permit approval. The procedures must discuss air quality data and modeling requirements on which applications must be based.

Section 51.161 of Subpart I specifies that the permitting agency must provide opportunity for public comment on information submitted by owners and on the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval. Section 51.161 also specifies the minimum requirements for public notice and comment on this information.

Section 51.162 of Subpart I specifies that the responsible agency must be identified in the plan.

Section 51.163 of Subpart I specifies that the plan must include administrative procedures to be followed in determining whether the construction or modification of a facility, building, structure or installation will violate applicable control strategies or interfere with the attainment or maintenance of a national standard.

Subpart L (Legal Authority) specifies identification of legal authority to implement plans and assignment of legal authority to local agencies.

Section 51.230 of Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and
- (4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard.

Section 51.231 of Subpart L requires the identification of legal authority as follows:

- (1) the provisions of law or regulation which the state determines provide the authorities required under § 51.231 must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and
- (2) the plan must show that the legal authorities specified in Subpart L are available to the state at the time of submission of the plan.

State Requirements

§10.1-1322.4 of the Code of Virginia provides an exemption (unless required by the federal government law or regulation) from permit requirements for the use of an alternative fuel or raw material, if the owner demonstrates to the board that, as a result of trial burns at the facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. The Code further provides (to the extent allowed by federal law or regulation) that no demonstration shall be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

Comparison with federal requirements

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

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

Need

Please explain the need for the new or amended regulation and the potential consequences that may result in the absence of the regulation. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal, the environmental benefits of the proposal, and the problems the proposal is intended to solve.

Identification of Specific Requirements Establishing the Need

Article 6 provides a procedural and legal basis for issuing new source review (NSR) permits for proposed new stationary sources or a projects at an existing ones that do not otherwise qualify for review under the major source NSR program. This minor source NSR (MNSR) regulation (i) enables the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, (ii) requires the agency to assess the impact of the emissions from the facility on air quality, and (iii) provides a state and federally enforceable mechanism to enforce permit program requirements. 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 current program uses a permit applicability approach that looks at the emissions changes from a source wide perspective to determine applicability. Applicability is based on the net emissions increase (NEI) based on all the source wide emissions changes due to or directly resultant from the physical or operational changes. Netting involves considering the emissions increases and decreases from all of the source wide emissions changes from the affected units in the project. To lower the net emissions increase at an expanding or modernizing source below levels subject to permitting, an emission reduction credit (ERC) obtained at the same source may be used to avoid the requirements of new source review. An ERC is a surplus emission reduction approved by the agency in accordance with the requirements of the current regulations which represents a decrease in the quantity of a pollutant discharged from a source below the allowable emissions in the current regulations or any emission limit specified as a permit condition by the approving authority.

To assure that regulatory requirements are met, each transaction which allows the use of an ERC must be approved by the state and be federally enforceable. Means of making ERCs federally enforceable

include SIP revisions, EPA-approved generic trading rules and new source preconstruction permits issued by states under EPA-approved regulations, as well as construction permits issued by EPA. ERCs should be incorporated in an enforceable compliance instrument which requires recordkeeping based on the averaging period over which the NEI is operating, so it may easily be determined over any single averaging period that the ERC limits are being met.

In the new source review program, the netting concept is used primarily to avoid major NSR by using netting operations to avoid major NSR permit applicability. It works in major NSR due to the use of the minor NSR program as an underlying permit program to make the netting operations state and federally enforceable. While the netting concept, essential to determining applicability, works well in major NSR, it is not working in minor NSR, primarily due to the lack of an underlying permit program to make the netting operations enforceable. Thus, there is no practical way to net out of minor NSR permit applicability, as there is in the case with major NSR. In order to work within the intent of the netting concept, the Department promulgated procedures that would allow the netting concept to be used for BACT applicability. The minor NSR permit would then become the vehicle to make the netting operations for BACT applicability determinations federally and state enforceable. It would also be used as a vehicle to place emission caps on emissions units potentially subject to BACT in order to legally maintain their emissions below the applicability thresholds for the BACT requirements. Using the netting concept has resulted in some sources being able to avoid BACT; however, it has also resulted in some sources having to use BACT on additional units, such as debottlenecked units. The result of using the NEI approach is increased complexity of the minor NSR program and the introduction of new administrative and financial burdens on both the agency and regulated community.

The revised program would base permit applicability on the emissions increases from only those emissions units that undergo a physical or operational change in the project. This approach was used prior to the current regulation changes which resulted in the use of the NEI approach. It is far simpler and less costly to implement and make permit applicability determinations.

The above changes are the primary reasons for the proposed action and are intended to simplify the program requirements and reduce the complexity of the permit program. In addition, the implementation of the program over the previous six years has resulted in the considerable implementation experience. The agency will review this implementation experience and propose other program changes as appropriate.

General Planning Requirements

Among the primary goals of the Clean Air Act are 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 NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air. EPA 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 the reduced levels (i.e., maintenance).

A state implementation plan is the key to the air quality programs. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards - that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented; the sanctions consisting of loss of federal funds for highways and other projects and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the Federal Clean Air Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the State to attain the air quality standards. Once the air quality standard is attained, the agency must have a program to continuously monitor air quality to ensure that it meets the standards. The agency must also have a means to monitor compliance by sources, to prevent the construction of a new or modified source if it will cause a violation of the air quality standards, and to take action as necessary to prevent air pollution levels in the air from creating an emergency condition. In addition, development and enforcement of regulations under the SIP must be continually pursued, as well as development of new plan revisions as federal laws and regulations change.

