

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Air Quality Permit Fees and Synthetic Minor Permitting Program

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in Sections 103(b)(1)(B)(ii)(III) and 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03 (b)(1)(B)(ii)(III) and 8-151.07(4) (2013 Repl. & 2016 Supp.)); Sections 5 and 6 of the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 *et seq.* (2013 Repl. & 2016 Supp.)); Mayor's Order 1998-44, dated April 10, 1998; and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to adopt the following amendments to Chapters 2 (Air Quality – General and Non-Attainment Area Permits) and 3 (Air Quality – Operating Permits and Acid Rain Programs) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking revises fees for Part 70 operating permits (also known as a “major sources” or “Title V” permits) in 20 DCMR Chapter 3; creates a synthetic minor permitting program; establishes general construction and operating permit fees in 20 DCMR Chapter 2; and allows the incorporation of preconstruction review permit requirements into a Title V permit via the administrative amendment process. Additionally, this rulemaking proposes grammatical and other minor clarifications, including adding a definition for the term “relevant emission units.”

Chapter 2, AIR QUALITY - GENERAL AND NON-ATTAINMENT AREA PERMITS, of Title 20 DCMR, ENVIRONMENT, is amended as follows:

Section 200, GENERAL PERMIT REQUIREMENTS, is amended to read follows:

200 GENERAL PERMIT REQUIREMENTS

- 200.1 A permit from the Department shall be obtained before any person shall cause, suffer, or allow the construction of a new stationary source, the modification of an existing stationary source, or the installation or modification of any air pollution control device on a stationary source.
- 200.2 An operating permit shall be obtained from the Department before any person shall cause, suffer, or allow the operation of the following:
- (a) Any major stationary source for which a construction or modification permit is required under § 200.1; or
 - (b) Any source for which a construction or modification permit is required under § 200.1, and which construction or modification permit was subject to conditions which affect, or would affect, the operation of the source.

200.3 The Department may allow the temporary operation of a source for a period no longer than one (1) month, in accordance with the requirements of this chapter, which may be extended month to month, to enable the initial evaluation of the operation of a source or device granted a permit under § 200.1, or to enable the continued operation of a source for which an application for an operating permit under § 200.2 has been filed, but due to delays attributable to the Department the permit has not been issued.

200.4 Construction and operating permits shall be valid for the period specified in the permit, but not to exceed five (5) years.

200.5 Each person owning or operating a stationary source or device for which a permit is required shall timely file with the Department the appropriate application, including applications for renewal of any construction or operating permit, if construction activities or operations are to continue beyond the expiration date of an existing permit.

200.6 The Department may establish a condition in a permit issued pursuant to this chapter that limits emissions from a source so as to avoid applicability of the permitting requirements of § 300.1.

Comment [A1]: 200.6 is a new section

200.7 The Department may establish a condition in a permit issued pursuant to this chapter that limits emissions from a source so as to avoid applicability of a District or federal air quality regulation, other than the requirements of § 300.1, except when prohibited by another District or federal regulation.

Comment [A2]: 200.7 is a new section

200.8 The Department may establish a source category permit covering a group of similar sources or emission units according to (a) through (h) of this subsection:

Comment [A3]:

Existing regulation (200.6):

The Department may, after its review, review by EPA and affected states (as defined in 20 DCMR § 399), and after notice and opportunity for public comment and hearing as required by § 210, establish a source category permit covering a group of similar sources or emission units according to (a) through (h) of this subsection.

See subsection (i), below; see 210.6, below.

- (a) Any source category permit shall comply with all requirements applicable to the source pursuant to the air quality regulations of this title;
- (b) During establishment of any source category permit, the Department shall establish criteria by which sources may qualify for the source category permit;
- (c) The Department shall maintain records of the public comments and issues raised during the public participation process;
- (d) A source category permit shall not be a substitute for a permit required under Chapter 3 of this title;
- (e) A response to each source category permit application may not be provided, rather the source category permit may specify a reasonable

Comment [A4]: Probably should be (i)

period of time after which an application is deemed approved and the applicant may construct and operate under the source category permit;

- (f) The applicant for a source category permit may be issued an individual permit, letter, or other document indicating that the application has been approved or denied;
- (g) If the Department provides an individual response, as provided in paragraph (f), the permittee shall retain the response and make it available on request to authorized officials of the Department;
- (h) Any established source category permit is subject to the expiration and renewal conditions found in § 200.4 and § 200.5 and may be revised by following the same process as is used for original establishment of the permit; and
- (i) The draft source category permit shall be subject to the public notice and comment requirements of § 210, however individual applications for the permit are not subject to public notice and comment.

Comment [A5]:

200.8(i) is a new section; but see above comment on the general provision of 200.8

200.9 Applications for permits shall be filed with the Department on the form or forms that the Department shall prescribe and shall be accompanied by the data, information, and analyses necessary or desirable to enable the Department to determine whether the requested permit should be issued or denied.

200.10 The Department may require, at any time, the submission of data, information, and analyses that the Department deems necessary or desirable, to allow the Department to determine whether a requested permit should be issued or denied, or an outstanding permit should be modified or revoked.

200.11 Applications for construction and operating permits may incorporate by reference data, information, and analyses otherwise available or provided to the Department, provided that the reference is clear and specific.

200.12 Each permit application shall be accompanied by a fee established by the Department in Section 211, which shall be sufficient to cover the reasonable costs of reviewing and acting upon the permit application and implementing and enforcing the terms and conditions of the permit.

200.13 An application for a permit shall be signed in the following manner:

- (a) If the applicant is a partnership, a general partner shall sign the application;
- (b) If the applicant is a corporation, association, or cooperative, an officer shall sign the application;

- (c) If the applicant is a sole proprietorship, the proprietor shall sign the application; and
- (d) If the applicant is a government or governmental agency, department, or board, a senior executive of that government agency, department, or board who has authority to sign shall sign the application.

200.14 No permit shall be required for any fuel burning equipment which has a capacity of five million British thermal units (5,000,000 Btu) or less per hour of heat input and which uses for fuel only gaseous fuels or distillate oils. This section shall not apply to sources subject to § 204.

