PROPOSED RULEMAKING

DEPARTMENT OF STATE

[51 PA. CODE CH. 53]

Biennial Filing Fee

The Department of State (Department) proposes to amend Chapter 53 (relating to registration and termination) by amending § 53.1 (relating to biennial filing fee) to read as set forth in Annex A. The proposed rulemaking increases the biennial registration fee for individuals and entities required to be registered under 65 Pa.C.S. Chapter 13A (relating to lobbying disclosure) (act) from $100 to $200.

Statutory Authority

Section 13A08(j) of the act (relating to administration) provides that the Department may by regulation adjust the filing fee established under section 13A10 of the act (relating to registration fees; fund established; system; regulations) if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the act.

Purpose

The current registration fee of $100 for individuals and entities required to be registered under the act was established by the act in section 13A10(a). Section 13A08(j) of the act states that the fees may be raised if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the act. For the Fiscal Years (FY) 2007-2008, the Department's costs for administering the act totaled $1,054,165.07. For the biennial registration period 2007-2008, the registration fees paid to the Department totaled $234,200. For the FY 2008-2009, the Department's costs are projected to be $1,711,318. While the increase in the registration fee will not come close to covering the total costs of administering the act to the Department, it will help to defray some of the costs.

Description of Proposed Rulemaking:

Section 53.1. Biennial Filing Fee.

Based upon the expense and revenue estimates provided to the Department, the Department proposes to adopt § 53.1(a)(1) to increase the biennial registration fee for individuals and entities required to be registered under the act from $100 to $200. The increased registration fee will go into effect on January 1, 2011. The increase in the registration fee will help defray some of the costs of administering the act.

Fiscal Impact

Commonwealth

By raising the registration fee to $200, the proposed rulemaking will help the Department defray some of the costs of administering the act.

Local Government

Local government will not have any expenses associated with this rulemaking. However, if a local government is required to register as a principal, the local government would have the cost of the increased registration fee of $200, and would then be considered part of the regulated community.

Private Sector

The proposed rulemaking will increase the biennial registration fee for principals, lobbying firms and lobbyists to $200.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 6, 2009, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate and House State Government Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking by the Department.

Responses to Comments

Contact Person:

Interested persons may contact Shauna C. Graves, Assistant Counsel, Department of State, 210 North Office Building, Harrisburg, PA 17120-0039, shgraves@state.pa.us. Comments must be received by November 16, 2009.

PEDRO A. CORTÉS,
Secretary

Fiscal Note: 16-50. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 51. PUBLIC OFFICERS

PART III. LOBBYING DISCLOSURE

CHAPTER 53. REGISTRATION AND TERMINATION

§ 53.1. Biennial filing fee.

(a) Under section 13A10(a) of the act (relating to registration fees; fund established; system; regulations), a principal, lobbying firm or lobbyist required to be registered under the act shall pay a biennial filing fee of **[$100] $200** to the Department, made payable to the "Commonwealth of Pennsylvania."

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[Pa.B. Doc. No. 09-1926. Filed for public inspection October 16, 2009, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121, 127 AND 139]

Air Quality Fee Schedules

The Environmental Quality Board (Board) proposes to amend Chapters 121, 127 and 139 (relating to general

provisions construction, modification, reactivation and operation of sources; and sampling and testing) as set forth in Annex A.

This proposal will address any disparity between the program income generated by fees and the cost of administering those programs.

This notice is given under Board order at its meeting of July 21, 2009.

A. *Effective Date*

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

These amendments will be submitted to the United States Environmental Protection Agency as a revision to the Pennsylvania State Implementation Plan upon final-form rulemaking.

B. *Contact Persons*

For further information, contact Dean Van Orden, Assistant Director, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9264 or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site at http://www.depweb.state.pa.us.

C. *Statutory Authority*

This action is being taken under the authority of section 6.3 of the Air Pollution Control Act (APCA) (35 P. S. § 4006.3), which grants to the Board the authority to adopt regulations to establish fees to cover the indirect and direct costs of administering the air pollution control program.

D. *Background and Summary*

The main purpose of this proposed rulemaking is to amend existing requirements and fees codified in Chapter 127, Subchapter I (relating to plan approval and operating permit fees), and add new categories of fees to that subchapter to address modifications of existing plan approvals and requests for determination of whether a plan approval is required. The proposed rulemaking would also add a new section to address fees for risk assessment applications. The proposed rulemaking would amend the existing annual emission fee paid by the owner or operator of a Title V facility. The proposed rulemaking would also add Subchapter D (relating to testing, auditing, and monitoring fees) to Chapter 139, to add new categories of fees to address Department-performed source testing, test report reviews and auditing and monitoring activities related to continuous emissions monitoring systems (CEMS).