Most of the agency's regulations are designed to provide the means for implementing and enforcing control measures (primarily stationary source and some mobile source) necessary to carry out the SIP. The chief stationary source control measures are to establish emission standards for existing sources and to require a permit for new or modified sources. The new source review permit is the agency's means to limit the amount of pollutant from the source by means of new source performance standards, and in some cases, to determine its siting.

A key strategy for managing the growth of new emissions is the permit program for new and modified stationary sources. The basic program requires that owners obtain a permit from the agency prior to the construction of a new industrial or commercial facility or the expansion of an existing one. Through preconstruction technology reviews and the issuance of permits, the agency ensures that new or modified facilities progressively minimize their adverse impact upon the air quality. Therefore, the implementation of new and modified source permit program, emission increases from new and expanding stationary sources can be managed so that affected areas can attain and maintain the air quality standards and accommodate growth.

The basic program (in existence since 1972) was later supplemented by mandate of the CAA with requirements that differ according to the facility's potential to emit a specified amount of a specific pollutant and the air quality status of the various areas within the state where the facility is or will be located. Requirements for facilities considered to be major due to their potential to emit a specified pollutant are more stringent than for less polluting facilities. Requirements for major facilities located or locating in those areas which have ambient air quality concentrations that have not been maintained at or below the health-based standard for a pollutant (nonattainment areas) are considerably more stringent than for those areas which have concentrations maintained at or below the standard (prevention of significant deterioration (PSD) areas). 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 in the area such that the reductions offset the increases from the proposed facility by a ratio greater than one for the emissions contributing to the nonattainment situation. Permits issued in PSD areas require the facility owner to employ control technology that is the best available and, in some cases, to monitor ambient air quality at the site where the facility will be located to determine ambient air background levels of the pollutants to be emitted.

The minor new source review (MNSR) program requires permits for new and modified stationary sources that do not qualify either as PSD or nonattainment area major sources. The MNSR program also includes exemption levels for exempting smaller sources from permit requirements even though the exempted sources, in some cases, must still meet any applicable emission standards.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the proposal.

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 proposal 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 proposal. 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 change the permit applicability approach of the permit program while satisfying the provisions of the law and associated regulations and policies. This option was chosen because it meets the stated purpose of the regulation: to simplify the program requirements and reduce the complexity of the permit program.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because the regulation needs to remain consistent with current federal requirements and the state objectives for the permit program.

3. Take no action to amend the regulations and continue to use the regulation in its current state. This option was not chosen because, without change, needless resources by the business community and department would be expended in implementing the permit program.

Regulatory Flexibility Analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposal; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposal.

Although the regulations apply to all facilities of the applicable source type, these standards were specifically designed to apply to facilities of the size that are now defined as small businesses. As such, any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely impact the benefits that would be achieved through the implementation of the existing regulations.

Public comment

Please summarize all public comment received during the comment period following the publication of the NOIRA, and provide the agency response. If no public comment was received, please so indicate.

Commenter	Comment	Agency response
Rochelle Garwood, Thomas Jefferson Planning District Commission	Although the Commission is not in favor of unnecessarily complex regulations, it would also not want to see the revisions result in the weakening of standards.	The proposal will facilitate the clear and consistent identification of the emissions units subject to the permit program. The proposed changes should bring certainty and clarity to the minor NSR review process without adversely impacting air quality in any significant way. No change has been made in the proposed regulation based upon this comment.
John Cline, Troutman Sanders LLP	The rulemaking should include a clear statement of the impact of the amended rule on debottlenecked emissions units.	This comment is acceptable and appropriate changes reflecting the intent of the comment have been made in this proposal.
John Cline, Troutman Sanders LLP	The rulemaking should include a clear statement of the scope of applicability of Chapter 50 when applicability of the minor NSR program is triggered by a proposed modification of an existing source.	This comment is acceptable and appropriate changes reflecting the intent of the comment have been made in this proposal.
John Cline, Troutman Sanders LLP	There should be equitable treatment for those sources which were subject to the current minor NSR rule's provisions which have since been acknowledged as inappropriate, overly stringent and/or flawed.	This purpose of this proposal is primarily to reduce the complexity and improve the efficiency of the minor NSR permit process, not to correct perceived inequities or flaws in the permit process. Permits issued properly according to regulatory provisions in effect prior to this revision must comply with the terms and conditions of those permits. No change has been made in the proposed regulation based upon this comment.
John Cline, Troutman Sanders LLP	There should be statutory accountability to the General Assembly for provisions of the minor NSR program which are more stringent than applicable federal requirements.	The minor NSR permit program is part of the federally-approved state implementation plan and, as such, is a federal requirement. The regulatory approval process ensures that the statutory requirements are fulfilled. The Administrative Process Act contains provisions for accountability to the General Assembly and legislative oversight of regulatory actions. No change has been made in the proposed regulation based upon this comment.
Joe Furr, Virginia Manufacturers Association (VMA)	The VMA fully supports a reversion back to the individual-unit applicability approach in effect prior to the 2002 amendments. It will simplify minor NSR permit program	This proposal returns minor NSR program applicability to an approach similar to that implemented prior to the 2002 revisions, which was facility-wide, considering the applicability of individual new and changed emissions units