200.15 A person shall comply with the conditions of any permit issued pursuant to this chapter.

Comment [A6]: 200.15 is a new section

Section 210, NOTICE AND COMMENT PRIOR TO PERMIT ISSUANCE, is amended to read follows:

210 NOTICE AND COMMENT PRIOR TO PERMIT ISSUANCE

210.1 Before issuing a permit under this chapter, the Department shall prepare a draft permit and provide adequate notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information.

210.2 With the exception of any information that the Department deems confidential, the Department shall make available for public inspection:

- (a) The application for a permit and any additional information that the Department requests;
- (b) The Department’s analysis of the application, including, where required or deemed appropriate, an ambient air quality analysis, a regulatory review, and a control technology review; and
- (c) The draft permit or justification for denial.

210.3 The Department shall publish a notice regarding the draft permit or denial in the *D.C. Register* and shall make the information in § 210.2 available for public inspection at the Department’s office and by one or more of the methods described in § 210.4.

210.4 The Department shall use at least one (1) of the following procedures to ensure appropriate means of notification:

- (a) Mail or e-mail a copy of the notice to persons on a mailing list that the Department develops consisting of those persons who have requested to be placed on such a mailing list;
- (b) Post the notice on the Department's website;
- (c) Publish the notice in a newspaper of general circulation in the area affected by the source;
- (d) Provide copies of the notice for posting at one (1) or more locations in the area affected by the source, such as post offices, libraries, community centers, or other gathering places in the community; or
- (e) Employ other means of notification as appropriate.

210.5

The notice shall include the following information at a minimum:

- (a) Identifying information of the source, including the name and address of the facility, and the name and telephone number of the facility manager or other contact person;
- (b) For preconstruction permits (including source category permits), the regulated New Source Review (NSR) pollutants to be emitted, the affected emissions units, and the emission limitations for each affected emissions unit;
- (c) For preconstruction permits, the emissions change involved in the permit action;
- (d) For permits to be issued with conditions pursuant to § 200.6 or § 200.7, a description of the proposed limitation and the resulting potential to emit of the source;
- (e) The name, address, and telephone number of a contact person in the Department from whom additional information may be obtained;
- (f) Locations and times of availability of the information specified in § 210.2; and
- (g) A statement that any person may submit written comments, a written request for a public hearing, or both, on the draft permit action within thirty (30) days from the date of the public notice.

Comment [A7]:
210.5(d) is a new section

210.6 By mail or e-mail, a copy of the notice shall be sent to the applicant, the U.S. Environmental Protection Agency Region III, and to all Affected States (as defined in § 399) for the following permits:

- (a) All NSR permits issued pursuant to § 204; and
- (b) All source category permits, when initially issued.

A new Section 211, FEES, is added to read as follows:

211 FEES

Comment [A8]:
Section 211 in its entirety is a new section

211.1 Except as noted under § 211.4, owners or operators of sources required to obtain or renew a permit under this chapter for the construction, modification, or operation of a stationary source, or the installation, modification or operation of any air pollution control device on a stationary source, shall pay all fees applicable according to the following table:

Combustion Equipment	
\$500	Cogeneration Unit, less than 1 Megawatt
\$2,000	Cogeneration Unit, equal to or larger than 1 Megawatt
\$500	Emergency Engines (Less than 1,340 hp)
\$1,000	Emergency Engines (Equal to or greater than 1,340 hp)
\$300	Fuel Burning Equipment – Small (Heat input less than 10 million Btu per hour)
\$500	Fuel Burning Equipment – Medium (Heat input equal to or greater than 10 million Btu per hour, but less than 40 million Btu per hour)
\$1,000	Fuel Burning Equipment – Large (Heat input equal to or greater than 40 million Btu per hour)
\$1,000	Non-Emergency Engines (Less than 1,340 hp)
\$2,000	Non-Emergency Engines (Equal to or greater than 1,340 hp)
Other Equipment or Activities	
\$1,000	Asphalt Plant
\$500	Concrete Plant - Portable
\$500	Crushers and Screens
\$250	Degreaser – Cold Solvent Tank
\$500	Dry Cleaning Facility (using perchlorethylene, petroleum solvents, or n-propyl bromide)
\$1,000	Gasoline Dispensing Station
\$500	Intaglio, Flexographic, and Rotogravure Printing
\$500	Lithograph or Letterpress Printing Operation
\$500	Miscellaneous Parts Paint Spray Booth
\$500	Mobile Equipment Refinishing
\$5,000	New Source Review (NSR) Permit (applicable to initial

	construction permits only)
Facility Wide Permit	
\$5,000	Plantwide Applicability Limit (PAL) Permit

211.2 If the stationary source or air pollution control device on a stationary source is not covered under § 211.1, the permit fee shall be one thousand dollars (\$1,000).

211.3 The fee for a variance shall be one thousand five hundred dollars (\$1,500).

211.4 Owners or operators who obtain a permit with a condition under § 200.6 shall pay permit fees pursuant to § 305.5.

211.5 Fees for permits issued pursuant to § 200.8 shall be prorated based on the number of years, or parts of years, that the permit is valid (rounded up to the next one-year increment).

211.6 Sources may apply for a permit with an effective period less than the default permit term, and pay a prorated fee (rounded up to the next one-year increment).

Chapter 3, AIR QUALITY - OPERATING PERMITS AND ACID RAIN PROGRAMS, is amended as follows:

Section 300, APPLICABILITY, is amended to read follows:

300 APPLICABILITY

300.1 Except as exempted from the requirement to obtain a permit under § 300.3 and elsewhere herein, the following sources shall be subject to the permitting requirements under this chapter:

- (a) Any major source;
- (b) Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the Act;
- (c) Any source, including an area source, subject to a standard or other requirement under § 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under § 112(r) of the Act;
- (d) Any affected source; and
- (e) Any source in a source category designated by the Administrator pursuant to 40 C.F.R. § 70.3.

300.2 In the event that this chapter conflicts or is inconsistent with other requirements of the air quality regulations of this title, this chapter shall supersede for sources subject to its provisions.

