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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 8, 9 VAC 5-80
Secondary action(s)	Article 9, 9 VAC 5-80
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Major New Source Review Reform (Revision E03)
Document preparation date	October 21, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action.

The purpose of the proposed action is to consider amending the regulations that govern permitting for new major stationary sources and major modifications as necessary to meet the new source reform requirements of 40 CFR Part 51.

Statutory Authority

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific 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.

Need

Please provide a brief explanation of the need for and the goals of the new or amended regulation. In addition, detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Finally, delineate any potential issues that may need to be addressed as the regulation is developed.

The current regulations governing major new source review (NSR) may need to be amended in order to meet the new requirements of a rule recently promulgated by the U.S. Environmental Protection Agency (EPA).

EPA's new major NSR reform rule incorporates five main elements: (i) changes to the method for determining baseline actual emissions; (ii) changes to the method for determining emissions increases due to an operational change; (iii) provisions to exclude pollution control projects from NSR; (iv) provisions for determining applicability of NSR requirements for units designated as clean units; and (v) provisions to allow for compliance with plant-wide applicability limits to avoid NSR.

Additional background information may be found following this paragraph.

General

Among the primary goals of the Clean Air Act (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 Act gives EPA the authority to establish the NAAQS, which are designed to protect the health of the general public with an adequate margin of safety. The NAAQS establish the maximum limits of pollutants that are permitted in the outside ambient air. The Act requires that each state submit a plan (called a State Implementation Plan or SIP), including any laws and regulations necessary to enforce the plan, showing how the air pollution concentrations will be reduced to levels at or below these standards (i.e., attainment). Once the pollution levels are within the standards, the plan must also demonstrate how the state will maintain the air pollution concentrations at reduced levels (i.e., maintenance). The Virginia SIP was submitted to EPA in early 1972. Many revisions to the SIP have been made since the original submittal in 1972. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare a SIP, or EPA does not approve a submitted SIP, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards. Generally, the SIP is revised, as needed, based upon changes in the federal Clean Air Act and its requirements.

The heart of the SIP is the control strategy. The control strategy describes the measures to be used by the state to attain and maintain the air quality standards. There are three basic types of control measures: stationary source control measures, mobile source control measures, and transportation source control measures. Stationary source control measures are directed at emissions primarily from commercial/industrial facilities and operations. Mobile source control measures are directed at tailpipe and other emissions from motor vehicles, and transportation source control measures affect motor vehicle location and use.

A key control measure for managing the growth of new emissions is to require preconstruction review of new major facilities or major modifications to existing ones. This review is accomplished through a permit program for new and modified stationary sources. The program requires that owners obtain a permit from DEQ prior to the construction of a new industrial or commercial facility or the modification (physical change or change in the method of operation) of an existing one. Program requirements differ according to the facility's potential to emit a certain amount of a specific pollutant and the air quality status of the area where the facility is or will be located. Requirements for facilities considered major due to their potential to emit a specified pollutant are more stringent than for less polluting facilities. Requirements for

major facilities in nonattainment areas are considerably more stringent than for those in areas which meet the standard.

Prevention of Significant Deterioration (PSD)

The PSD program is designed to protect air quality in areas where the air is cleaner than required by the NAAQS. The program has three classifications for defining the level of allowable degradation: Class I is the most stringent classification, allowing for little additional pollution, while Class III allows the most. All of Virginia is classified at the moderate level, Class II, with the exception of two Class I federal lands.

The primary control measure of the PSD program is new source review. Prior to construction or expansion of an industrial facility, a permit must be issued that ensures that the facility will not emit pollutants in sufficient quantity to make a significant contribution to the deterioration of air quality or to violate the NAAQS. Additionally, the owner must provide an analysis of the impairment to air quality related values (including visibility) that would occur as a result of the source or modification. The permit application and the Department review and analysis must be subject to a public hearing prior to issuing the permit. The facility must use the best available control technology to control emissions. If the facility is to be located near a Class I area, the federal land manager (FLM) is involved in the review process. Also in such cases, additional data with respect to impact on the Class I area is required. Any disagreements with the FLM must be addressed prior to releasing the application and analysis to public comment.

Nonattainment

When concentrations of ambient air pollution exceed the federal standard the area is considered to be out of compliance and is designated as "nonattainment." Numerous counties and cities within the Commonwealth have at one time been identified as ozone nonattainment areas according to the Act. Currently, one area continues to be designated nonattainment for the 1-hour ozone standard, while a number of new areas will be designated nonattainment for the 8-hour standard.