These increased fees and new fees would be used to support the Department's air quality program as authorized by the APCA. This will ensure that the program is self-sustaining. The fee revisions would allow the Department to maintain staffing levels in the air quality program. This would provide a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

Increased funding for the plan approval and operating permit program would continue to allow for timely and complete review of plan approval and operating permit applications. Implementation of new fees for risk assessment applications would allow for resources to address this important area of public health and social well-being by evaluating the risks associated with observed levels of contaminants.

Implementation of the new schedule of fees proposed in Chapter 139, Subchapter D, for the source testing and monitoring program would fund observations of stack emissions source testing and audits of CEMS by Department staff. Observations and audits conducted by Department staff with expertise in source testing and monitoring would ensure that high quality test and monitoring data are collected and submitted to the Department. High quality data are critical to determining compliance with permitted air pollutant emission limits and establishing emission inventories used by the Department in developing programs to protect public health and social well-being.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of these proposed amendments. At its February 12, 2009, meeting, the AQTAC concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking with publication for a minimum 60-day public comment period and three public hearings.

The Department also conferred with the Citizens Advisory Council (CAC) concerning the proposed rulemaking on February 17, 2009. The CAC concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking. An overview of the proposal was presented to the Small Business Compliance Advisory Committee on March 4, 2009.

E. *Summary of Regulatory Revisions*

The proposed amendments add the following 22 new definitions and terms to § 121.1 (relating to definitions) to explain source testing, auditing and monitoring activities used in the substantive provisions under either Chapter 127, Subchapter I or Chapter 139, Subchapter D: "CEMS level 1 quarterly report," "CEMS level 1 quarterly report audit," "CEMS level 2 system inspection audit," "CEMS level 3 analyzer audit," "CEMS level 4 system audit," "CEMS level 4 system audit report," "CEMS level 4 test protocol," "CEMS level 4 test protocol review," "CEMS level 4 test report (RATA)," "CEMS level 4 test report (RATA) review," "CEMS levels," "CEMS periodic self-audit," "CEMS phase 1 monitoring plan," "CEMS phase 1 monitoring plan review," "CEMS phase 2 test protocol," "CEMS phase 3 certification test report," "CEMS phase 3 certification test report review," "CEMS phases," "observer," "RATA-relative accuracy test audit," "risk assessment" and "trial burn operating scenario." The proposed amendments revise the definition of one term to provide clarity: "CEMS—continuous emissions monitoring system."

Proposed changes to § 127.701 (relating to general provisions) ensure that fees are made payable to the Pennsylvania Clean Air Fund and that at least every 5 years, the Department will provide the Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and

the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

Proposed changes to § 127.702 (relating to plan approval fees) provide for, among other things, the following proposed fee provisions:

Under subsection (b), the owner or operator of a source requiring approval under Chapter 127, Subchapter B (relating to plan approval requirements), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to $1,300 for applications filed during the 2010—2014 calendar years; $1,600 for applications filed during the 2015—2019 calendar years; and $2,000 for applications filed for the calendar years beginning in 2020.

Under subsection (c), the owner or operator of a source requiring approval under Chapter 127, Subchapter E (relating to new source review), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to $6,300 for applications filed during the 2010—2014 calendar years; $7,300 for applications filed during the 2015—2019 calendar years; and $8,000 for applications filed for the calendar years beginning in 2020.

Under subsection (d), the owner or operator of a source requiring approval under Chapter 122, Chapter 124 or § 127.35(b) (relating to national standards of performance for new stationary sources; national emission standards for hazardous air pollutants; and maximum achievable control technology standards for hazardous air pollutants), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to $2,000 for applications filed during the 2010—2014 calendar years; $2,500 for applications filed during the 2015—2019 calendar years; and $3,000 for applications filed during the calendar years beginning in 2020.

Under subsection (e), the owner or operator of a source requiring approval under § 127.35(c), (d) or (h), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to $10,000 for applications filed during the 2010—2014 calendar years; $12,000 for applications filed during the 2015—2019 calendar years; and $14,000 for applications filed during the calendar years beginning in 2020.

Under subsection (f), the owner or operator of a source requiring approval under Chapter 127, Subchapter D (relating to prevention of significant deterioration of air quality), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to $27,200 for applications filed during the 2010—2014 calendar years; $30,700 for applications filed during the 2015—2019 calendar years; and $35,700 for applications filed during the calendar years beginning 2020.