300.3 The following source category exemptions shall apply:

- (a) All sources listed in § 300.1 that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to § 129(e) of the Act, are exempt from the obligation to obtain a Part 70 permit unless required to do so under applicable requirements, or future rulemaking by the Administrator, but any such exempt source may apply for a permit under this chapter;
- (b) If the Administrator decides to terminate the exemption of certain nonmajor sources when adopting standards or other requirements under § 111 or 112 of the Act after July 21, 1992, the nonmajor sources shall become subject to the permitting requirements in accordance with the standard or other requirement adopted by the Administrator;
- (c) All sources that obtain a permit with a condition pursuant to § 200.6 that allows the source to avoid the applicability of § 300.1, and pay the associated fees pursuant to § 305.5, commonly referred to as a “synthetic minor” permit, are exempted from the requirements to obtain a Part 70 permit; and
- (d) Sources in the following source categories shall be exempted from the obligation to obtain a Part 70 permit:
 - (1) All sources in source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and
 - (2) All sources in source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, 40 C.F.R. § 61.145, Standard for Demolition and Renovation.

Comment [A9]:

300.3(c) is a new section

300.4 The emission units covered in a Part 70 permit shall be determined as follows:

- (a) For major sources, the permit shall include all applicable requirements for all relevant emissions units in the major source; and
- (b) For any nonmajor source subject to this rule under § 300.1 and not exempt under § 300.3, the permit shall include only the applicable requirements

Comment [A10]: The proposed rule moves the definition of “relevant emissions units” to 399.

Existing regulation (300.3(a)):

For major sources, the permit shall include all applicable requirements for all relevant emissions units in the major source. For purposes of this section, the term “relevant emissions units” shall mean only those emissions units that are subject to applicable requirements

which apply to emissions units that cause the source to be subject to the requirement to obtain a permit under this chapter.

300.5 Fugitive emissions from a covered source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

Section 301, PERMIT APPLICATIONS, is amended to read follows:

301 PERMIT APPLICATIONS

301.1 For each Part 70 source, a timely and complete permit application shall be submitted by the owner or operator, and reviewed by the Department, in accordance with the following:

Comment [A11]: New addition

- (a) A timely application shall be submitted under the following conditions:
 - (1) Sources that are subject to the operating permit program established by this chapter as of the date the program is approved by the Administrator, the “effective date,” shall file applications on the following schedule:
 - (A) Sources that emitted one hundred fifty (150) tons per year or less of regulated pollutants in the aggregate during the previous calendar year shall file complete applications within eight (8) months of the effective date; provided, that upon request and for good cause shown, the Department may allow a source additional time up to twelve (12) months from the effective date; and
 - (B) All other sources shall file complete applications within twelve (12) months of the effective date;
 - (2) A source that becomes subject to the operating permit program established by this chapter at any time following the effective date shall file a complete application within twelve (12) months of the date on which the source first becomes subject to the program;
 - (3) A source that is required to meet the requirements under § 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of the Act, shall file a complete application to obtain an operating permit or permit amendment or modification within twelve (12) months after commencing operation;

- (4) Where an existing operating permit would prohibit the construction or change in operation, the source shall obtain a permit revision before commencing operation;
 - (5) Sources subject to this chapter shall file an application for renewal of an operating permit at least six (6) months before the date of permit expiration, unless a longer period (not to exceed eighteen (18) months) is specified in the permit; and
 - (6) Sources required to submit applications for initial phase II acid rain permits shall submit the applications to the Department by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides;
- (b) The following procedures shall be followed when Part 70 permit applications are received:
- (1) Within five (5) days of receipt of an application, the Department shall notify the applicant of the date on which the application was received and the date on which the application will automatically be deemed complete unless the Department determines otherwise;
 - (2) The Department shall review each application for completeness and shall inform the applicant within sixty (60) days if the application is incomplete;
 - (3) To be complete for purposes of this section, an application shall include a completed application form and, to the extent not called for by the form, the information required in §§ 301.4 and 301.5;
 - (4) An application shall be considered complete if it contains the information required by the application form and §§ 301.4 and 301.5;
 - (5) If the Department does not notify the source within sixty (60) days of receipt that its application is incomplete, the application shall be deemed complete, however nothing in this subsection shall prevent the Department from requesting additional information in writing that is necessary to process the application;
 - (6) The Department shall maintain a checklist to be used for the completeness determination, and a copy of the checklist shall be provided to applicants along with application forms issued by the Department;
 - (7) If, while processing an application that has been determined or deemed to be complete, the Department determines that additional

information is necessary to evaluate or take final action on that application, the Department may request the additional information in writing and shall establish a reasonable deadline for a response;

- (8) In submitting an application for renewal of an operating permit issued under this chapter, a source may identify terms and conditions in its previous permit that should remain unchanged and incorporate by reference those portions of its existing permit and the permit application and any permit amendment or modification applications that describe products, processes, operations, and emissions to which those terms and conditions apply;
- (9) In submitting an application for renewal of an operating permit issued under this chapter, the source shall identify specifically and list the portions of its previous permit or applications that are incorporated by reference; and
- (10) A renewal application shall contain the following:
 - (A) Information specified in §§ 301.4 and 301.5 for those products, processes, operations, and emissions of the following that:
 - (i) Are not addressed in the existing permit;
 - (ii) Are subject to applicable requirements that are not addressed in the existing permit; or
 - (iii) Are terms and conditions sought by the source that are different than those in the existing permit;
 - (B) A compliance plan and certification as required in § 301.5(h); and
 - (C) A compliance certification, as required by § 301.5(i);
- (c) If a source submits information to the Department under a claim of confidentiality pursuant to § 114(c) of the Act, the source shall also submit a copy of the information, along with the claim of confidentiality, directly to the Administrator, if the Department requests that the source do so; and
- (d) The contents of a Part 70 permit issued under this chapter shall not be entitled to confidential treatment.

301.2 An applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of the

failure or incorrect submittal, promptly submit the supplementary facts or corrected information.

