

TITLE V OPERATING PERMIT REVISIONS GUIDANCE PROCEDURES AND INSTRUCTIONS

Introduction:

The purpose of this guidance document is to provide a simplified means for determining how sources may revise their existing Title V Operating Permit(s). There are different ways Title V permits can be revised, depending on the type of change and whether the proposed changes conflict with the existing permit. The affected Title V facility must satisfy the modification requirements of 45CSR30. By using the forms available on the WVDAQ website, the application requirements will be satisfied, and will help to establish consistency

Revision Forms:

The appropriate forms, as well as various information and presentations pertaining to Title V Permit Revisions are located on the WV DAQ website. More specifically, the Title V revision forms are located at: <http://www.wvdep.org/alt.cfm?asid=145>

There are two (2) different permit revision application forms.

1. “Title V Revision Application”: This form is for use when only revising a Title V permit (i.e., no underlying R13, R14, or R19 permitting action is involved). The revision application form only addresses information specifically pertaining to the Title V permit.
2. “Application for NSR Permit and Title V Permit Revision”: This form is a combination application which satisfies the requirements for both NSR and Title V permits. This form should be used when the permittee must obtain an NSR permitting action (i.e., R13, R14, R19) in addition to revising their Title V permit for the proposed change. When using this form, there are no other separate/additional revision application requirements needed to address the Title V portion of the revision.

The types of Title V permit revisions addressed in this guidance include:

1. Administrative Amendments
2. Minor Permit Modifications
3. Significant Permit Modifications
4. Off-Permit Changes
5. Operational Flexibility

Title I Modifications:

A key term used in determining the appropriate method of revising a Title V Operating Permit is “Title I Modification”. Any proposed changes to a facility that meet the definition of a Title I Modification must utilize Significant Modification procedures to revise the Title V Operating Permit. A Title I Modification is a modification that meets any of the following criteria:

1. The potential to emit from all new, modified, replacement, or relocated emission units at the stationary source, which are covered by the Title V modification application are equal to or greater than the de minimus thresholds for triggering Prevention of Significant Deterioration (PSD) review [45CSR14 permit].

2. The potential to emit from all new, modified, replacement, or relocated emission units at the stationary source, which are covered by the Title V modification application are equal to or greater than the de minimus thresholds for triggering major non-attainment NSR review [45CSR19 permit].
3. The potential to emit from all new, modified, replacement, or relocated emission units at the stationary source, which are covered by the Title V modification application would be greater than the de minimus level for hazardous air pollutants (HAPs) pursuant to Section 112 of the Clean Air Act, thus triggering MACT (40 CFR Part 63).
4. Any construction/modification of a source that would be defined as such under 40 CFR Part 60, the New Source Performance Standards (NSPS).
5. Any construction/modification of a source which is subject to a standard under 40 CFR Part 61, National Emissions Standards for Hazardous Air Pollutants (NESHAP).

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I. Administrative Amendments (C.S.R. § 45-30.6.4.)

A. Definition and Criteria:

An Administrative Amendment is a permit revision that involves changes consisting of the following:

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 Director determines that 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 Director;
5. Incorporate into the Title V operating permit all provisions required under 45CSR30 and all preconstruction requirements under Title I of the Clean Air Act (including requirements of 45CSR14 and 45CSR19, assuming that all the appropriate notification requirements have been met). ~~or~~

Note: It is possible to use administrative amendment procedures to incorporate the provisions of an R14/R19 permit modification due to the fact that the notification requirements and EPA review involved also satisfies Title V requirements. To use administrative amendment procedures to incorporate the provisions of an R13 permit, the processing requirements would need to be increased to meet sufficiency requirements of Title V.

6. Is approved pursuant to rules of the Director, incorporating federal requirements promulgated under Title IV of the CAA (Acid Deposition Control).

B. Application Content:

As noted in the Title V Revision Form, administrative amendments require a description of the change, rationale for use of administrative amendment procedures, and appropriate certification by the Responsible Official.

C. Completeness Determination:

A completeness determination for an administrative amendment is not required, however, the applicant must provide the Director any additional information that is requested in order to expedite the change.

D. Implementation of the Requested Change:

The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

E. Public Notice:

The application for an administrative amendment does not require public notice.

F. EPA Review:

The Director shall submit a copy of the revised permit to the U.S. EPA. The application for an administrative amendment is not required to be submitted to EPA by the applicant or the Director.

G. Final Action:

The Director shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the Director designates any such permit revisions as having been made pursuant to section 6.4. of 45CSR30.