Under subsection (g), the owner or operator of a source proposing a modification of a plan approval, extension of a plan approval or transfer of a plan approval due to a change of ownership, except as provided in subsection (h), when an amendment of a plan approval or revision of an application by the applicant that requires the reassessment of a control technology determination or of the ambient impacts of the source is a significant modification of the plan approval or application, shall pay a fee equal to $400 for applications filed during the 2010—2014 calendar years; $500 for applications filed during the 2015—2019 calendar years; and $650 for applications filed during the calendar years beginning in 2020.

Under subsection (h)(1), the applicant proposing an amendment of the plan approval or revision to an application that requires reassessment of a control technology determination shall pay fees as established under subsections (b)—(f).

Under subsection (h)(2), the applicant proposing an amendment of a plan approval or revision to an application that requires changes to the ambient impact analysis or Department reanalysis of the ambient impacts of the source to meet the requirements of 40 CFR 51, Appendix W (relating to guideline on air quality models) shall pay fees in accordance with the following: for modeling using a screening technique as defined in 40 CFR 51, Appendix W—$3,500 for applications filed during the 2010—2014 calendar years; $4,500 for applications filed during the 2015—2019 calendar years; and $6,000 for applications filed for calendar years beginning in 2020; for all other modeling as defined in 40 CFR 51, Appendix W—$7,500 for applications filed during the 2010—2014 calendar years; $9,000 for applications filed during the 2015—2019 calendar years; and $11,000 for applications filed for the calendar years beginning in 2020.

Under subsection (j), the owner or operator of a source that submits a request for determination for a plan approval application shall pay a fee equal to $400 for requests for determination filed during the 2010—2014 calendar years; $500 for requests for determination filed during the 2015—2019 calendar years; and $650 for requests for determination filed for the calendar years beginning in 2020. The owner or operator of a source that submits a request for determination for both a plan approval under this section and an operating permit under § 127.703(e) (relating to operating permit fees under Subchapter F) shall pay one request for determination fee.

Under subsection (k), the owner or operator of a source proposing to use a general plan approval under Chapter 127, Subchapter H (relating to general plan approvals and operating permits) shall pay a fee which will not be greater than the fees established under § 127.702. These fees shall be established at the time the general plan approval is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice; and review period).

Proposed changes to § 127.703 provide for, among other things, the following proposed fee provisions:

Under subsection (b) for processing an application for an operating permit—$500 for applications filed during the 2010—2014 calendar years; $600 for applications filed during the 2015—2019 calendar years; and $850 for applications filed for the calendar years beginning in 2020.

Under subsection (c) for the annual operating permit administration fee—$500 for the 2010—2014 calendar years; $600 for the 2015—2019 calendar years; and $750 for the calendar years beginning in 2020. The annual operating permit administration fee is due on or before March 1 of each year for the current calendar year.

Under subsection (e), the owner or operator of a source that submits a request for determination for an operating permit shall pay a fee equal to $400 for requests for determination filed during the 2010—2014 calendar years; $500 for requests for determination filed during the 2015—2019 calendar years; and $650 for requests for

determination filed for the calendar years beginning in 2020. The owner or operator that submits a request for determination for both an operating permit under this section and a plan approval under § 127.702(j) shall pay one request for determination fee.

Under subsection (f), the owner or operator of a source proposing to use a general operating permit under Chapter 127, Subchapter H shall pay a fee which will not be greater than the fees established under § 127.703. These fees shall be established at the time the general operating permit is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

Proposed changes to § 127.704 (relating to Title V operating permit fees under Subchapter G) provide for, among other things, the following proposed fee provisions:

Under subsection (b), for processing an application for an operating permit—$900 for applications filed during the 2010—2014 calendar years; $1,100 for applications filed during the 2015—2019 calendar years; and $1,500 for applications filed for the calendar years beginning in 2020.

Under subsection (c), the annual operating permit administrative fee—$900 for applications filed during the 2010—2014 calendar years; $1,100 for applications filed during the 2015—2019 calendar years; and $1,300 for applications filed for the calendar years beginning in 2020.

Under subsection (e), the owner or operator of a source proposing to use a general operating permit under Chapter 127, Subchapter H shall pay a fee which will not be greater than the fees established under § 127.704. These fees shall be established at the time the general operating permit is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

Proposed changes to § 127.705 (relating to emission fees) provide for, among other things, under subsection (a) that beginning January 1, 2010, the annual Title V emission fee is $70 per ton for each ton of regulated pollutant actually emitted from the facility.