- 301.3 An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft permit.
- 301.4 All sources that are subject to the operating permit program established by this chapter shall submit applications on the standard application form that the Department provides for that purpose, which shall include information needed to determine the applicability of any applicable requirement and to evaluate the fee amount required under the schedule set forth in § 305.
- 301.5 The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted, and the application form and any attachments shall require that the following be provided:
- (a) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact;
 - (b) A description of the source's processes and products (by two-digit Standard Industrial Classification Code), including any associated with each alternate scenario identified by the source;
 - (c) The following emissions-related information:
 - (1) All emissions of pollutants for which the source is major and all emissions of regulated air pollutants as follows:
 - (A) A description of all emissions of regulated air pollutants emitted from any emissions unit; and
 - (B) Additional information related to the emissions of regulated air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to determine the amount of any permit fees owed under the fee schedule set forth in § 305;
 - (2) Identification and description of all points of emissions described in § 301.5(c)(1) in sufficient detail to establish the basis for fees and applicability of the Act's requirements;
 - (3) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any;

- (4) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules;
 - (5) Identification and description of air pollution control equipment and compliance monitoring devices or activities;
 - (6) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source;
 - (7) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to § 123 of the Act); and
 - (8) Calculations on which the information in subparagraphs (c)(1) through (c)(7) of this subsection is based;
- (d) The following air pollution control requirements:
- (1) Citation and description of all applicable requirements; and
 - (2) Description of or reference to any applicable test method for determining compliance with each applicable requirement;
- (e) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of the requirements;
- (f) An explanation of any proposed exemptions from otherwise applicable requirements;
- (g) Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to § 302.1(j) or to define permit terms and conditions implementing §§ 302.1(k) or 302.8 of this chapter;
- (h) A compliance plan for all covered sources that contains all of the following:
- (1) A description of the compliance status of the source with respect to all applicable requirements;
 - (2) A description as follows:

- (A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - (B) For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and
 - (C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with the requirements;
- (3) A compliance schedule as follows:
- (A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - (B) For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis;
 - (C) A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy the provision under paragraph (B) of this subpart, unless a more detailed schedule is expressly required by the applicable requirement; and
 - (D) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance, which shall:
 - (i) Include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance; and
 - (ii) Resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject, and shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

- (4) A schedule for submission of certified progress reports no less frequently than every six (6) months for sources required to have a schedule of compliance under § 301.5(h)(3)(D); and
 - (5) The compliance plan content requirements specified in this subparagraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations;
- (i) Requirements for compliance certification, including the following:
- (1) A certification of compliance with all applicable requirements by a responsible official consistent with § 114(a)(3) of the Act and § 301.6;
 - (2) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - (3) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement; and
 - (4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act;
- (j) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act; and
- (k) **The permit application fee required pursuant to § 305.1.**

Comment [A12]:
Subsection (k) is a new provision

301.6

Any application form, report, or compliance certification submitted pursuant to this chapter shall contain certification by a responsible official of truth, accuracy, and completeness, which shall meet the following requirements:

- (a) This certification and any other certification required under this chapter shall be signed by a responsible official; and
- (b) This certification and any other certification required under this chapter shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

301.7 Pursuant to § 300.4, a major source shall obtain a permit addressing all applicable requirements for all relevant emissions units in the major source, which may be complied with through one of the following methods:

- (a) The source obtains a single permit for all relevant emission units; or
- (b) The source requests and obtains coverage for one or more emission units eligible for coverage under a general permit or permits issued by the Department and obtains a separate permit for all remaining emission units not eligible for the coverage.

Section 303, PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS, is amended to read follows:

303 PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS

303.1 The following criteria shall be used in the processing of a permit application:

- (a) A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:
 - (1) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 302.4;
 - (2) Except for modifications qualifying for minor permit modification procedures under §§ 303.5(b) and 303.5(c), the Department has complied with the requirements for public participation under § 303.10;
 - (3) The Department has complied with the requirements for notifying and responding to affected States under § 304.2;
 - (4) The Department finds that the conditions of the permit provide for compliance with all applicable requirements and the requirements of Part 70; and
 - (5) The Administrator has received a copy of the proposed permit and any notices required under §§ 304.1 and 304.2, and has not objected to issuance of the permit under § 304.3 within the time period specified therein;

- (b) Upon receipt of an application submitted pursuant to § 301, the Department shall provide notice to the applicant of whether the application is complete;
- (c) Unless the Department requests additional information or otherwise notifies the applicant that the application is incomplete within sixty (60) days of receipt, the application shall be deemed complete;
- (d) Following review of an application submitted in accordance with § 301, the Department shall issue a draft permit, permit modification, or permit renewal for public comment, in accordance with the public participation procedures in § 303.10; and
 - (1) The draft permit, permit modification, or permit renewal shall be accompanied by a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions); and
 - (2) The Department shall send the statement required by § 303.1(d)(1) to the Administrator, to affected States, and to the applicant, and shall place a copy in the public file;
- (e) The Department shall transmit to the Administrator a proposed permit, permit modification, or permit renewal;
- (f) The proposed permit, permit modification, or permit renewal shall be issued no later than fifty (50) days preceding the respective deadlines for permit issuance, permit modifications, and permit renewals established in this chapter, and shall contain all applicable requirements that have been promulgated and made applicable to the source as of the date of issuance of the draft permit; and
- (g) If new requirements are promulgated or otherwise become newly applicable to the source following the issuance of the draft permit but before issuance of the final permit, the Department may either:
 - (1) Extend or reopen the public comment period (for an additional time not to exceed thirty (30) days) to solicit comment on additional permit provisions to implement the new requirements; or
 - (2) If the Department determines that extension or reopening of the public comment period would unduly delay issuance of the permit:
 - (A) The Department shall include within the proposed or final permit a provision stating that the permit will be reopened

to incorporate the new requirements and expressly excluding the new requirements from the protection of the permit shield;

- (B) If the Department elects to issue the proposed or final permit without incorporating the new requirements, the Department shall, within thirty (30) days of the new requirements becoming applicable to the source, institute proceedings pursuant to § 303.6 to reopen the permit to incorporate the new requirements; and
 - (C) The permit reopening proceedings may be instituted, but need not be completed, before issuance of the final permit;
- (h) The following action shall be taken after the Department's transmittal of the proposed permit, permit modification, or permit renewal for the Administrator's review:
- (1) Upon receipt of notice from the Administrator that the Administrator will not object to a proposed permit, permit modification, or permit renewal that has been transmitted for the Administrator's review pursuant to § 304, the Department shall issue the permit, permit modification, or permit renewal no later than the fifth (5th) day following receipt of the notice from the Administrator; or
 - (2) Upon the passage of forty-five (45) days after transmission of a proposed permit, permit modification, or permit renewal for the Administrator's review, and if the Administrator has not notified the Department that the Administrator objects to the proposed permit action, the Department shall issue the permit, permit modification, or permit renewal no later than the fiftieth (50th) day following transmission for the Administrator's review;
- (i) Except as provided in §§ 303.1(j)(1) or (2), the Department shall take final action on each application for a permit within eighteen (18) months after receiving a complete application;
- (j) For each permit application, the Department shall transmit a proposed permit, permit modification, or permit renewal to the Administrator no later than fifty (50) days before the appropriate deadline for permit issuance established in this section:
- (1) The Department shall take final action on at least one-third (1/3) of all initial permit applications (as defined in § 301.1(a)(1)) annually

during the first three (3) years following the effective date of the operating permit program; and

