

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Division

Definition of "Title I Modification"
(LAC 33:III.502) (AQ347)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.502 (AQ347).

This rule will revise the definition of "Title I Modification" in LAC 33:III.502.A to clarify that, in the context of section 111 of the Clean Air Act, such modifications are limited to physical or operational changes to an existing facility. 40 CFR 70.7(e)(2)(i)(A)(5) states that minor permit modification procedures may be used only for those permit modifications that are "not modifications under any provision of title I of the Act." However, neither 40 CFR 70 nor 40 CFR 71 defines "Title I Modification" or otherwise describes what constitutes a modification "under any provision of title I of the Act."

LAC 33:III.502.A defines "Title I Modification," in relevant part, as "any physical change or change in the method of operation of a stationary source which increases the amount of any regulated air pollutant emitted or which results in the emission of any regulated air pollutant not previously emitted" and which "will result in the applicability of a standard of performance for new stationary sources promulgated pursuant to section 111 of the Clean Air Act."

This definition could be interpreted to include both the addition of a new affected facility to a stationary source and the modification of an existing facility at a stationary source. However, under 40 CFR 60.2 and 60.14, a modification is defined as any physical or operational change to an existing facility.

Therefore, consistent with the aforementioned provisions, this rule revision will clarify that "Title I Modifications," in the context of section 111 of the Clean Air Act, are limited to physical or operational changes to an existing facility. The basis and rationale for this rule are to clarify that "Title I Modifications," in the context of section 111 of the Clean Air Act, are changes to existing facilities. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

This rule has no known impact on poverty as described in R.S. 49:973.

This rule has no known impact on providers as described in HCR 170 of 2014.

A public hearing will be held on October 28, 2015, at 1:30 p.m. in the Galvez Building, Room 1051, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ347. Such comments must be received no later than November 4, 2015, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ347. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Baratavia Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

Title 33**ENVIRONMENTAL QUALITY****Part III. Air****Chapter 5. Permit Procedures****§502. Definitions**

A. Except where specifically provided in another Section herein, the following definitions apply to terms used in this Chapter. Except as provided in this Chapter, terms used in this Chapter retain the definition provided them in LAC 33:III.111 or the Louisiana Air Quality regulations. Wherever provisions related to the Acid Rain Program are concerned, the definitions provided in 40 CFR Part 72 shall apply.

* * *

Title I Modification—any physical change or change in the method of operation of a stationary source which increases the amount of any regulated air pollutant emitted or which results in the emission of any regulated air pollutant not previously emitted and which meets one or more of the following descriptions.

- a. The change will constitute a modification as described in 40 CFR 60.14 and therefore result in the applicability of a standard of performance for new stationary sources promulgated pursuant to section 111 of the Clean Air Act.
- b. The change will result in a significant net emissions increase under the *prevention of significant deterioration (PSD) program*, as defined in LAC 33:III.509.B.
- c. The change will result in a significant net emissions increase under the program for Nonattainment New Source Review, as defined in LAC 33:III.504.
- d. The change will result in the applicability of a maximum achievable control technology (MACT) determination pursuant to regulations promulgated under section 112(g) (Modifications, Hazardous Air Pollutants) of the Clean Air Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 36:2553 (November 2010), LR 37:1148 (April 2011), LR 37:1391 (May 2011), LR 41:**.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

LOG #: AQ347

Person Preparing Statement: Bryan D. Johnston Dept.: Environmental Quality
Phone: (225) 219-3450 Office: Environmental Services
bryan.johnston@la.gov
Return Address: 602 North Fifth Street Rule Title: Definition of "Title I Modification"
Baton Rouge, LA 70802 (LAC 33:III.502.A)
Date Rule Takes Effect: Upon Promulgation

SUMMARY (Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule change. The proposed rule change will revise the definition of "Title I Modification" to clarify that, in the context of section 111 of the Clean Air Act, such modifications are limited to physical or operational changes to an existing facility. Title I modifications are any physical change or change in the method of operation of a stationary source which increases the amount of any regulated air pollutant emitted or which results in the emission of any regulated air pollutant not previously emitted and that meets one of the other conditions set forth in the Title 1 Modification definition (a - d).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Owners or operators of Part 70 sources, such as mills and processing plants, seeking a permit modification will be affected by the proposed rule change. In evaluating the requisite permit application, LDEQ will determine whether the change constitutes a "Title I Modification." If the permit application is determined to be a "Title I Modification," the permit revision must be processed using significant modification procedures that require a public comment period of at least 30 days and a 45-day EPA review period. If it is not determined to be a "Title I Modification," minor modification procedures may be utilized.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule change.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This rule will revise the definition of "Title I Modification" in LAC 33:III.502.A to clarify that, in the context of section 111 of the Clean Air Act, such modifications are limited to physical or operational changes to an *existing* facility.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

40 CFR 70.7(e)(2)(i)(A)(5) states that minor permit modification procedures may be used only for those permit modifications that are "not modifications under any provision of title I of the Act." However, neither 40 CFR 70 nor 40 CFR 71 defines "Title I Modification" or otherwise describes what constitutes a modification "under any provision of title I of the Act."

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This definition could be interpreted to include both the addition of a new affected facility to a stationary source *and* the modification of an existing facility at a stationary source. However, under 40 CFR 60.2 and 60.14, a modification is described as any physical or operational change to an *existing* facility.

Therefore, consistent with the aforementioned provisions, this rule revision will clarify that "Title I Modifications," in the context of section 111 of the Clean Air Act, are limited to physical or operational changes to an existing facility.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, the proposed rule will not result in any increase in the expenditure of funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ___ Yes. If yes, attach documentation.

(b) ___ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

No costs or savings to state agencies are anticipated as a result of the proposed rule.

COSTS	FY 15-16	FY 16-17	FY 17-18
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR. POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

This question is not applicable.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No additional funds are required to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

No impact on local governmental units is anticipated.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

There will be no costs or savings to local governmental units, so no funding sources will be affected.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

No increase or decrease in revenues to state or local governmental units will be realized.

REVENUE INCREASE/DECREASE	FY 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase or decrease in revenues will be realized.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Owners or operators of Part 70 sources seeking a permit modification to authorize an "affected facility," as defined in 40 CFR 60.2, will be affected by the proposed action. In evaluating the requisite permit application, LDEQ must determine whether the change constitutes a "Title I Modification." If so, the permit revision must be processed using significant modification procedures (LAC 33:III.527.A.2.a), which require a public comment period of at least 30 days and a 45-day EPA review period. If not, minor modification procedures may be utilized.

No effect on costs, including workload adjustments and additional paperwork, is expected.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No impact on receipts or income of the affected persons or non-governmental groups is expected.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition or employment in the public or private sector.