Proposed § 127.708 (relating to risk assessment) provides that each applicant for a risk assessment shall, as part of the plan approval application, submit the application fee as follows:

Under subsection (b), for a risk assessment that is inhalation only with a screening model—$5,000 for applications filed during the 2010—2014 calendar years; $6,000 for applications filed during the 2015—2019 calendar years; and $7,200 for applications filed for the calendar years beginning in 2020.

Under subsection (c), for a risk assessment that is inhalation only for all other modeling—$9,000 for applications filed during the 2010—2014 calendar years; $11,000 for applications filed during the 2015—2019 calendar years; and $13,000 for applications filed for the calendar years beginning in 2020.

Under subsection (d), for a risk assessment that is multi-pathway—$10,000 for applications filed during the 2010—2014 calendar years; $12,000 for applications filed during the 2015—2019 calendar years; and $14,500 for applications filed for the calendar years beginning in 2020.

Chapter 139 is proposed to be amended to add Subchapter D. This subchapter is proposed to establish fees for testing, auditing and monitoring activities that the Department undertakes to administer the requirements of the APCA or the Clean Air Act. The fees collected under this subchapter shall be made payable to the Pennsylvania Clean Air Fund and deposited into the Clean Air Fund established under section 9.2 of the APCA (35 P. S. § 4009.2). At least every 5 years, the Department will provide the Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

Under proposed § 139.202 (relating to schedule of testing, auditing and monitoring fees) for testing, auditing and monitoring activities performed by Department personnel for calendar years 2010—2014, 2015—2019, and calendar years beginning with 2020, the Department will assess a testing, auditing or monitoring fee on the applicant or permittee in accordance with the schedule of testing, auditing and monitoring fees for activities performed by Department personnel listed in Table I.

F. *Benefits, Costs and Compliance*

Benefits

Overall, the citizens of this Commonwealth would benefit from these proposed amendments because the fee revisions would allow the Department to maintain staffing levels in the air quality program. This would provide a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

Compliance Costs

The proposed rulemaking adjusts the fees to be paid by the owners or operators of affected facilities. The Department estimates that the increase in emission fees will result in additional costs of $2,761,000 per year to the owners or operators of affected facilities. The adjusted plan approval and permit fees are estimated to result in an increase in costs of $760,000 per year. The source testing fees would increase costs to owners or operators by $1.4 million per year. No new legal, accounting or consulting procedures would be required.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing compliance assistance program.

Paperwork Requirements

There are no additional paperwork requirements associated with this proposed rulemaking with which industry would need to comply.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rule-

making would allow the Department to maintain staffing levels in the air quality program, which would provide a sound basis for continued air quality assessments and planning that are fundamental to reducing pollution and protecting public health and welfare and the environment.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

At least every 5 years, the Department will provide the Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 6, 2009, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed amendments within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. *Public Comments*

Written Comments: Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by December 21, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by December 21, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulation will be considered.

Electronic Comments: Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by December 21, 2009. A subject heading of the proposal and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to ensure receipt.

K. *Public Hearings*

The Board will hold three public hearings for the purpose of accepting comments on this proposal. The hearings will be held as follows:

Department of Environmental Protection Southcentral Regional Office Susquehanna Room A 909 Elmerton Avenue Harrisburg, PA 17110	November 17, 2009 10 a.m.
Department of Environmental Protection Southeast Regional Office Delaware Conference Room 2 East Main Street Norristown, PA 19401	November 19, 2009 10 a.m.
Department of Environmental Protection Southwest Regional Office Waterfront Conference Room A and B 400 Waterfront Drive Pittsburgh, PA 15222-4745	November 20, 2009 10 a.m.

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Board may accommodate their needs.

JOHN HANGER,
Chairperson

Fiscal Note: 7-441. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

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CEMS—Continuous emissions monitoring system— **[For purposes of Chapter 127, Subchapter E, all]**

(i) All of the equipment **[that]:**

(A) That may be required to meet the data acquisition and availability requirements **[of Chapter 127, Subchapter E] set forth by the Department** to sample, condition, analyze and provide a record of emissions on a continuous basis.

(B) That may be necessary for the determination, collection and reporting of a pollutant or parameter in the applicable units of measurement in accordance with the requirements set forth by the Department.

(ii) The requirements may be set forth by the Department in one or more of the following:

(A) Plan approval.