(2) The Department shall take action on any permit, permit modification, or permit renewal issued in compliance with regulations promulgated under Title IV or V of the Act for the permitting of affected sources under the Acid Rain Program within the time specified in those regulations; and

(k) To the extent feasible, applications shall be acted upon in the order received, except that priority shall be given to taking final action on applications for construction or modification under Title I, Parts C and D of the Act.

303.2 Except as provided in § 303.2(a), no source subject to this chapter may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under this chapter:

(a) If the source subject to the requirement to obtain a permit under this chapter submits a timely and complete application for permit issuance or renewal, that source's failure to have a permit shall not be a violation of the requirement to have such a permit until the Department takes final action on the application;

(b) The protection of § 303.2(a) shall cease to apply if, subsequent to the completeness determination made pursuant to §§ 303.1(b) and (c), the applicant fails to submit by the deadline specified in writing by the Department any additional information needed to process the application; and

(c) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Title I of the Act.

303.3 Procedures affecting permit renewal and expiration shall be subject to the following requirements:

(a) Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, affected State comment, and Administrator's review, that apply to initial permit issuance under § 303.1;

(b) An application for permit renewal may address only those portions of the permit that require revision, supplementation, or deletion, incorporating the remaining permit terms by reference from the previous permit;

- (c) In issuing a draft renewal permit or proposed renewal permit, the Department may specify only those portions that will be revised, supplemented, or deleted, incorporating the remaining permit terms by reference;
- (d) A source's right to operate shall terminate upon the expiration of its permit unless a timely and complete renewal permit application has been submitted at least six (6) months before the date of expiration or the Department has taken final action approving the source's permit application for renewal by the expiration date; and
- (e) If a timely and complete application for a permit renewal is submitted, but the Department fails to take final action to issue or deny the renewal permit before the end of the term of the previous permit, then the permit shall not expire until the renewal permit has been issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

303.4 Administrative permit amendments shall be governed as follows:

- (a) An "administrative permit amendment" is a permit revision that:
 - (1) Corrects typographical errors;
 - (2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - (3) Requires more frequent monitoring or reporting by the permittee;
 - (4) Allows for a change in ownership or operational control of a source where the Department determines no other change in the permit is necessary; provided, that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;
 - (5) Incorporates into the Part 70 permit the requirements from preconstruction review permits authorized under Chapter 2 of this Title, provided such permits go through enhanced notice and comment requirements equivalent to those required for a significant modification under this chapter and meet all other requirements of this chapter that would be applicable to this change if it were subject to review as a significant modification; or

Comment [A13]:
Section 303.4(a)(5) is a new section

- (6) Incorporates any other type of change that the Administrator has determined as part of the Department's approved permit rule to be similar to those in paragraphs (d)(1)(i) through (iv) of § 70.7 of Part 70;
- (b) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act;
- (c) An administrative permit amendment shall be made by the Department in accordance with the following:
 - (1) The Department shall take final action on a request for an administrative permit amendment within sixty (60) days from the date of receipt of a request, and may incorporate the proposed changes without providing notice to the public or affected States; provided, that the Department designates any permit revisions as having been made pursuant to this paragraph;
 - (2) The Department shall transmit a copy of the revised permit to the Administrator; and
 - (3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request; and
- (d) The Department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 302.6 for administrative permit amendments made pursuant to § 303.4(a)(6).

303.5 A permit modification shall be any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under § 303.4, and shall be governed as follows:

- (a) The Department shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications by adopting and complying with the procedures established in this subsection;
- (b) Minor permit modification procedures shall be as follows:
 - (1) Criteria:
 - (A) Minor permit modification procedures may be used only for those permit modifications that:

- (i) Do not violate any applicable requirement;
 - (ii) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;
 - (iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - (iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject, which includes the following:
 - (a) A federally-enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Act; and
 - (b) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Act; and
 - (v) Are not modifications under any provision of Title I of the Act; and
- (B) Notwithstanding §§ 303.5(b)(1)(A) and (c)(1) of this subsection, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable requirement;
- (2) To use the minor permit modification procedures, a source shall submit a permit application requesting such use that shall meet the basic permit application requirements of this chapter and shall include the following:

- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 - (B) A suggested draft permit;
 - (C) Certification by a responsible official, consistent with § 301.6, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
 - (D) Completed forms for the Department to use to notify the Administrator and affected States as required under § 304;
- (3) Within five (5) business days of receipt of a complete minor permit modification application, the Department__shall meet the Department's obligation under §§ 70.8(a)(1) and (b)(1) of Part 70 to notify the Administrator and affected States of the requested permit modification and shall promptly send any notice required under § 304.2(b) to the Administrator;
- (4) The Department shall not issue a final minor permit modification until after the Administrator's forty-five (45) day review period or until the Administrator has notified the Department that the Administrator will not object to issuance of the permit modification, whichever occurs first, although the Department can approve the permit modification prior to that time;
- (5) Within ninety (90) days of the Department's receipt of a permit application under the minor permit modification procedures or fifteen (15) days after the end of the Administrator's forty-five (45) day review period under § 304.3, whichever is later, the Department shall do one of the following:
- (A) Issue the minor permit modification as proposed;
 - (B) Deny the minor permit modification application;
 - (C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
 - (D) Revise the draft permit modification that was suggested by the applicant pursuant to § 303.5(b)(2)(B) and transmit to the Administrator the new proposed minor permit modification as required by § 304.1;