H. Permit Shield:

The Director may allow coverage by the permit shield for administrative permit amendments made pursuant to subparagraph 6.4.a.5. of 45CSR30 (as mentioned in subparagraph I.A.5. above), which meets the relevant requirements of sections five, six, and seven of 45CSR30 for significant permit modifications.

II. Minor Modifications (C.S.R. § 45-30.6.5.a.)**A. Definition and Criteria:**

Minor Permit modification procedures may be used only for those permit modifications that:

1. Do not violate any applicable requirement;
2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
3. 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 air quality impacts, or a visibility or increment analysis;
4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and which permit or condition has been used to avoid an applicable requirement to which the source would otherwise be subject (synthetic minor). Such terms and conditions include, but are not limited to, a federally enforceable emissions cap used to avoid classification as a modification under any provision of Title I or any alternative emissions limit approved pursuant to regulations promulgated under §112(i)(5) of the Clean Air Act;
5. Do not involve preconstruction review under Title I of the Clean Air Act or 45CSR14 and 45CSR19; and
6. Are not required under any rule of the Director to be processed as a significant modification.
7. Notwithstanding subparagraph 6.5.a.1.A of 45CSR30 (criteria stated in subparagraphs II.A.1-6 above), 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 rules of the Director which are approved by the U.S. EPA as part of the State Implementation Plan under the Clean Air Act, or which may be otherwise provided for in the Title V operating permit issued under this rule.

B. Application Content:

As noted in the Title V Revision Form, minor modifications require the following information:

1. Description of the change;
2. Associated change in emissions;
3. Sample calculations for determining emissions;
4. Listing of any new applicable requirements;
5. Listing of R13/R14 permits associated with the change;
6. Suggested draft permit language;

7. Certification for use of minor modification procedures;
8. Certification of application and compliance.

C. Completeness Determination:

A completeness determination for a minor permit modification is not required, however, the applicant must provide the Director any additional information that is requested in order to expedite the change.

D. Materials to be Submitted to EPA:

The Director shall on or before the fifth (5th) day following receipt of the complete permit modification application meet the obligation under paragraphs 7.1.a and 7.2.a of 45CSR30 to notify U.S. EPA and affected state of the requested permit modification. The proposed permit shall be the same as the draft permit for this purpose. The Director shall promptly send any notice required under 7.2.b of 45CSR30 to U.S. EPA.

E. Application Submittal and Implementation of the Change:

A permittee may not make a change to a source proposed in a minor permit modification application unless it has submitted the permit application at least seven (7) days prior to making the proposed change. After the source makes the proposed change allowed by the preceding sentence, and until the Director takes any of the actions specified in 6.5.a.4.A through 6.5.a.4.C of 45CSR30, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it and violation of the proposed terms and conditions is relevant in considering any sanction.

F. PublicNotice:

The application for a minor permit modification does not require public notice.

G. EPA Review:

The Director shall not issue a final permit modification until after U.S. EPA's forty-five (45) day review period or until U.S. EPA has notified the Director that U.S. EPA will not object to the issuance of the permit modification.

H. Final Action:

Within ninety (90) days of the Director's receipt of an application under minor permit modification procedure or fifteen (15) days after the end of U.S. EPA's forty-five (45) day review period under subsection 7.3 of 45CSR30, whichever is later, the Director shall:

1. Issue the permit modification as proposed;
2. Deny the permit modification application;
3. Determine that the requested modification does not meet the minor permit modification procedure criteria and should be reviewed under the significant modification procedures; or
4. Revise the draft permit modification and transmit to U.S. EPA, and, if appropriate, affected states, the new proposed permit modification in accordance with 7.1.a and 7.2 of 45CSR30. In the event that draft permit modifications are made, the Director shall utilize the same procedures outlined in 6.5.a.4 of 45CSR30.

I. Permit Shield:

The permit shield shall **not** extend to minor permit modifications.

III. Significant Modifications (C.S.R. § 45-30.6.5.b.)

A. Definition and Criteria:

Significant modification procedures shall be used for applications requesting significant permit modifications that do not qualify as minor permit modifications or as administrative amendments including, but not limiting to, the following:

1. Modifications under any provision of Title I of the Clean Air Act, except those that qualify for processing as administrative amendments under subsection 6.4 or any rule of the Director required under Title I of the Clean Air Act;
2. A significant change in existing monitoring permit terms or conditions, or a relaxation of reporting or recordkeeping permit terms or conditions;
3. A change to 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;
4. Establishment of or change to a permit or condition for which there is no corresponding underlying applicable requirement;
5. Proposed changes which in the judgement of the Director would require decisions to be made on significant or complex issues that generate or are likely to generate significant material adverse comment from the public, affected states, or US EPA with respect to the determination of applicable requirements or air quality impacts.