	applicability determinations and cut down on delay and cost that Virginia businesses incur under the minor NSR rules. We believe the air emission impacts from switching from the source-wide applicability approach back to the individual-unit applicability approach will be a wash because some source changes that would not trigger minor NSR under the source-wide approach may trigger permitting requirements under the individual-unit approach and vice-versa.	and the emissions, or emissions increases, of those individual emissions units in making that determination. The term “source-wide approach” in the 2002 revision was used to indicate that emissions increases and decreases from all emissions units at the source, not just the new and changed emissions units, would be considered for netting purposes. This proposal returns to an approach that only addresses the individual emissions units that were new or changed. This comment is acceptable and appropriate changes reflecting the general intent of the comment have been made in this proposal.
Joe Furr, Virginia Manufacturers Association (VMA)	While we generally support the changes made to the minor NSR regulations during earlier revision processes, we do have some significant concerns with the provisions requiring application of best available control technology (“BACT”) to modifications to existing sources.	This comment is acceptable and appropriate changes reflecting the general intent of the comment have been made in this proposal.
Sharyl Raulston, International Paper	International Paper supports the comments submitted to the DEQ by the Virginia Manufacturer’s Association (VMA).	See the response to the previous two comments. This comment is acceptable and appropriate changes reflecting the general intent of the comment have been made in this proposal.
Sharyl Raulston, International Paper	International Paper (IP) has found that the recently revised Minor NSR regulations are very difficult to understand and interpret. IP recommends returning the permit applicability approach to be based on the increase of uncontrolled emissions from a physical or operational change on an individual unit basis, and not a source wide basis. IP supports this reversion back to the approach that was in effect prior to the 2002 amendments and believes this will simplify the minor NSR permitting determination. Removing the confusion around the minor NSR regulations will reduce the permitting time helping IP and DEQ.	It should be noted that changing the basis for the baseline and projected emissions for permit applicability to uncontrolled emissions has been accomplished via a previous regulatory action. This comment is acceptable and appropriate changes reflecting the general intent of the comment have been made in this proposal.

Family impact

Please provide an assessment of the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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 the proposal will have a direct impact on families. However, there will be positive indirect impacts in that the proposal 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.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Current requirement	Proposed change and rationale
50-240, Applicability and designation of affected facility.	See below.	See below.
50-240 A.	Affected facilities are all those facilities that emit any air pollutant and that are subject to the new source review program.	Affected facilities are those emissions units that are subject to new source review. Changed to be consistent with proposed changes to the minor NSR permit program.
50-240 C.	None.	Standards are applied to any regulated air pollutant except to the extent that the pollutant is regulated by the Hazardous Air Pollutant (HAP) regulations in Chapter 60. Inserted to be consistent with proposed changes to the minor NSR permit program.
50-250, Definitions.	See below.	See below.
50-250 A.	Applicability of terms as defined in subsection C (Terms defined).	Language updated to be consistent with other articles in Chapters 40 and 50. Changed to improve consistency with related chapters.
50-250 B.	Terms not defined in subsection C have meanings as assigned in Chapter 10.	Specifies that terms not defined in subsection C have meanings as assigned in a hierarchy of sources; in Chapter 80, in Chapter 10 or according to common use, in that order. Changed to avoid confusion about which chapters preferentially assign meaning to undefined terms used in Chapter 50.
50-250 C. Terms defined.	See below.	See below.

Current section number	Current requirement	Proposed change and rationale
"Best Available Control Technology."	Term is defined as an emissions limitation for the purpose of choosing appropriate permit process limitations, control technologies, work practices, operational standards. Specifies certain factors to be considered. Currently the definition serves both the major NSR program and minor NSR program.	Deletes language that specifies that consideration be given to the nature and amount of new emissions, emission control efficiencies achieved in the industry for the source type and cost effectiveness of the incremental emission reduction achieved. Necessary to limit the definition to the minor NSR program and bring it in line with other changes being made to BACT applicability.
"Lowest achievable emission rate."	Term is defined for the purposes of setting standards for Nonattainment Major Source NSR.	Deletes the definition because the term is now defined in in the major NSR program.
"New source review (NSR) program."	Term is defined as the preconstruction review and permit program required by the Clean Air Act and codified in Chapter 80.	Deletes the definition because the term is now defined in Part I of Chapter 80.
50-260, Standards for stationary sources.	See below.	See below.
50-260 B.	Specifies how BACT is applied to each pollutant at a new stationary source.	Specifies that terms and conditions may be placed in the permit for any pollutant emitted by the affected emissions units as may be necessary to implement the BACT determination. Necessary to be consistent with other changes being made to BACT applicability, using language consistent with the new terms defined in Chapter 80.
50-260 C.	Specifies how BACT is applied to each pollutant at a modified stationary source and each emissions unit.	Deletes the requirement to apply BACT only to individual emissions units. Specifies that terms and conditions may be placed in the permit for any pollutant as may be necessary to implement the BACT determination. Necessary to be consistent with other changes being made to BACT applicability, using language consistent with the new terms defined in Chapter 80.
50-260 D.	BACT at phased construction projects must be reviewed prior to commencement of each phase and adequacy of the BACT determination for the project must be demonstrated.	Specifies that the adequacy of a BACT determination for phased construction must also be reviewed and demonstrated prior to each phase for new sources. Necessary to be consistent with the new terms defined in Chapter 80.
80-1100, Applicability.	See below.	See below.