- (6) Immediately after filing a permit application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application;
 - (7) After the source makes the change allowed by § 303.5(b)(6), and until the Department takes any of the actions specified in §§ 303.5(b)(5)(A) through (C), the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions;
 - (8) During the period in § 303.5(b)(7), the source need not comply with the existing terms and conditions of the permit it seeks to modify; however, if the source fails to comply with its proposed permit terms and conditions during the time period under § 303.5(b)(7), the existing permit terms and conditions it seeks to modify may be enforced against it; and
 - (9) The permit shield under § 302.6 will not extend to minor permit modifications;
- (c) Pursuant to this paragraph, the Department may modify the procedure outlined in § 303.5(b) to process groups of a source's applications for certain modifications eligible for minor permit modification processing:
- (1) Group processing of modifications may be used only for those permit modifications that:
 - (A) Meet the criteria for minor permit modification procedures under § 303.5(b)(1)(A); and
 - (B) Are collectively below the following threshold levels: ten percent (10%) of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent (20%) of the applicable definition of major source in § 399.1, or five (5) tons per year, whichever is least;
 - (2) An application requesting the use of group processing procedures shall meet the requirements of §§ 301.4 and 301.5, and shall include the following:
 - (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

- (B) The source's suggested draft permit;
 - (C) Certification by a responsible official, consistent with § 301.6, that the proposed modification meets the criteria for use of group processing procedures and a request that the procedures be used;
 - (D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under § 303.5(c)(1)(B);
 - (E) Certification, consistent with § 301.6, that the source has notified the Administrator of the proposed modification (notification need only contain a brief description of the requested modification); and
 - (F) Completed forms for the Department to use to notify the Administrator and affected States as required under § 304.
- (3) On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under § 303.5(c)(1)(B), whichever is earlier, the Department shall, in accordance with §§ 304.1(a) and 304.2(a), notify the Administrator and affected States of the requested permit modifications.
 - (4) The Department shall send any notice required under § 304.2(b) to the Administrator;
 - (5) The provisions of § 303.5(b)(4) and (5) shall apply to modifications eligible for group processing, except that the Department shall take one of the actions specified in §§ 303.5(b)(5)(A) through (D) within one hundred eighty (180) calendar days of receipt of the permit application or fifteen (15) calendar days after the end of the Administrator's forty-five (45) calendar day review period under § 304.3, whichever is later; and
 - (6) The provisions of §§ 303.5(b)(6) through (b)(9) shall apply to modifications eligible for group processing;
- (d) Significant permit modification procedures shall be as follows:

- (1) Significant permit modification procedures shall be used for applications requesting permit modifications that:
 - (A) Involve a significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting or record keeping permit terms or conditions;
 - (B) Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - (C) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject, including the following:
 - (i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and
 - (ii) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Act;
 - (D) Are modifications under any provision of Title I of the Act, except those that qualify for processing as administrative permit amendments under § 303.4(a); and
 - (E) Do not qualify as administrative permit amendments under § 303.4(a) or minor permit modifications under § 303.5(b);
- (2) Nothing in § 303.5(d) shall be construed to preclude the permittee from making changes consistent with Part 70 that would render existing permit compliance terms and conditions irrelevant;
- (3) Significant permit modifications shall meet all requirements of this chapter that are applicable to permit issuance and permit renewal, including those for applications, public participation, review by affected States, and review by the Administrator;
- (4) The application for a significant permit modification shall describe the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs; and

- (5) The Department shall complete review of an application for a significant permit modification within nine (9) months after receipt of a complete application; and
- (e) A permit modification for purposes of to the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

303.6 Each issued permit shall be subject to be reopened for cause under the following circumstances:

- (a) A permit shall be reopened for cause if the following occurs:
 - (1) The Department or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms of the permit;
 - (2) Additional applicable requirements under the Act become applicable to the source; provided, that reopening on this ground is not required if the following occurs:
 - (A) The source is not a major source;
 - (B) The permit has a remaining term of less than three (3) years;
 - (C) The effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to § 303.3(e); or
 - (D) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit;
 - (3) Additional requirements (including excess emissions requirements) become applicable to a source under the Acid Rain Program; provided, that upon approval by the Administrator excess emissions offset plans shall be deemed to be incorporated into the permit; or
 - (4) The Department or the Administrator determines that the permit must be revised to assure compliance by the source with applicable requirements;

- (b) If the Department finds reason to believe that a permit should be reopened and modified for cause, the Department shall provide at least thirty (30) calendar days prior written notice to that effect to the source, except that the notice period can be shorter if the Department finds that an emergency exists;
- (c) The notice required under paragraph (b) of this subpart shall include the following:
 - (1) A statement of the terms and conditions that the Department proposes to change, delete, or add to the permit;
 - (2) If the Department does not have sufficient information to determine the terms and conditions that must be changed, deleted, or added to the permit, the notice shall request the source to provide that information within a period of time specified in the notice, which shall be not less than thirty (30) days except in the case of an emergency; and
 - (3) If the proposed reopening is to be done pursuant to § 303.6(a) the Department shall give the source an opportunity to provide evidence that the permit should not be reopened;
- (d) When modifying a permit, the Department shall follow the procedures established under § 303.1 and § 303.10 and shall alter only those portions of the permit for which cause to reopen exists;
- (e) When modifying a permit, the source shall in all cases be afforded an opportunity to comment on the revised permit terms;
- (f) While a reopening proceeding is pending, the source shall be entitled to the continued protection of any permit shield provided in the permit pending issuance of a modified permit unless:
 - (1) The Department specifically suspends the shield on the basis of a finding that the suspension is necessary to implement applicable requirements; and
 - (2) If a finding under paragraph (1) of this subpart applies only to certain applicable requirements or permit terms, the suspension shall extend only to those requirements or terms; and
- (g) Any reopening under § 303.6(a)(2) shall be completed within eighteen (18) months after promulgation of the applicable requirements.

303.7 Each issued permit may be reopened (modifications) and revoked for cause by the Administrator under the following circumstances:

- (a) If the Department receives a notice from the Administrator that the Administrator has found that cause exists to revoke, or reopen a permit, the Department shall, within ten (10) days after receipt of the notification, provide notice to the source;
- (b) The notice to the source, specified in § 303.7(a), shall include a copy of the notice from the Administrator and invite the source to comment in writing on the proposed action;
- (c) Within ninety (90) days following receipt of the notification from the Administrator, the Department shall issue and forward to the Administrator a proposed determination in response to the Administrator's notification;
- (d) The Department may request additional time for the transmission of the determination specified in § 303.7(c), pursuant to Part 70, if such time is required to obtain a new or revised permit application or other information from the source; and
- (e) Within ninety (90) days of receipt of an objection from the Administrator on his or her proposed determination, the Department shall either resolve the objection or modify or revoke the permit in accordance with the Administrator's objection.