(B) Permit.

(C) Order.

(D) Technical guidance.

(E) Chapter 127, Subchapter E (relating to new source review).

(F) Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources).

(G) Other regulations.

***CEMS level 1 quarterly report*—The written emissions report submitted quarterly to the Department by the owner or operator of a facility with a CEMS. The format and content of the report are specified in the *Continuous Source Monitoring Manual* referenced in § 139.102(3) (relating to references).**

***CEMS level 1 quarterly report audit*—The audit conducted by the Department on the CEMS level 1 quarterly emissions report submitted by the owner or operator of a facility.**

(i) The audit includes both of the following activities:

(A) A review of the emissions report for consistency in both format and content with the current *Continuous Source Monitoring Manual* referenced in § 139.102(3).

(B) Subsequent processing of the emissions report through the Continuous Emission Monitoring Data Processing System (CEMDPS), from which a written report summarizing the quarterly report submitted by the facility is generated.

(ii) Initial submittal refers to the first time the CEMS level 1 quarterly report is submitted for audit.

(iii) Resubmittal refers to subsequent submittals of the CEMS level 1 quarterly report to correct incorrect data or calculations or to supply missing data or calculations.

***CEMS level 2 system inspection audit*—**

(i) A random or as-needed audit conducted by the Department of the CEMS at a facility, which consists of all of the following:

(A) A system configuration and equipment inspection.

(B) A diagnostic check of the analyzers.

(C) An operational audit.

(D) A data inspection.

(ii) The term includes a field systems inspection audit.

***CEMS level 3 analyzer audit*—**

(i) A random or as-needed audit conducted by the Department of analyzer performance of the CEMS at a facility, which includes both of the following actions:

(A) Each analyzer is challenged with Department-supplied calibration gases or neutral density filters (opacity) at three operational levels.

(B) The results obtained from the facility analyzers are compared to the values of the reference materials.

(ii) The term includes an analyzer performance audit.

***CEMS level 4 system audit*—An audit by either the Department or the owner or operator of the facility of the system performance of the CEMS, conducted in accordance with the Department's current RATA procedures, when both of the following occur:**

(i) Testing is conducted using EPA-approved test methods.

(ii) The test results are reported in the applicable units of measurement in the CEMS level 4 system audit report.

***CEMS level 4 system audit report*—The written report containing the results of a Department- or company-conducted CEMS level 4 system audit of the system performance of the CEMS.**

***CEMS level 4 test protocol*—A test protocol that describes all test procedures and methods to be used to inspect the CEMS.**

***CEMS level 4 test protocol review*—Department review of the information contained in the CEMS level 4 test protocol.**

***CEMS level 4 test report (RATA)*—The test report detailing the results of the testing conducted on the CEMS.**

***CEMS level 4 test report (RATA) review*—Department review of the information contained in the CEMS level 4 test report (RATA).**

***CEMS levels*—A four-level inspection and audit program that the Department uses to determine the continued accuracy and reliability of installed, certified CEMS.**

***CEMS periodic self-audit*—A periodically conducted audit of system performance that is required of the owner or operator of a certified CEMS, which follows the current RATA procedures listed in the CEMS phase 2 performance testing section of the current *Continuous Source Monitoring Manual* referenced in § 139.102(3).**

***CEMS phase 1 monitoring plan*—**

(i) The initial written monitoring plan application for the installation of a CEMS, submitted by the owner or operator of a facility to the Department.

(ii) The monitoring plan application must indicate the probable capability of a monitoring system to meet all of the regulatory requirements.

***CEMS phase 1 monitoring plan review*—Review of the CEMS phase 1 monitoring plan by the Department.**

(i) Initial certification refers to a currently uncertified CEMS undergoing the process of certification for the first time.

(ii) Recertification refers to a currently certified CEMS undergoing the process of the CEMS phase 1 monitoring plan review due to a change from the currently approved system.

***CEMS phase 2 test protocol*—**

(i) The report that documents the performance testing that will be conducted on the CEMS by the owner or operator of the facility to obtain Department certification.

(ii) The report is submitted to the Department in the form of a written test protocol as specified in the *Continuous Source Monitoring Manual* referenced in § 139.102(3).

***CEMS phase 3 certification test report*—The written report submitted to the Department by the owner or operator of the facility, which includes all of the following information to verify the compliance of the CEMS with all regulatory requirements:**

(i) Identification of all analyzer/measurement device serial numbers.

(ii) Identification of all raw data and calculations for the testing specified in the CEMS phase 2 test protocol submitted by the owner or operator of the facility.