Current section number	Current requirement	Proposed change and rationale
80-1100 A.	Specifies how the provisions of Article 6 are applied.	Specifies that provisions apply to construction of a new stationary source or any project at a stationary source, and apply to reduction of stack outlet elevations. Changed to be consistent with new defined terms and to clarify that the minor NSR program applies to changes to stack heights.
80-1100 C.	Specifies that provisions of Article 6 do not apply to exempt sources, facilities or emissions units.	Allows the owner of the exempt source, facility or emissions unit the option to get a minor NSR permit. Necessary to make it possible for new sources and projects consisting of many exempt emissions units to get a minor NSR permit to avoid major NSR.
80-1100 C 3.	None.	Specifies that owners of a new stationary source or project that opt into the minor NSR program are then subject to the program as if the exemptions did not apply. Added to specify how the program provisions apply to such facilities that opt in.
80-1100 D.	Specifies how fugitive emissions are to be included in making permit applicability determinations.	Specifies that fugitive emissions are to be included in making permit applicability determinations except when fugitive emissions are specifically excluded under the exemption provisions. Necessary to avoid confusion about the meaning of this provision.
80-1100 E.	Specifies when sources that are subject to a federal new source performance standard (NSPS) may be exempt.	Deletes this provision because the federal NSPS program has progressively covered smaller sources, for which minor NSR review is not a cost efficient use of limited staff resources.
80-1100 E.	(see above.)	Specifies that a series of exempt changes accomplished within a prior five-year contemporaneous period must be considered together for permit applicability. Necessary to make the look-back interval for a series of exempt changes consistent with other changes being made to program applicability.
80-1100 H.	Specifies how certain terms used in this Article relate to other terms in the Article.	Revises this provision to remove the term "reconstruction." Changed to be consistent with other changes made to remove "reconstruction" as an action that is subject to this article (as separate from other modifications).
80-1100 I.	None.	Identifies how the elements of the federal HAP new source review programs are to be implemented under this article. Relocated from 80-1120 H and elaborated upon to specify which parts of the federal HAPS programs are implemented under the minor NSR program.

Current section number	Current requirement	Proposed change and rationale
80-1100 J.	None.	Specifies how the minor NSR program provisions prior to this revision are to be applied after the revision. Added to clarify how the proposed revisions will be implemented.
80-1100 K.	None.	Specifies which provisions of 40 CFR Parts 60, 61 and 63 cited in this article apply. Added to avoid confusion about which parts of federal programs are implemented under this article.
80-1100 L.	None.	Specifies which provisions of 40 CFR Parts 51, 58, 60, 61 and 63 cited in this article apply. Added to avoid confusion about which parts of federal programs are implemented under this article.
80-1100 M.	None.	Specifies how condensable and non-condensable PM _{2.5} emissions will be treated under this Article. Added to be consistent with federal new source review requirements for PM _{2.5} .
80-1105, Exemptions.	None.	Replaces 80-1320 and makes changes throughout this section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary for clarity and to be consistent with other changes.
80-1105 A.	None.	Replaces 80-1320 A and specifies general requirements for exemptions from minor NSR permit requirements. Compared with 80-1320 A, the change also adds a new exemption for some vegetation mulching operations, clarifies the portable emissions unit exemption, replaces the exemption for reconstructed emissions units with an exemption for replacement emissions units, and adds an exemption for changes in stack height elevations emitting pollutants from an exempt emissions unit. Transferred to be consistent with placement of exemptions in other articles and to add or clarify exemptions that have either a net beneficial impact on the environment or an insignificant adverse impact on emissions.

Current section number	Current requirement	Proposed change and rationale
80-1105 B.	None.	<p>Replaces 80-1320 B, and specifies exemptions for specific types of facilities that may be exempt from minor NSR permit requirements. Compared with 80-1320B, the change also clarifies the exemption for emergency engines; adds exemptions for space heaters, certain open pit incinerators and temporary test and remediation facilities; lowers the exemption for gaseous fuel burners and requires that certain changes in sensitive areas be aggregated to qualify for the exemption.</p> <p>Transferred to be consistent with placement of exemptions in other articles and to add exemptions that have either a net beneficial impact on the environment or an insignificant adverse impact on emissions.</p>
80-1105 C.	None.	<p>Replaces 80-1320 C and specifies conditions under which new stationary sources may be exempt from minor NSR permit requirements. This change shifts the basis for the exemption, adds exemption criteria for PM_{2.5} and incorporates and clarifies 80-1100 D provisions for fugitive emissions.</p> <p>Transferred to be consistent with placement of exemptions in other articles and change the basis for the exemption consistent with the other changes being made to program applicability.</p>
80-1105 D.	None.	<p>Replaces 80-1320 D and specifies conditions under which projects at existing stationary sources may be exempt from minor NSR permit requirements. This change also changes the basis for the exemption, adds exemption criteria for PM_{2.5} and incorporates and clarifies 80-1100 D provisions for fugitive emissions.</p> <p>Transferred to be consistent with placement of exemptions in other articles and amended to change the basis for the exemption consistent with the other changes being made to program applicability.</p>
80-1105 E.	None.	<p>Replaces 80-1320 E and specifies conditions under which toxic emissions from new sources and projects may be exempt from minor NSR permit requirements. The change also allows the exemption of open pit burners that are regulated by Chapter 40, Article 40.</p> <p>Transferred to be consistent with placement of exemptions in other articles and amended to clarify an apparent inconsistency with other regulations.</p>