303.8 The following procedures shall apply to revocations and terminations:

- (a) The Department may terminate a permit at the request of the permittee or revoke it for cause, if the following occurs:
 - (1) The permitted stationary source is in violation of any term or condition of the permit and the permittee has not undertaken appropriate action (such as a schedule of compliance) to resolve the violation;
 - (2) The permittee has failed to disclose material facts relevant to issuance of the permit or has knowingly submitted false or misleading information to the Department;
 - (3) The Department finds that the permitted stationary source or activity substantially endangers public health, safety, or the environment, and that the danger cannot be removed by a modification of the terms of the permit;

- (4) The permittee has failed to pay permit fees required under § 305; or
 - (5) The permittee has failed to pay a civil or criminal penalty imposed for violations of the permit;
- (b) Upon finding that cause exists for revocation of a permit, the Department shall notify the permittee of that finding in writing, stating the reasons for the proposed revocation;
 - (c) Within thirty (30) days following receipt of the notice for permit revocation, the permittee may submit written comments concerning the proposed revocation and may request a hearing pursuant to § 104;
 - (d) If the Department makes a final determination to revoke the permit, the Department shall provide a written notice to the permittee specifying the reasons for the decision and the effective date of the revocation;
 - (e) A permit revocation issued under this section may be issued conditionally with a future effective date and may specify that the revocation will not take effect if the permittee satisfies the specified conditions before the effective date;
 - (f) A permittee may at any time apply for termination of all or a portion of its permit relating solely to operations, activities, and emissions that have been permanently discontinued at the permitted stationary source:
 - (1) An application for termination shall identify with specificity the permit or permit terms that relate to the discontinued operations, activities, and emissions;
 - (2) The Department shall act on an application for termination on this ground within ninety (90) days of receipt and shall grant the application for termination upon finding that the permit terms for which termination is sought relate solely to operations, activities, and emissions that have been permanently discontinued; and
 - (3) In terminating all or portions of a permit pursuant to this subsection, the Department may make appropriate orders for the submission of a final report or other information from the source to verify the complete discontinuation of the relevant operations, activities, and emissions;
 - (g) A source may apply for termination of its permit on the ground that its operations, activities, and emissions are fully covered by a general permit for which it has applied for and received coverage pursuant to § 302.4;

- (h) The Department shall act on an application for termination on the grounds specified in § 303.8(g) within ninety (90) days of receipt and shall grant the application upon a finding that the source's operations, activities, and emissions are fully covered by a general permit;
- (i) A source that has received a final revocation or termination of its permit may apply for a new permit under the procedures established in § 301.

303.9 If applicable requirements require the Department to make a case-by-case determination of an emission standard, technology requirement, work practice standard, or other requirement for a source and to include terms and conditions implementing that determination in the source's permit, the source shall include in its permit application under § 301 a proposed determination, together with the data and other information upon which the determination is to be based, and proposed terms and conditions to implement the determination, which will be reviewed in accordance with the following procedures:

- (a) Upon receipt of a request from the source, the Department may meet with the source before the permit application is submitted to discuss the determination and the information required to make it; and
- (b) In the event that the Department determines that the source's proposed determination and implementing terms and conditions should be revised in the draft permit, the proposed permit, or the final permit, the Department shall inform the source of the changes to be made and allow the source to comment on those changes before issuing the draft permit, proposed permit, or final permit.

303.10 Except for permit modifications qualifying for minor permit modification procedures under § 303.5(b), all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be conducted in accordance with the following procedures for public participation:

- (a) After receiving a complete application for a permit, significant permit modification, or permit renewal, the Department shall, no later than sixty-one (61) calendar days before the deadline for issuing a proposed permit, significant modification, or renewal for the Administrator's review, issue a draft permit and solicit comment from the applicant, from the affected States and from the public as follows:
 - (1) The Department shall provide notice to the public by doing the following:
 - (A) Making available a public file containing a copy of all materials (including permit applications, compliance plans,

permit monitoring and compliance certification reports, except for information entitled to confidential treatment under § 301.1(c)) that the applicant has submitted, a copy of the preliminary determination and draft permit or permit renewal, and a copy or summary of other materials, if any, considered in making the preliminary determination;

- (B) Publishing a notice in the District of Columbia Register and using any other means necessary to assure adequate notice to the affected public of the application, the preliminary determination, the location of the public file, the procedures for submitting written comments, the procedures for requesting a hearing if the Department has not scheduled a hearing, and the date, time, and location of the public hearing; and
 - (C) Publishing any notice of a public hearing at least thirty (30) days in advance of the hearing;
- (2) Copies of the notice required under § 303.10(a)(1)(B) shall be sent to the applicant, to the representatives of affected States designated by those States to receive the notices, and to persons on a mailing list developed by the Department, including those who request in writing to be on the list;
- (b) The public notice shall establish a period of not less than thirty (30) days following publication of the notice for the submission of written comments and shall identify the affected stationary source the name and address of the applicant or permittee, the name and address of the Department's representative with responsibility for the permitting action, the activity or activities involved in the permit action, the emissions change involved in any permit modification, and the location of the public file;
 - (c) The applicant shall be afforded an opportunity to submit, within ten (10) business days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made;
 - (d) The Department shall consider all comments submitted by the applicant, the public, and affected States in reaching its final determination and issuing the proposed permit, modification, or renewal for the Administrator's review;
 - (e) The Department shall maintain a list of all commenters and a summary of the issues raised in sufficient detail such that the Administrator may fulfill his or her obligation under § 505(b)(2) of the Act and shall make that

information available in the public file and supply it to the Administrator upon request; and

- (f) At the time the Department issues a proposed permit, permit modification, or permit renewal for the Administrator's review, the Department shall issue a written response to all comments submitted by affected States and all significant comments submitted by the applicant and the public. Copies of this written response shall be provided to the Administrator, affected States, and the applicant, and a copy shall be placed in the public file.