(iii) All additional data or testing required by the Department,

***CEMS phase 3 certification test report review*—Review of the CEMS phase 3 certification test report by the Department, which, if approved in writing, results in the certification of the CEMS.**

***CEMS phases*—**

(i) The certification process for a new, currently uncertified CEMS.

(ii) The recertification process for a currently certified CEMS for which the owner or operator has applied for a change from the currently approved system.

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***Observer*—For purposes of Chapter 139, Subchapter D (relating to testing, auditing and monitoring fees), Department staff qualified to observe testing.**

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***RATA—Relative accuracy test audit*—A performance test of the CEMS required as part of the following:**

(i) A CEMS phase 2 test protocol.

(ii) A CEMS level 4 system audit, when conducted by the Department.

(iii) The CEMS periodic self-audit.

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***Risk assessment*—The determination of potentially adverse health effects from exposure to chemicals, including both quantitative and qualitative expressions of risk.**

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***Trial burn operating scenario*—A demonstration of process capability for a source using an operating method or operating process different from the process operating conditions described in the operating permit.**

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CHAPTER 127. CONSTRUCTION, MODIFICATION, REACTIVATION AND OPERATION OF SOURCES

Subchapter I. PLAN APPROVAL AND OPERATING PERMIT FEES

§ 127.701. General provisions.

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(b) The fees collected **under this subchapter** shall be **made payable to the Pennsylvania Clean Air Fund and** deposited into the Clean Air Fund established under section 9.2 of the act (35 P. S. § 4009.2).

(c) Fees collected **under this subchapter** to implement the requirements of Title V of the Clean Air Act and the Small Business Stationary Source Technical and Environmental Compliance Assistance, Compliance Advisory Committee and the Office of Small Business Ombudsman shall be **made payable to the Pennsylvania Clean Air Fund and** deposited into a restricted revenue account within the Clean Air Fund.

(d) At least every 5 years, the Department will provide the EQB with an evaluation of the fees in this subchapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

§ 127.702. Plan approval fees.

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(b) Except as provided in subsections (c)—**[(g)] (j), the owner or operator of** a source requiring approval under Subchapter B (relating to plan approval requirements) shall pay a fee equal to:

(1) **[Seven hundred fifty dollars for applications filed during the 1995—1999 calendar years.**

(2) Eight hundred fifty dollars for applications filed during the 2000—2004 calendar years.

(3)] One thousand dollars for applications filed **[for] during** the **[calendar years beginning in]** 2005—**2009 calendar years**.

(2) One thousand three hundred dollars for applications filed during the 2010—2014 calendar years.

(3) One thousand six hundred dollars for applications filed during the 2015—2019 calendar years.

(4) Two thousand dollars for applications filed for the calendar years beginning in 2020.

(c) **[A] The owner or operator of a** source requiring approval under Subchapter E (relating to new source review) shall pay a fee equal to:

(1) **[Three thousand five hundred dollars for applications filed during the 1995—1999 calendar years.**

(2) Four thousand three hundred dollars for applications filed during the 2000—2004 calendar years.

(3)] Five thousand three hundred dollars for applications filed **[beginning in] during the** 2005**—2009 calendar years**.

(2) Six thousand three hundred dollars for applications filed during the 2010—2014 calendar years.

(3) Seven thousand three hundred dollars for applications filed during the 2015—2019 calendar years.

(4) Eight thousand dollars for applications filed for the calendar years beginning in 2020.

(d) **[A] The owner or operator of a** source subject to standards adopted under Chapter 122 (relating to national standards of performance for new stationary sources)**, [or to standards adopted under]** Chapter 124 (relating to national emission standards for hazardous air pollutants) **or § 127.35(b) (relating to maximum achievable control technology standards for hazardous air pollutants)** shall pay a fee equal to:

(1) **[One thousand two hundred dollars for applications filed during the 1995—1999 calendar years.**

(2) One thousand four hundred dollars for applications filed during the 2000—2004 calendar years.

(3)] One thousand seven hundred dollars for applications filed **[beginning in] during the** 2005**—2009 calendar years**.

(2) Two thousand dollars for applications filed during the 2010—2014 calendar years.

(3) Two thousand five hundred dollars for applications filed during the 2015—2019 calendar years.

(4) Three thousand dollars for applications filed during the calendar years beginning in 2020.