Current section number	Current requirement	Proposed change and rationale
80-1105 F.	None.	Replaces 80-1320 F and specifies conditions under which new sources and projects that are subject to federal hazardous air pollutant programs may be exempt from minor NSR permit requirements. Compared with 80-1320 F, the change also clarifies which sources subject to which federal programs may be exempt. Transferred to be consistent with placement of exemptions in other articles and to clarify that the exemption applies to sources for which EPA has made a formal determination.
80-1110, Definitions.	Specifies how meaning is determined for terms used in this article	Changed throughout this section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary for clarity and to be consistent with other changes.
80-1110 C, Terms defined.	Specifies definitions for certain terms used in this article.	See below.
"Addition."	None.	Identifies certain types of emissions units that are new to the stationary source. Needed to correctly group similar types of changes at a stationary source for the purpose of applying permit requirements.
"Affected emissions units."	None.	Identifies the types of emissions units that may be subject to minor NSR permit requirements. Necessary to facilitate the clear and consistent identification of the emissions units subject to the permit program by differentiating between those emissions units that may be, and those that may not be, subject to minor NSR permit requirements.
"Allowable emissions."	Identifies the maximum emission rate allowable at a source.	Deletes a term that is no longer used.
"Applicable federal requirement."	Identifies federal requirements applicable to sources.	Updates definition to reflect changes to federal regulations.
"Clean wood."	None.	Identifies characteristics of a certain process material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
"Commence."	Characterizes the start of activities that may be subject to minor NSR permit requirements.	Applies new emissions unit groupings for compliance purposes. Necessary to be consistent with other proposed changes.
"Construction."	Identifies activities at a source that may be subject to minor NSR permit requirements.	Broadens definition to apply to all types of changes at a source that may be subject to minor NSR requirements. Necessary to be consistent with other proposed changes.

Current section number	Current requirement	Proposed change and rationale
"Construction waste."	None.	Identifies characteristics of a certain process material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
"Debris waste."	None.	Identifies characteristics of a certain process material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
"Demolition waste."	None.	Identifies characteristics of a certain process material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
"Diesel engine."	None.	Identifies characteristics of a certain type of emissions unit. Necessary to characterize a limited use for the new exemption for some vegetation mulching operations.
"Emissions limitation."	None.	Defines a general term for many ways that emissions may be limited. Necessary to clarify when an emissions limit is required and when other limitations on emissions may be allowed.
"Existing stationary source."	None.	Defines a class of stationary sources. Necessary to differentiate between types of changes at a site for which minor NSR permitting may be required.
"Federal hazardous air pollutant new source review program."	Identifies the elements of the federal hazardous air pollutant program.	Deletes some provisions because they are duplicated in 80-1100 I. Updates other provisions to reflect recent changes in the equivalent definition in the major NSR program. Necessary to improve consistency within the NSR programs.
"Federal operating permit."	None.	Adds definition for the purpose of specifying certain properties of applicable federal requirements under the minor NSR program.
"Federal operating permit program."	None.	Adds definition for the purpose of specifying certain properties of applicable federal requirements under the minor NSR program.
"Hazardous air pollutant."	Identifies air pollutants subject to the federal hazardous air pollutant program.	Updates definition to be consistent with federal regulations.
"Major modification."	Defines major changes to a source in terms of the major NSR programs.	Specifies a definition for major changes to a source in terms that are defined within the minor NSR program and adds criteria for limiting potential-to-emit. Necessary to clarify which sources are affected and which changes are subject to additional minor NSR permit program requirements.