B. Application Content:

Applications for significant modifications shall meet all requirements of 45CSR30 as they apply to initial permit issuance renewal. As noted in the Title V Revision Form, significant modifications require the following information:

1. Description of the change;
2. Associated change in emissions;
3. Sample calculations for determining emissions estimates;
4. Listing of R13/R14 permits associated with the changes;
5. Updated drawings, plot plans, process flow diagrams, etc. (if necessary);
6. Certification of application and compliance.

C. Completeness Determination:

Unless the Director determines that an application is not complete within sixty (60) days of receipt of the application, such application shall be deemed to be complete.

D. Materials to be Submitted to EPA:

The Director shall provide the EPA a copy of each significant modification application, as well as any proposed and final significant modification permitting actions.

E. Application Submittal and Implementation of Changes:

1. If the proposed changes are neither addressed nor prohibited by the existing Title V Permit ⁽¹⁾, the permittee may file a complete significant modification application within twelve (12) months after commencing operation of the proposed changes, utilizing the “Title V Permit Revision Form”, keeping in mind there is no permit shield in the meantime.
2. If the proposed changes are addressed and/or prohibited by the existing Title V Permit, the permittee must submit the significant modification application, and receive the issued significant modification permit prior to operating the changes. This could be done by using the “Application for NSR Permit and Title V Permit Revision”.
 - i. When using the “Application for NSR Permit and Title V Permit Revision” form, both the NSR and Title V permit revisions are processed in parallel to allow the permittee to operate the changes more expeditiously.
 - a) One Notice for both Title V and NSR permitting actions used in soliciting public comments, involving an overlapping 30 day public comment period for both the NSR and Title V permit revisions and a 45 day EPA review period of the Title V permit revision.
 - b) Permit shield applies as to the date of the final action of the Title V permit revision.

Note: (1) *C.S.R. § 45-30.4.1.a.2. states that only if the Title V permit would prohibit such changes in operations, would the source have to obtain the permit prior to commencing operation. Otherwise, the source may file a complete application to obtain the Title V permit revision within twelve (12) months after commencing operations.*

F. Public Notice:

Public notice of the preparation of a draft significant permit modification shall allow at least thirty (30) days for public comment.

G. EPA/Affected States Review:

1. The Director shall give notice of each draft permit to any affected state on or before the time that the Director provides this notice to the public.
2. The U.S. EPA has (45) days from the receipt of the proposed permit modification and all supporting information, to object in writing to the issuance of the permit modification.

H. Final Action:

The Director shall complete the review process for significant permit modifications within six (6) months after receipt of a complete application.

I. Permit Shield:

Permit shield is extended to significant modifications, effective upon issuance of the permit modification.

IV. Off-Permit Changes (C.S.R. § 45-30.5.9.)

A. Definition and Criteria:

A facility may make any change in its operations or emissions that is not addressed nor prohibited in its permit and which is not considered to be construction nor modification under any rule promulgated by the Director without obtaining an amendment or modification of its permit, in accordance with the following requirements and restrictions:

1. The change must meet all applicable requirements and may not violate any existing permit term or condition.
2. No permittee may make any change subject to any requirement under Title IV of the Clean Air Act (Acid Deposition Control) pursuant to the provisions of section 5.9 of 45CSR30.
3. No permittee may make any changes which would require preconstruction review under any provision of Title I of the Clean Air Act (including 45CSR14 and 45CSR19) pursuant to the provisions of section 5.9 of 45CSR30.

B. Notification Requirements:

The permittee must provide a written notice to the Director and to U.S. EPA within two (2) business days following the date of the change. The use of the "Title V Permit Revision Form" may satisfy this notification requirement, which is to include the following:

1. Description of the change;
2. The date on which the change will occur or has occurred;
3. Any change in emissions;
4. Pollutants emitted; and
5. Any applicable requirement that would apply as a result of the change.
6. Certification of application and compliance.

C. Implementation of the Change:

The permittee may operate a change qualifying for off-permit procedures at their own will, however, it should be noted that written notification is to be submitted to the Director and U.S. EPA no later than two (2) business days from the date of the change.

D. Public Notice:

Off-permit changes to Title V Permits do not require public notice.