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

Permits issued in nonattainment areas require the facility owner to apply control technology that meets the lowest achievable emission rate and to obtain emission reductions from existing sources. The emission reductions must offset the increases from the proposed facility by the ratio specified in the Act for that particular nonattainment classification. The offset ratio for ozone nonattainment areas classified as marginal is 1.1 to 1, for moderate areas 1.15 to 1, for serious areas 1.2 to 1, and for severe areas 1.3 to 1. For areas with no classification, the offset ratio is 1 to 1. For all other pollutants, the offset ratio is 1 to 1.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of this proposed regulation, 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. Also, 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

On December 31, 2002, EPA promulgated its final rule revising the federal New Source Review (NSR) permitting program for PSD (attainment) and nonattainment areas, by publishing the rule in the Federal Register (67 FR 80185). The new rule, signed by the Administrator on November 22, 2002, affects 40 CFR 51.165 and 40 CFR 51.166. The new rule incorporates five main elements: changes to the method for determining baseline actual emissions; changes to the method for determining emissions increases due to an operational change; provisions to exclude pollution control projects from NSR; provisions for determining applicability of NSR requirements for units designated as clean units; and provisions to allow for compliance with plant-wide applicability limits to avoid NSR. EPA states in the Federal Register publication that the final rule revisions become effective on March 3, 2003 and will apply beginning on that date in any area for which EPA is the permit reviewing authority, and in any area for which EPA has delegated the authority to issue permits under the federal program to the state or local agency. In areas where the state or local agency is administering the NSR program under an approved SIP, the state or local agency must adopt and submit revisions to the SIP to reflect the rule revisions no later than January 2, 2006. The revised SIP must be the same as or equivalent to the revised federal program just promulgated.

Additional background information may be found below.

General

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

Section 110(a) of the 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 SIP 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 meet the applicable requirements 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 of the modification and construction of any stationary source within areas covered by the plan to assure the achievement of the ambient air quality standards, including a permit program as required by Parts C and D of Title I of the CAA.

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

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. 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.

Section 51.164 of Subpart I governs stack height procedures. It requires that such procedures provide a degree of emission limitation required of any source for control of any air pollutant that is not affected by so much of any source's stack height that exceeds good engineering practice (GEP) or by any other dispersion technique. The procedures must provide that before a state issues a permit to a source based on a GEP stack height that exceeds the standard allowable height, the state must notify the public of the availability of the demonstration study and must provide opportunity for public hearing.

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 SIP 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.

Prevention of Significant Deterioration (PSD)

Part C of the Clean Air Act is entitled, "Prevention of Significant Deterioration of Air Quality." As described in section 160, the purpose of Part C is to protect existing clean air resources. Part C requires that the SIP include a PSD program. Section 161 of Part C says:

In accordance with the policy of section 101(b)(1), each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to section 107 as attainment or unclassifiable.

This means that the air in areas that meet national clean air standards may not be allowed to become less clean, that is, to deteriorate.

Sections 162 through 169B go on to provide the details of how each state's PSD program is to be designed and operated. Section 165, "Preconstruction Requirements," is the section of the Act that deals with new source review permit programs. This section requires that sources obtain permits demonstrating that they will not contribute to air pollution in excess of that allowed by the Act. Section 165 also specifies what steps are needed to coordinate this permitting process with the Federal Land Managers, who are responsible for maintaining air quality in the cleanest areas of the country: the national parks. Section 165 specifies that new sources locating in attainment areas must meet Best Available Control Technology (BACT), which is defined in § 169. Section 166 requires EPA to regulate certain types of pollutants in PSD areas.

40 CFR 51.166 provides details of what state PSD programs must include. These details include how to revise the program, how and when to assess the program, public participation requirements, and how to amend the program. Section 51.166(a)(1) states, "Each applicable State Implementation plan shall contain emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality." Section 51.166(a)(7) specifies the source applicability for the review of major sources and modifications and defines certain principles to be applied in the administration of the program. The remainder of § 51.166 provides details on what the SIPs must contain.