Current section number	Current requirement	Proposed change and rationale
"Major new source review (NSR) permit."	None.	Defines a class of NSR permit by its originating program. Necessary to specify a hierarchy of program requirements and their properties.
"Major stationary source."	Specifies the criteria for classifying a source as "major" under the minor NSR program.	Adds criteria for limiting the potential-to-emit for new stationary sources. Necessary for consistency with the definition of major modification.
"Minor new source review (NSR) permit."	None.	Defines a class of NSR permit by its originating program. Necessary to specify a hierarchy of program requirements and their properties.
"Minor new source review (minor NSR) program."	Specifies the basis and scope of the minor source pre-construction review program.	Clarifies that the minor source pre-construction review program applies pollutant by pollutant and clarifies how the program may be implemented for those pollutants. Necessary to be consistent with other proposed changes.
"Modification."	Defines changes to a stationary source that may be subject to minor NSR permit requirements.	Changes the basis for such changes, adds two exceptions to the definition and clarifies how the exceptions are limited by permit conditions. Necessary to be more consistent with similar language in the major NSR program.
"Modified source."	Specifies a start date for defining a source modification.	Deleted because the term is not used in the remainder of this article.
"Necessary preconstruction approvals or permits."	Specifies that such required approvals are consistent with the state implementation plan (SIP).	Clarifies that the required approvals are implemented through one of the SIP-approved NSR programs. Necessary to clarify permit requirements.
"Net emissions increase."	Specifies how the "net emissions increase" basis for minor NSR permit applicability is calculated.	Deletes a term no longer used in this article.
"New source."	Specifies a start date for defining a new source.	Deletes a term that is no longer used in this article except where it is used to refer to federally required programs and standards.
"New source review (NSR) permit."	None.	Defines a general class of new source review permits. Necessary for differentiating pre-construction review permit programs from state and federal operating permit programs.
"New source review (NSR) program."	Specifies the basis and scope for the general class of pre-construction review programs.	Clarifies that the pre-construction review programs apply pollutant by pollutant and how the programs may be implemented for those pollutants. Necessary to be consistent with other proposed changes.
"New stationary source."	None.	Defines a class of stationary sources. Necessary to facilitate the clear and consistent identification of the emissions units subject to the permit program.

Current section number	Current requirement	Proposed change and rationale
"Nonroad engine."	Defines a class of mobile engines that are not motor vehicles and are not engines used as "stationary sources."	Removes all portable engines that are used as stationary sources from the definition. Necessary to remove the conflicts with the exemption for portable emissions units.
"Plantwide applicability limitation (PAL)."	None.	Defines a specific type of emission limitation used to limit sourcewide emissions. Added so that term may be used within the article.
"PAL permit."	None.	Defines a subclass of state operating permits. Added to specify that PALs are implemented through the state operating permit program and not through the minor NSR program.
"Precursor pollutant."	None.	Specifies pollutants that are precursors to certain pollutants for which an ambient air quality standard exists. Necessary for applying federal standards for a new regulated pollutant.
"Process operation."	None.	Defines the context in which emissions units may operate. Necessary to properly qualify the criteria for an exempt replacement of an emissions unit.
"Project."	None.	Specifies the types of changes at an existing stationary source that may be subject to permit requirements. Necessary to facilitate the clear and consistent identification of the emissions units subject to the permit program.
"Reconstruction."	Specifies the criteria for considering changes to an emissions unit as reconstruction.	Revises definition to apply only to enforcement of changes previously permitted or exempted as "reconstruction." Necessary to resolve an exemption issue and to be consistent with other changes.
"Regulated air pollutant."	Specifies the pollutants that may be subject to minor NSR permit requirements.	Revises the pollutant list to include precursor pollutants. Necessary to regulate the precursor pollutants for PM _{2.5} using the minor NSR program.
"Replacement."	None.	Defines a term that was formerly used but was undefined. Necessary to continue to exempt replacement emissions units that do not adversely impact emissions.
"Secondary emissions."	Specifies that secondary emissions are emissions from stationary sources that result from changes, but are not emitted from the stationary source itself.	Revises the term to specify that secondary emissions result only from construction of a new stationary source. Necessary to remove emissions resulting from construction at an existing source from the exclusion for secondary emissions.

Current section number	Current requirement	Proposed change and rationale
"Significant."	None.	Specifies that any potential emissions rate increases at or above specified thresholds for the listed pollutants will be considered to be significant. Necessary to differentiate major modifications from other modifications in the minor NSR program.
"Significant emissions increase."	None.	Defines an emissions rate increase that is significant for any pollutant. Necessary to differentiate major modifications from other modifications in the minor NSR program.
"Site."	None.	Defines a location that may contain no operating emissions units." Necessary for differentiating a new stationary source from an existing stationary source.
"Source category schedule for standards."	None.	Identifies the currently adopted schedule for promulgating MACT standards. Necessary to accommodate the more specific applicability review requirements described in 80-1105 F.
"Space heater."	None.	Identifies a type of direct heater used to maintain a space as habitable or useable. Necessary for extending the fuel-burning equipment exemption to these heaters.
"State operating permit."	None.	Defines a type of operating permit. Necessary for describing the ways that state operating permit program interact with the minor NSR program.
"Stationary source."	Incorporates SIC manual, with supplement, to identify regulated entities covered by regulation.	Deletes the reference to the SIC manual supplement because it no longer exists.
"Synthetic minor source."	Specifies the criteria for considering a potential major source to be a minor source for the purposes of the NSR programs.	Clarifies the criteria and specifies that the criteria apply pollutant by pollutant. Necessary to avoid confusion about the criteria for making a synthetic minor source.
"Temporary facility."	None.	Specifies certain characteristics for a type of temporary new source or project that does not contribute product or service. Necessary for preventing construction a stationary source without a permit under the guise of constructing a temporary facility that may otherwise be exempt.
"Toxic pollutant."	None.	Defines criteria for pollutants that may pose a health hazard and may be regulated under the minor NSR program. Necessary to reduce confusion concerning which hazardous pollutants may be addressed under the minor NSR program.