(e) **[A] The owner or operator of a** source subject to § 127.35(c), (d) or (h) **[(relating to maximum achievable control technology standards for hazardous air pollutants)]** shall pay a fee equal to:

(1) **[Five thousand five hundred dollars for applications filed during the 1995—1999 calendar years.**

(2) Six thousand seven hundred dollars for applications filed during the 2000—2004 calendar years.

(3)] Eight thousand dollars for applications filed **[beginning in] during the** 2005**—2009 calendar years**.

(2) Ten thousand dollars for applications filed during the 2010—2014 calendar years.

(3) Twelve thousand dollars for applications filed during the 2015—2019 calendar years.

(4) Fourteen thousand dollars for applications filed during the calendar years beginning in 2020.

(f) **[A] The owner or operator of a** source requiring approval under Subchapter D (relating to prevention of significant deterioration of air quality) shall pay a fee equal to:

(1) **[Fifteen thousand dollars for applications filed during the 1995—1999 calendar years.**

(2) Eighteen thousand five hundred dollars for applications filed during the 2000—2004 calendar years.

(3)] Twenty-two thousand seven hundred dollars for applications filed **[beginning in] during the** 2005**—2009 calendar years**.

(2) Twenty-seven thousand two hundred dollars for applications filed during the 2010—2014 calendar years.

(3) Thirty thousand seven hundred dollars for applications filed during the 2015—2019 calendar years.

(4) Thirty-five thousand seven hundred dollars for applications filed during the calendar years beginning 2020.

(g) Except as provided in subsection (h), the **owner or operator of a** source proposing a **[minor]** modification of a plan approval, extension of a plan approval**[, and] or** transfer of a plan approval due to a change of ownership, shall pay a fee equal to:

(1) **[Two hundred dollars for applications filed during the 1995—1999 calendar years.**

(2) Two hundred thirty dollars for applications filed during the 2000—2004 calendar years.

(3)] Three hundred dollars for applications filed **[beginning in] during the** 2005**—2009 calendar years**.

(2) Four hundred dollars for applications filed during the 2010—2014 calendar years.

(3) Five hundred dollars for applications filed during the 2015—2019 calendar years.

(4) Six hundred fifty dollars for applications filed during the calendar years beginning in 2020.

(h) The **[modification] amendment** of a plan approval **or revision of an application by the applicant** that **[includes] requires** the reassessment of a control technology determination or of the ambient impacts of the source **[will not be considered] is** a **[minor] significant** modification of the plan approval **or application**.

(1) The applicant proposing an amendment of the plan approval or revision to an application that requires reassessment of a control technology determination shall pay fees as established under subsections (b)—(f).

(2) The applicant proposing an amendment of a plan approval or revision to an application that requires changes to the ambient impact analysis or Department reanalysis of the ambient impacts of the source to meet the requirements of 40 CFR 51, Appendix W (relating to guideline on air quality models), shall pay fees in accordance with the following:

(i) For modeling using a screening technique as defined in 40 CFR 51, Appendix W:

(A) Three thousand five hundred dollars for applications filed during the 2010—2014 calendar years.

(B) Four thousand five hundred dollars for applications filed during the 2015—2019 calendar years.

(C) Six thousand dollars for applications filed for calendar years beginning in 2020.

(ii) For all other modeling as defined in 40 CFR 51, Appendix W:

(A) Seven thousand five hundred dollars for applications filed during the 2010—2014 calendar years.

(B) Nine thousand dollars for applications filed during the 2015—2019 calendar years.

(C) Eleven thousand dollars for applications filed for the calendar years beginning in 2020.

(i) The Department may establish application fees for general plan approvals and plan approvals for sources operating at multiple temporary locations **[which] that** will not be greater than the fees established **[by subsection (b)] under this section**. These fees **[shall] will be** established at the time the plan approval is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice**;** and review period).

(j) The owner or operator of a source that submits a request for determination for:

(1) A plan approval application shall pay a fee equal to:

(i) Four hundred dollars for requests for determination filed during the 2010—2014 calendar years.

(ii) Five hundred dollars for requests for determination filed during the 2015—2019 calendar years.

(iii) Six hundred fifty dollars for requests for determination filed for the calendar years beginning in 2020.

(2) Both a plan approval under this section and an operating permit under § 127.703(e) (relating to operating permit fees under Subchapter F) shall pay one request for determination fee.

(k) The owner or operator of a source proposing to use a general plan approval under Subchapter H (relating to general plan approvals and operating permits) shall pay a fee that will not be greater than the fees established under this section. The Department will establish these fees at the time the general plan approval is issued and will publish the fees in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

§ 127.703. Operating permit fees under Subchapter F.