E. Recordkeeping:

The permittee shall keep records describing all changes made at the source that result in emissions of regulated air pollutants, but not otherwise regulated under the permit, and the emissions resulting from those changes.

F. Final Action:

The Director shall maintain records of all off-permit changes, and place them in the company's public file. All off-permit changes incurred during the term of the Title V Permit will be incorporated into the said Title V Permit at the time of renewal.

G. Permit Shield:

The permit shield does not apply to off-permit changes.

V. Operational Flexibility [502(b)(10) Changes] (C.S.R. § 45-30.5.8.)

A. Definition and Criteria:

Each permit issued under this rule shall provide that a permittee may make changes within the facility, as provided by § 502(b)(10) of the Clean Air Act, in accordance with the following:

1. No such changes shall be a modification under any rule or any provision of Title I of the Clean Air Act (including 45CSR14 and 45CSR19) promulgated by the Director in accordance with Title I of the Clean Air Act.
2. The Change shall not result in a level of emissions exceeding the emissions allowable under the permit.
3. A permitted source may trade increases and decreases in emissions within the facility, where rules promulgated by the Director pursuant to provisions of Title I of the Clean Air Act and which are contained in the State Implementation Plan for West Virginia provide for such emissions trades without a permit modification. In such a case, the advance written notice provided by the permittee shall:
 - i. Identify the applicable requirements allowing trading;
 - ii. State when the change will occur;
 - iii. State the types and quantities of emissions to be traded;
 - iv. State the permit terms or other applicable requirements with which the source will comply through emissions trading; and
 - v. Provide other such information as may be required by the Director.

B. Notification Requirements:

1. Before making a change under this provision, the permittee shall provide advance written notice to the Director and to U.S. EPA at least seven (7) days prior to the date that the change is to be made, except that this period may be shortened or eliminated as necessary for a change that must be implemented more quickly to address unanticipated conditions posing a significant health, safety, or environmental hazard. If less than seven days notice is provided because of a need to respond more quickly to such unanticipated conditions, the permittee shall provide notice to the Director and U.S. EPA as soon as possible after learning of the need to make the change. The use of the "Title V Permit Revision Form" may satisfy this notification requirement, which shall provide the following information:
 - i. Description of the change to be made;
 - ii. The date on which the change will occur;
 - iii. Any changes in emissions;
 - iv. Any permit terms and conditions that are affected
2. Permittee shall thereafter maintain a copy of the notice with the permit, and the Director shall place a copy with the permit in the public file.

C. Implementation of Change:

The permittee may implement the change seven (7) days after submitting the required notification, in accordance with Section 5.8.a. of 45CSR30 (paragraph V.B.1.).

D. Public Notice:

Changes made to Title V Permits through Operational Flexibility procedures do not require public notice.

E. Permit Shield:

The permit shield shall **not** apply to changes made under this section except those provided for in paragraph 5.8.d of 45CSR30 (Emissions Trading, paragraph V.G. below). The permit shield may be reinstated for emissions and operations affected by the change if:

1. Subsequent changes cause the facility's operations and emissions to revert to those authorized in the permit and the permittee resumes compliance with the terms and conditions of the permit, or
2. The permittee obtains final approval of a significant modification to the permit to incorporate the change in the permit.

F. Emissions Trading:

Upon the request of a permit applicant, the Director may issue a permit that contains terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements.

1. The permit applicant shall include the following in its application proposed replicable procedures and permit terms that assure that the emissions trades are quantifiable, enforceable, and replicable, and comply with all applicable requirements and paragraph 5.1.j of 45CSR30.
2. The permit shield shall apply to permit terms and conditions authorizing such increases and decreases in emissions.
3. The written notification required above (paragraph V.A.3.) shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

VI. Reopenings (C.S.R. § 45-30.6.6)**A. Reopenings For Cause:**

1. *Criteria:* Each issued Title V Operating Permit shall be reopened and revised under any of the following circumstances:
 - i. Additional applicable requirements under the Clean Air Act or the Director's legislative rules become applicable to a major source with a remaining permit term of three (3) or more years.
 - ii. Additional requirements (including excess emissions requirements) become applicable to an affected source under Title IV of the Clean Air Act (Acid Deposition Control) or other legislative rules of the Director. Upon approval by U.S. EPA, excess emissions offset plans shall be incorporated into the permit.
 - iii. The Director or U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
 - iv. The Director or U.S. EPA determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.
2. *Processing Requirements:* Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

3. *Notice of Reopening*: Reopenings under paragraph 45CSR30-6.6.a (of this section) shall not be initiated before a notice of such intent is provided to the source by the Director at least thirty (30) days in advance of the date that the permit is to be reopened, except that the Director may provide a shorter time period in the case of an emergency. The notice shall include a statement of the reasons for the reopening of the permit. Until such time as a permit is reissued pursuant to the reopening, the source shall be entitled to the continued protection of any permit shield provided in the permit, unless the Director specifically suspends the shield upon a finding that such suspension is necessary to implement applicable requirements.