Current section number	Current requirement	Proposed change and rationale
"Undeveloped site."	None.	Specifies characteristics of a location at which a new source is constructed. Necessary to differentiate a new stationary source from an existing stationary source.
"Vegetative waste recycling/mulching operation."	None.	Specifies characteristics of a certain type of organic material recycling process and limits the types feed material to be used. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
"Vegetative waste."	None.	Specifies the characteristics of a certain process feed material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
80-1120.	Specifies general requirements concerning permits issued under this article.	Changes made throughout this section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary for clarity and to be consistent with other changes.
80-1120 A.	Prohibits construction of any new source or any changes to any existing stationary source that would be subject to minor NSR without first obtaining a proper permit.	Revises provision to also prohibit operation of such new stationary source or project at an existing stationary source without first obtaining the required permit. Also prohibits constructing or operating such stationary source except as specified in the permit. Necessary to facilitate the clear and consistent identification of the emissions units subject to the permit program.
80-1120 C.	Prohibits the lowering of the outlet elevation of an emission point without first obtaining a proper permit.	Makes changes to allow such outlet elevation reductions without a permit if the reduction qualifies as exempt from permitting requirements. Necessary to prevent unnecessary applications and to preserve staff resources.
80-1120 D.	Allows the board to combine permit requirements into one permit and require applications for multiple emissions units to be combined into one application.	Requires the board to combine permit terms into one permit if certain conditions are met and prevents making changes to those terms unless appropriate requirements are met. Necessary to clarify the requirements for combining permits. Deletes the requirement to combine applications because changes to 80-1140 A make the requirement redundant.
80-1120 E.	Allows the board to combine terms from a state operating permit (SOP) with those of a minor NSR permit and supersede the SOP under certain conditions.	Deletes entire provision because requirements were incorporated into 80-1120 D and 80-1255.

Current section number	Current requirement	Proposed change and rationale
80-1120 E.	(see above.)	Adds provisions to allow the board to make changes to permit terms under certain conditions. Changed permit terms may still be combined. Necessary to clarify the requirements for making changes to permit terms.
80-1120 G.	Allows permits to be issued for a project to be completed in planned incremental phases.	Makes changes to support the change in the permit applicability approach. Necessary for consistency with other changes.
80-1120 H.	Identifies how the elements of the federal hazardous air pollutant new source review program are to be implemented under this article.	Deletes entire section. Necessary because provisions are relocated to 80-1100 I for clarity.
80-1140.	Specifies permit application requirements.	Makes changes throughout this section to use new terms defined in section 80-1110. Necessary for consistency with other changes.
80-1140 A.	Requires a single application identifying each emissions unit subject to minor NSR.	Provides that one application is required identifying each emission unit at the new source or project. Necessary for clarification of application requirements.
80-1140 B.	Requires a separate application for each stationary source.	Requires separate application for each new source or project. Necessary for clarification of application requirements.
80-1140C.	Requires a single application for phased development projects.	Provides a requirement for a single application covering new sources with phased development. Necessary for clarification of application requirements.
80-1140 E.	Requires certification of understanding that minor NSR application does not provide shield from applicability of major NSR program.	Revises provisions for clarity using new terms. Necessary for consistency with other changes.
80-1150.	Requires the board to provide application forms and provides that completed forms also serve as initial registration.	Makes changes throughout this section to use new terms defined in section 80-1110. Necessary for clarity and to be consistent with other changes.
80-1150 B.	Specifies the minimum information requirements that each application must contain	Revises provisions for clarity using new terms. Also makes changes to support the changes in the permit applicability approach. Necessary for consistency with other changes.
80-1160 A.	This provision specifies the criteria for determining an application to be complete.	Renumbers provision as 80-1160 B and updates the provision to reflect the addition of fee requirements to the new source review permit programs. Necessary for consistency with other program requirements.

Current section number	Current requirement	Proposed change and rationale
80-1160 A.	None.	Provides for processing a non-binding applicability determination. Necessary to provide sources with assurance of their compliance with permit requirements.
80-1170.	Specifies public participation requirements for permit applications.	Makes changes throughout this section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary to be consistent with other changes.
80-1170 A.	Specifies the applicant's public notification requirements for major stationary sources.	Revises provision to specifically require public notification of new major stationary sources. Necessary for clarity and to be consistent with other changes.
80-1170 D.	Specifies the types of sources and permit actions that have public participation requirements.	Adds a new subdivision to require public participation for projects that are equivalent in emissions to a new major stationary source. Necessary to allow public input on applications for emissions changes at minor sources that would make the source potentially qualify as a major source.
80-1170 E.	Specifies the public participation information and publication requirements.	Revises language to include in subdivision E 1 the requirement that was moved from subdivision D 4 to publish certain information. Necessary to clarify the information that is required to be published.
80-1180.	Specifies standards and requirements for granting permits.	Makes changes throughout this section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary to be consistent with other changes.
80-1180 B.	Specifies criteria for including emission caps as permit terms.	Revises criteria to specify that emission caps may be used to create a synthetic minor source. Necessary to clarify how such sources are created.
80-1180 C.	Specifies criteria for establishing emission standards as permit terms.	Corrects criteria to be consistent with defined terms. Necessary to be consistent with other changes.
80-1180 D.	Specifies other elements that may be included as permit terms.	Makes grammatical corrections and other corrections to be consistent with similar terms used elsewhere in regulations. Necessary to clarify potential permit terms.
80-1190.	Specifies review requirements for permit applications.	Makes changes throughout this section to use new terms defined in section 80-1110 and to make reference corrections. Necessary to be consistent with other changes.
80-1200.	Specifies compliance and testing requirements.	Makes changes throughout this section to use new terms defined in section 80-1110. Necessary to be consistent with other changes.