Significant PSD concepts such as "major stationary source," "major modification," "net emissions increase," "potential to emit," "baseline concentration," and "significant" are defined in § 51.166(b). In § 51.166(c), ambient air increments are found, while ambient air ceilings are specified in § 51.166(d). Area classifications are restricted in § 51.166(e); exclusions from increment consumption are listed in § 51.166(f). Redesignation of Class I, II, or III areas is discussed in § 51.166(g) and stack height

requirements are given in § 51.166(h). Exemptions are found in § 51.166(i). Section 51.166(j) covers control technology review, specifically § 51.166(j)(2) and (3) which require that new sources or major modifications must meet BACT as defined in § 51.166(b)(12). Requirements for source impact analysis are given in § 51.166(k). Air quality models are described in § 51.166(l). Preapplication analysis, post-construction monitoring, and operation of monitoring stations are found in § 51.166(m), air quality analysis. Sources must provide information as described in § 51.166(n), as well as additional impact analyses as described in § 51.166(o). Sources that affect federal Class I areas must meet the requirements of § 51.166(p), which also describes the responsibilities of the Federal Land Manager. Public participation requirements are found in § 51.166(q). Section 51.166(r) includes additional information on source obligation, and § 51.166(s) allows for the use of innovative control technologies.

The clean unit test for emissions units that are subject to BACT or LAER is described in § 51.166(t), while clean unit provisions for emissions units that achieve an emission limitation comparable to BACT are covered in § 51.166(u). Pollution control project exclusion procedural requirements are found in § 51.166(v). Finally, the plan must provide for plantwide applicability limits, as described in § 51.166(w)

Nonattainment

Part D of the Clean Air Act, "Plan Requirements for Nonattainment Areas," describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1, Nonattainment Areas in General, consists of §§ 171 through 179, and provides the overall framework of what nonattainment plans are to contain, permit requirements, planning procedures, motor vehicle emission standards, and sanctions and consequences of failure to attain. Subpart 2, Additional Provisions for Ozone Nonattainment Areas, consists of §§ 181 through 185, and provides more detail on what is required of areas designated as nonattainment for ozone.

Section 182 (a)(2)(C) sets out the general requirements for new source review programs in all nonattainment areas and mandates a new and modified major stationary source permit program that meets the requirements of §§ 172 and 173 of the Act. Section 172 contains the basic requirement for a permit program, while § 173 contains the specifics which are summarized below.

Section 173(a) provides that a permit may be issued if the following criteria are met:

1. Offsets have been obtained for the new or expanding sources from existing sources so that total allowable emissions (i) from existing sources in the region, (ii) from new or modified sources which are not major emitting facilities, and (iii) from the proposed new source will be sufficiently less than total emissions from existing sources prior to the application for the permit so as to represent reasonable further progress.
2. The proposed source is required to comply with the lowest achievable emission rate (LAER).
3. The owner of the proposed source has demonstrated that all major stationary sources owned or operated by the owner in the state are subject to emission limitations and are in or on a schedule for compliance with all applicable emission limitations or standards.
4. The SIP is being adequately implemented for the nonattainment area in which the proposed source is to be located.
5. An analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 173(b) prohibits the use of any growth allowance that is part of a SIP revision in effect prior to the adoption of the 1990 Amendments to the Act for areas designated nonattainment after adoption of the amendments.

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

Section 173(d) provides that states must promptly submit any control technology information relative to the permit program to EPA for entry into the BACT/LAER clearinghouse.

Section 173(e) provides that the permit program must allow the use of alternative or innovative means to achieve offsets for emission increases due to rocket engine and motor firing and cleaning related to the firing.

A major stationary source is defined for general application in § 302 of the Act as "any facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant." For nonattainment areas defined as serious or worse, § 182(c) specifically defines a major stationary source as a facility emitting fifty tons per year or more; and for nonattainment areas defined as severe or worse, § 182(d) specifically defines a major stationary source as a facility emitting twenty-five tons per year or more. Section 182(f) provides that requirements which apply to major stationary sources of VOCs under the Act shall also apply to major stationary sources of NO_x.

Section 182(a)(4) sets out the requirements for marginal areas with respect to offset ratios, providing for a minimum ratio of total emissions reduction of VOCs to total increased emissions of VOCs of 1.1 to 1. Likewise § 182(b)(5) sets out the offset requirements for moderate nonattainment areas, specifying the ratio to be at least 1.15 to 1. Accordingly, § 182(c)(10) sets out the offset requirements for serious nonattainment areas, specifying the ratio to be at least 1.2 to 1. Finally, § 182(d)(2) sets out the offset requirements for severe nonattainment areas, specifying the ratio to be at least 1.3 to 1.