B. Reopenings For Cause Resulting From U.S. EPA Notice:

1. The Director shall, within ninety (90) days after receipt of a notification from U.S. EPA that cause exists to terminate, modify, or revoke and reissue a permit, forward to U.S. EPA a proposed determination of termination, modification, or revocation and reissuance, as is appropriate. The Director may request an extension of this ninety (90) day period for an additional ninety (90) days if the Director finds that a new or revised permit application is necessary or that the Director must require the permittee to submit additional information.
2. The Director shall have ninety (90) days from receipt of a U.S. EPA objection to resolve any objection that U.S. EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with U.S. EPA's objection.

VII. Title V Permit Revisions - Factors for Consideration

When considering which option to use in revising a Title V Operating Permit, the following factors should be considered:

- A. Is the change a Title I Modification (NSPS, MACT, NESHAP, PSD - R14, or non-attainment NSR - R19)?
- B. What are the public participation requirements involved with the type of revision?
- C. How fast does the source need to "operate" the change?
- D. How do you value permit shield coverage?
- E. Does the existing Title V permit address or prohibit the proposed change (conflict with permit)?

VIII. Example of Permit Revision Options (Refer to flowchart in Appendix A)

- A. Example #1 - Various Revision Types: A company needs to make changes at their facility quickly in order to compete in the market-place. (It would like to be "shielded", but this concern is secondary to its need to operate the new equipment as soon as possible.) The existing Title V permit does not include any facility-wide emissions caps. What permit revision options are available if:
 1. *Implementation of the proposed changes trigger Major NSR, NSPS, MACT, NESHAP, (Title I Modification)*?
 - i. Significant Permit Modification (SPM) - if change conflicts with existing Title V permit: Must first go through NSR/PSD review and SPM. Permit shield is available. Can't operate change until final action on SPM.
 - a) Parallel Process: NSR/PSD permit and Title V permit go to Notice simultaneously to expedite process. Permit shield available. The "Application for NSR and Title V Permit Revision" form may be used.

- ii. Significant Permit Modification (SPM) - if change does not conflict with existing Title V permit: Go through NSR/PSD only. Source can operate change, and SPM application must be submitted within 12 months from commencing operation [45CSR30 - §4.1.a.2.]. The “Title V Permit Revision Form” may be used.
2. *Implementation of the proposed changes trigger 45CSR13 permit, but is not considered a Title I Modification)?*
- i. Minor Permit Modification (MPM): Must first go through R13 and MPM. Permit shield **not** available. Permittee can operate change within 7 days of application submittal. The “Application for NSR and Title V Permit Revision” form may be used.
 - a) If the proposed changes involve significant changes or relaxations to existing monitoring, recordkeeping, or reporting requirements, then the significant modification procedures must be used.
 - b) For the purpose of obtaining a permit shield for this type of change, the permittee may follow-up the minor modification permit with an application for a significant modification at any time.
3. *Addition of new equipment that does **not** trigger 45CSR13 permit (PDF)?*
- i. Off-Permit Change - if change does not conflict with existing permit: Can operate change immediately. Provide written notice to DAQ/EPA within 2 days of change. Permit shield **not** available. Records are to be maintained, and copies of notification placed with permit in the company’s public file. The “Title V Permit Revision Form” may be used for this notification.

B. Example #2 - Operational Flexibility:

Statement:

A facility’s Title V permit contains specific limits for the type of coating (manufacturer, name, etc.) to be used, as well as usage and VOC-content limits for a particular coating line.