Current section number	Current requirement	Proposed change and rationale
80-1210.	Specifies actions that may be taken in response to non-compliance with permit terms.	Makes changes throughout this section to use new terms defined in section 80-1110 and to renumber the requirements. Necessary to be consistent with other changes.
80-1210 A.	None.	Added to allow and facilitate enforcement of minor NSR program permit requirements. Necessary for enforcement continuity.
80-1220	Specifies that having a permit does not provide a defense against violations of these regulations or any requirements of other government entities.	Makes a change to use a new term defined in section 80-1110. Necessary to be consistent with other changes.
80-1240	Specifies that permits may not be transferred among locations or to different sources or emissions units, except as specified.	Makes changes to use a new term defined in section 80-1110 and to correct grammar. Necessary to be consistent with other changes.
80-1240 E.	None.	Adds a provision to facilitate the replacement of certain permitted emissions units that would be exempt under section 80-1105. Necessary to resolve inconsistency between regulatory provisions.
80-1255.	None.	Specifies requirements for combining permit terms and provisions of two or more permits into one permit and for removing similar or duplicated terms. Necessary to regain the capability to combine permits.
80-1260.	Specifies how changes may be made to permits and to permit terms in the permit.	Makes changes throughout this section to use new terms defined in section 80-1110, to correct grammar, and to make the specific change described below. Necessary to be consistent with other changes.
80-1260 A.	Specifies general requirements for making changes to permits.	Adds language clarifying that any changes to minor NSR permit terms to be incorporated into federal operating permits are not made according to this section. Necessary to avoid confusion concerning which requirements apply to these changes.
80-1270.	Specifies permit changes that may be made by administrative amendment and how those changes are made.	Makes changes in this section to correct grammar and to delete language for combining permits in subdivision A 4. Necessary to avoid conflict with new subsection 80-1255 E for combining permits.
80-1280.	Specifies permit changes that may be made by minor amendment and how those changes are made.	Makes changes throughout this section to use new terms defined in section 80-1110, to clarify language, to correct grammar, and to make the specific changes described below. Necessary to clarify requirements and be consistent with other changes.

Current section number	Current requirement	Proposed change and rationale
80-1280 A.	Specifies the criteria that all must be satisfied for making a permit change as a minor amendment.	Adds language to clarify that any changes made to lower an emissions cap is not one of the disqualifying criteria for a minor amendment. Necessary to facilitate minor permit changes that do not otherwise affect actual emissions.
80-1280 B.	Specifies certain changes that may be made as a minor amendment.	Adds language allowing minor amendments to be used to transfer permit requirements from an emissions unit to its exempt replacement. Necessary to allow this exemption that does not otherwise affect actual emissions.
80-1280 C.	Specifies that certain changes involving rescission of an underlying requirement may be made as a minor amendment.	Adds two criteria that must be met in order to rescind a permit requirement by minor amendment. Necessary for continuity of the minor NSR permit program.
80-1280 D.	Specifies the application requirements for a minor amendment of a permit.	Adds language allowing the applicant to propose a revised permit condition. Necessary to allow the applicant to make the minor amendment change immediately.
80-1280 G.	Specifies the procedures for an owner to follow to make the proposed minor amendment change immediately.	Adds language allowing the applicant to comply with the proposed permit condition. Necessary to allow the applicant to make the minor amendment change immediately.
80-1290.	Specifies permit changes that must be made by significant amendment and how those changes are made.	Makes changes throughout this section to use new terms defined in section 80-1110, to clarify language, to correct grammar, and to make the specific changes described below. Necessary to clarify requirements and be consistent with other changes.
80-1290 A	Specifies the criteria that must be satisfied for making a permit change as a significant amendment.	Adds language specifying how the significant amendment is not to be used. Necessary to avoid confusion concerning which public participation requirements apply.
80-1290 C	Specifies the public participation requirements for a significant amendment.	Makes the public participation requirements subject to whether or not the changed emissions unit was previously subject to public participation and subject to the discretion of the board as to whether they are necessary. Necessary to avoid confusion concerning when public participation requirements apply.
80-1300	Specifies criteria and procedures for reopening a permit.	Makes changes throughout this section to use new terms defined in section 80-1110. Necessary to be consistent with other changes.
80-1300 A	Sets forth the requirements for reopening and amending a permit.	Provisions are being changed (amending to revising) to avoid confusion with amendment process set forth elsewhere in regulation.

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 four 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 four 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 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 facilities that will prevent or interfere with the attainment or maintenance of any ambient air quality standard through the issuance and enforcement of new source review permits.
3. To ensure that new facilities or expansions to existing facilities will be designed, built, and equipped to operate without causing or exacerbating a violation of any ambient air quality standard through the issuance and enforcement of new source review permits.
4. To ensure that new facilities or expansions to existing facilities will be designed, built, and equipped to comply with case-by-case control technology determinations and other requirements through the issuance and enforcement of new source review permits.

Clarity

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.

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