Sections 182(c)(6) through (c)(8) contain some additional specifics for serious or worse nonattainment areas concerning the establishment of a de minimis level for expanding existing sources and the allowance of internal offsets as an alternative to the permit requirements. New source permit programs must include provisions to require permits for modifications of all existing sources unless the increase in net emissions from the source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years, including the calendar year in which the increase occurs. The program must also include provisions concerning internal offsets as alternatives to the permit requirements. For sources emitting less than 100 tons per year and applying for a permit to expand, a permit will be required unless the owner elects to offset the increase by a greater reduction in emissions of the same pollutant from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. If the owner does not choose the option of an internal offset, a permit will be required but the control technology level required will be best available control technology (BACT) instead of lowest achievable emission rate (LAER). For sources emitting 100 tons or more per year and applying for a permit to expand, control technology requirements which constitute LAER will be required unless the owner elects to offset the increase by a greater reduction in emissions of the same pollutant from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1.

40 CFR 51.165 enumerates permit requirements for nonattainment areas. This section describes what permitting requirements are to be contained in the SIP. Specific definitions of key terms such as "potential to emit," major stationary source," "major modification," "allowable emissions," and "lowest achievable emission rate," are found in § 51.165(a)(1). In § 51.166(a)(2), the SIP must include a preconstruction review program to satisfy the requirements of §§ 172(b)(6) and 173 of the Act, and must apply to any new source or modification locating in a nonattainment area; § 51.166(a)(2) also defines

certain principles to be applied in the administration of the program. Section 51.165(a)(3) describes how emissions and emission reductions are to be measured and included in the SIP; § 51.165(a)(4) lists a number of exemptions. Section 51.165(a)(5) stipulates that sources must meet the SIP as well as other state and federal requirements. In accordance with § 51.165(a)(6), owners of projects at existing emissions units at a major stationary source in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase must monitor emissions and record and report certain data; additionally, § 51.165(a)(7) requires that such information be made available for review.

Section 51.165(b) requires that sources meet the requirements of § 110(a)(2)(d)(i). This section also provides significance levels of pollutants which may not be exceeded by any source or modification.

Clean Unit Tests for emissions units that are subject to LAER, which provide the option of using the Clean Unit Test to determine whether emissions increases at a clean unit are part of a project that is a major modification, are described in § 51.165(c); similar provisions for emissions units that achieve an emission limitation comparable to LAER are found in § 51.165(d).

Section 51.165(e) contains the procedural requirements for pollution control project exclusions. Finally, § 51.165 (f) provides requirements for plantwide applicability limits.

State Requirements

Code of Virginia § 10.1-1307 A provides that the board may, among other activities, develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth.

Code of Virginia § 10.1-1308 provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act. It further provides that the regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

1. Articles 8 and 9 of 9 VAC 5 Chapter 80 may be amended, as necessary, to reflect the new source reform requirements promulgated by EPA.
2. Articles 8 and 9 of 9 VAC 5 Chapter 80 may be amended, as necessary, to implement the requirements of any other pertinent federal regulations that may be promulgated during the regulation development process.
3. Other provisions of the new source review program, as is necessary, may be amended to maintain consistency with the changes to Articles 8 and 9 of 9 VAC 5 Chapter 80.
4. Other regulations may be updated to be consistent with any other changes to federal or state mandates that may become known during the regulation revision process.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

Alternatives to the proposed regulation amendments are being considered by the Department. The alternatives being considered by the Department are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies.
3. Take no action to amend the regulations.

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that: (1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or (2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the Department in the development of the proposal, (ii) the impacts of the proposed regulation on farm and forest land preservation, and (iii) the costs and benefits of the alternatives stated in this notice or other alternatives. All comments must be received by the Department by 5:00 p.m. on the day of the public meeting (see information below) in order to be considered. It is preferred that all comments be provided in writing to the Department, along with any supporting documents or exhibits; however, oral comments will be accepted at the meeting. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the meeting, but must be submitted to Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia, 23240 (e-mail: kgsabastea@deq.virginia.gov) (fax number: 804-698-4510). Comments by facsimile transmission will be accepted only if followed by receipt of the signed original within one week. Comments by e-mail will be accepted only if the name, address and phone number of the commenter are included. All testimony, exhibits and documents received are a matter of public record. Only comments (i) related to the information specified in this notice and (ii) provided in accordance with the procedures specified in this notice will be given consideration in the development of the proposed regulation amendments.

A public meeting will be held by the Department to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Participatory Approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that: (1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; (2) the agency is using the participatory approach in the development of the proposal; or (3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

Subject to the stipulations noted below, the Department will form an ad hoc advisory group to assist in the development of the regulation. If you want to be on the group, notify the agency contact in writing by 5:00 p.m. on **August 11, 2004** and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you want to be on the group, you are encouraged to attend the public meeting mentioned above. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. At its discretion, the Department may dispense with the use of an ad hoc advisory group if it receives less than five applications. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence.

Impact on Family

Please provided an assessment of the potential 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 these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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