Proposed Change:

The company proposes to switch to an equal or lesser VOC-content coating from a *different manufacturer*, where:

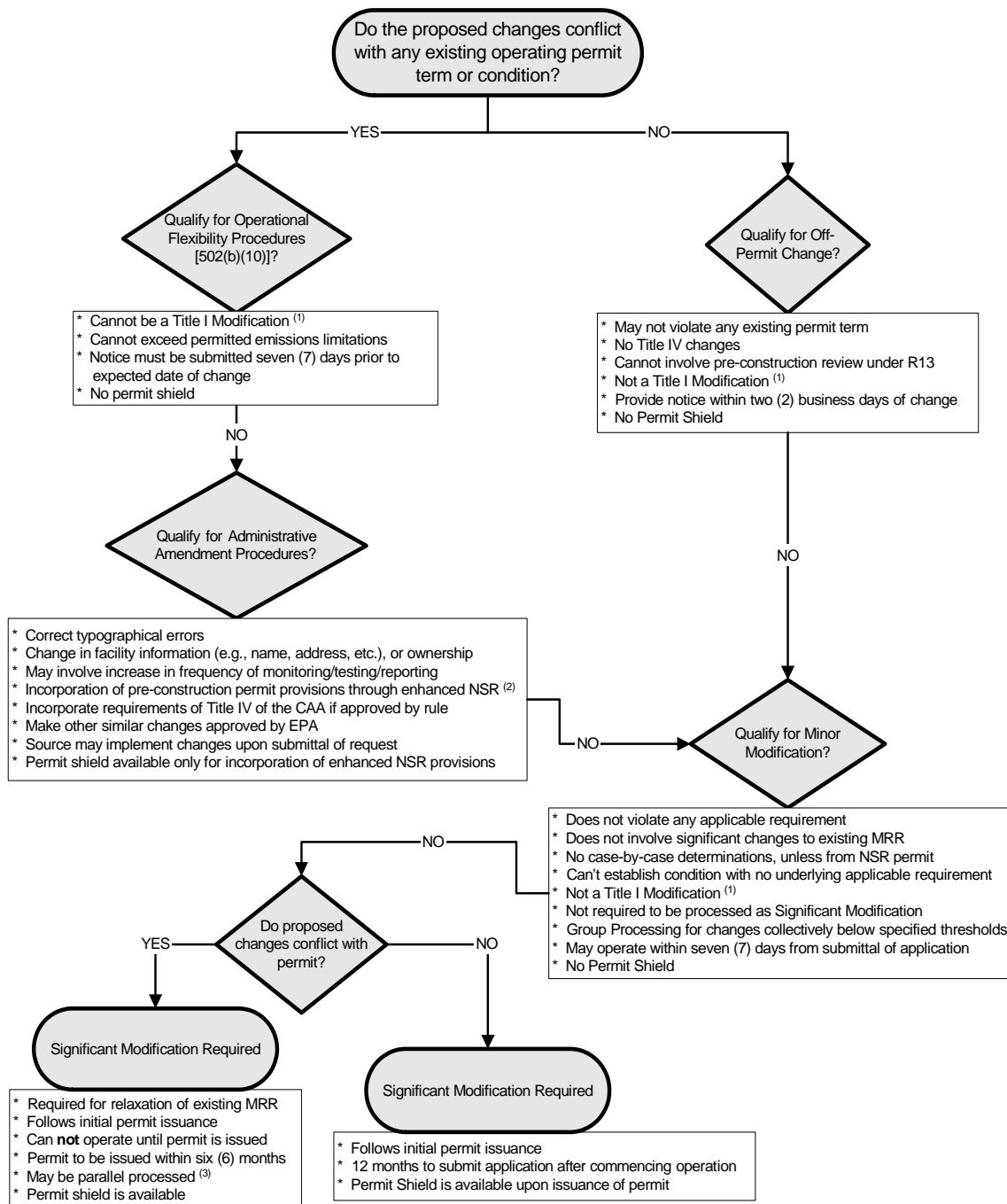
- i. Coating usage does not increase due to proposed change;
- ii. VOC emissions do not increase due to proposed change;
- iii. Proposed change does not trigger NSPS, MACT, NESHAP, etc. (Title I Modification).

Operational Flexibility Procedures:

Because the coating manufacturer and name is included in coating limitations, there is a conflict with the permit, therefore permittee must submit written notice of the proposed change seven (7) days prior to the expected date of said change. Records are to be maintained accordingly. The “Title V Permit Revision Form” may be used for this notification.

APPENDIX A – Flowchart

DAQ - Title V Permit Revision Flowchart



Notes

- (1) Title I Modifications consist of permitting actions involving major NSR (PSD & non-attainment NSR), NSPS, NESHAP, and MACT
 (2) Enhanced NSR process must satisfy the Title V permit processing requirements to ensure proper level of review by the public, affected states, and EPA
 (3) Source may submit R13 and SPM applications simultaneously and request that parallel process procedures be used to expedite Title V permit issuance