303.11 Any final action granting or denying an application for a permit, permit amendment or modification, or permit renewal shall be subject to judicial review **in the Office of Administrative Hearings** upon an application filed by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review under District law.

Comment [A14]:
Not the Superior Court of DC

303.12 The opportunity for judicial review provided for in § 303.11 shall be the exclusive means for obtaining judicial review of any permit action.

303.13 Procedures for judicial review shall be as follows:

- (a) No application for judicial review may be filed more than ninety (90) days following the final action on which the review is sought, unless:
 - (1) The grounds for review arose at a later time, in which case the application for review shall be filed within ninety (90) days of the date on which the grounds for review first arose and review shall be limited to the later-arising grounds; or
 - (2) The final action being challenged is the Department's failure to take final action, in which case an application for judicial review may be filed any time before the Department denies the permit or issues the final permit; and
- (b) Any application for judicial review shall be limited to the following:
 - (1) Issues raised in written comments filed with the Department or during a public hearing on the proposed permit action (if the grounds on which review is sought were known at that time), except that this restriction shall not apply if the person seeking review was not afforded an advance opportunity to comment on the challenged action; and
 - (2) Issues that are germane and material to the relevant permit action.

Section 305, PERMIT FEES, is repealed and replaced with the following:

305 FEES

305.1 Owners or operators of Part 70 sources shall pay a permit application fee (original and renewal applications) based on the total tons of potential emissions of each regulated pollutant (for presumptive fee calculation purposes) according to the schedule in the following table:

Comment [A15]:
Section 305.1 is a new section in its entirety

\$5,000	Total potential emissions less than 100 tons per year
\$7,500	Total potential emissions equal to or greater than 100 tons per year, but less than 250 tons per year
\$15,000	Total potential emissions equal to or greater than 250 tons per year, but less than 1,000 tons per year
\$30,000	Total potential emissions equal to or greater than 1,000 tons per year

305.2 Owners or operators of Part 70 sources shall pay annual fees (as adjusted pursuant to the criteria set forth in § 305.6) based on the total tons of actual emissions of each regulated pollutant (for presumptive fee calculation purposes) emitted from Part 70 sources following the schedule in the following table:

Comment [A16]:
Section 305.2 replaces the existing 305.1

\$1,000	Total actual emissions less than 10 tons per year
\$5,000	Total actual emissions equal to or greater than 10 tons per year, but less than 25 tons per year
\$10,000	Total actual emissions equal to or greater than 25 tons per year, but less than 100 tons per year
\$30,000	Total actual emissions equal to or greater than 100 tons per year

305.3 Owners or operators of Part 70 sources with total actual annual emissions greater than 100 tons per year will pay an annual fee of three hundred dollars (\$300) (as adjusted pursuant to the criteria set forth in § 305.6), in addition to the fees specified under § 305.2, for each ton of annual emissions in excess of one hundred (100) tons per year.

Comment [A17]:
Section 305.3 is a new section in its entirety

305.4 Owners or operators of Part 70 sources subject to annual fees pursuant to § 305.2 shall pay annual fees within twelve (12) months of the date on which the source first becomes subject to the program.

Comment [A18]:
Section 305.4 is a new section in its entirety

305.5 Owners or operators of sources that accept federally enforceable emission limits pursuant to § 200.6 and § 300.3(c) shall pay a permit application fee (original and renewal applications) of five thousand dollars (\$5,000).

Comment [A19]:
Section 305.5 is a new section in its entirety

305.6 The fees described in §§ 305.2 and 305.3 shall be increased each year by the percentage, if any, by which the Consumer Price Index for the most recent

Comment [A20]:
The inflation provision is updated to reflect 2015 inflation

calendar year ending before the beginning of the year exceeds the Consumer Price Index for the calendar year 2015:

- (a) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the twelve (12) month period ending on August 31st of each calendar year; and
- (b) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 2015 shall be used. The Consumer Price Index for all-urban consumers for the month of August 2015 is 238.316.

305.7 Owners or operators that fail to pay a fee owed pursuant to §§ 305.1, 305.2, or 305.3 within sixty (60) days of the date that the Department issues an invoice or by September 1, whichever is earlier, unless another deadline is specified in a permit issued pursuant to this chapter, shall pay a penalty of fifty percent (50%) of the fee amount, plus interest pursuant to § 502(b)(3)(C)(ii) of the Act.

Comment [A21]:
This timeframe is new

305.8 All fees, penalties, and interest collected pursuant to this chapter shall be deposited by the Department in a special D.C. Treasury fund, subject to appropriation, to carryout Part 70 program activities solely.

Section 399, DEFINITIONS AND ABBREVIATIONS, is amended as follows:

Subsection 399.1 is amended by replacing the definition of “Regulated pollutant (for presumptive fee calculation)” to read as follows:

Regulated pollutant (for presumptive fee calculation), which is used only for purposes of § 305 - any “regulated air pollutant” except the following:

- (a) Any pollutant that is a regulated air pollutant solely because it is a class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act;
- (b) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under § 112(r) of the Clean Air Act;
- (c) Carbon monoxide; or
- (d) Greenhouse gases, as defined in 40 C.F.R. § 86.1818–12(a).

Comment [A22]:
Existing regulation:
Regulated pollutant (for presumptive fee calculation), which is used only for purposes of § 305 - any “regulated air pollutant” except the following:
(a) Any pollutant that is a regulated air pollutant solely because it is a class I or II substance subject to a standard promulgated under or established by title vi of the act;
(b) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under § 112(r) of the Act; or
(c) Carbon monoxide.
Greenhouse gases is the new addition

By adding a definition for “relevant emissions units” as follows:

Relevant emissions units - those emissions units that are subject to applicable requirements.

Comment [A23]:
New addition; moved from 300.3(a)

All persons desiring to comment on the proposed rulemaking should file comments in writing not later than thirty (30) days after publication of this notice in the *D.C. Register*. Comments should be clearly marked “Public Comments: Air Quality Permit Fees and Synthetic Minor Permitting Program” and filed with DOEE, Air Quality Division, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, Attention: Stephen Ours, or e-mailed to airqualityregulations@dc.gov. Copies of the above documents may be obtained from DOEE at the same address.