(a) Each applicant for an operating permit, which is not a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required **[by] under** this section to the Department. These fees apply to **[the] an administrative amendment,** extension, **minor** modification, revision, renewal **[and]**, reissuance **or transfer due to a change of ownership** of each operating permit or part thereof.

(b) The fee for processing an application for an operating permit is:

(1) **[Two hundred fifty dollars for applications filed during the 1995—1999 calendar years.**

(2) Three hundred dollars for applications filed during the 2000—2004 calendar years.

(3)] Three hundred seventy-five dollars for applications filed **[for] during** the **[calendar years beginning in]** 2005**—2009 calendar years**.

(2) Five hundred dollars for applications filed during the 2010—2014 calendar years.

(3) Six hundred dollars for applications filed during the 2015—2019 calendar years.

(4) Eight hundred fifty dollars for applications filed for the calendar years beginning in 2020.

(c) The annual operating permit administration fee is**[:] due on or before March 1 of each year for the current calendar year.**

(1) **[Two hundred fifty dollars for applications filed during the 1995—1999 calendar years.**

(2) Three hundred dollars for applications filed during the 2000—2004 calendar years.

(3)] Three hundred seventy-five dollars for applications filed **[during] for** the **[years beginning in]** 2005**—2009 calendar years**.

(2) Five hundred dollars for the 2010—2014 calendar years.

(3) Six hundred dollars for the 2015—2019 calendar years.

(4) Seven hundred fifty dollars for the calendar years beginning in 2020.

(d) The Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations **[which] that** will not be greater than the fees established **[by] under** this section. These fees **[shall] will** be established at the time the operating permit is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice**;** and review period).

(e) The owner or operator of a source that submits a request for determination for:

(1) An operating permit shall pay a fee equal to:

(i) Four hundred dollars for requests for determination filed during the 2010—2014 calendar years.

(ii) Five hundred dollars for requests for determination filed during the 2015—2019 calendar years.

(iii) Six hundred fifty dollars for requests for determination filed for the calendar years beginning in 2020.

(2) Both an operating permit under this section and a plan approval under § 127.702(j) (relating to plan approval fees) shall pay one request for determination fee.

(f) The owner or operator of a source proposing to use a general plan approval under Subchapter H (relating to general plan approvals and operating permits) shall pay a fee that will not be greater than the fees established under this section. The Department will establish these fees at the time the general plan approval is issued and will publish the fees in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

§ 127.704. Title V operating permit fees under Subchapter G.

(a) Each applicant for an operating permit, which is a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required **[by] under this section to the Department. These fees apply to [the] an administrative amendment,** extension, **minor** modification, revision, renewal **[and],** reissuance **or transfer due to a change of ownership** of each operating permit or part thereof.

(b) The fee for processing an application for an operating permit is:

(1) **[Five hundred dollars for applications filed during the 1995—1999 calendar years.**

(2) Six hundred fifteen dollars for applications during the 2000—2004 calendar years.

(3)] Seven hundred fifty dollars for applications filed during the **[calendar years beginning in]** 2005**—2009 calendar years**.

(2) Nine hundred dollars for applications filed during the 2010—2014 calendar years.

(3) One thousand one hundred dollars for applications filed during the 2015—2019 calendar years.

(4) One thousand five hundred dollars for applications filed for the calendar years beginning in 2020.

(c) The annual operating permit administration fee to be paid by a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions) is:

(1) **[Six hundred fifteen dollars for applications filed during the 2000—2004 calendar years.**

(2)] Seven hundred fifty dollars for applications filed during the **[years beginning in]** 2005**—2009 calendar years**.

(2) Nine hundred dollars for applications filed during the 2010—2014 calendar years.

(3) One thousand one hundred dollars for applications filed during the 2015—2019 calendar years.

(4) One thousand three hundred dollars for applications filed for the calendar years beginning in 2020.

(d) The Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations **[which] that** will not be greater than the fees established **[by] under** this section. These fees **[shall] will** be established at the time the operating permit is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice**;** and review period).

(e) The owner or operator of a source proposing to use a general plan approval under Subchapter H (relating to general plan approvals and operating permits) shall pay a fee that will not be greater than the fees established under this section. The Department will establish these fees at the time the general plan approval is issued and will publish the fees in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

§ 127.705. Emission fees.

(a) **[The] Beginning January 1, 2010, the** owner or operator of a Title V facility including Title V facilities located in Allegheny County and Philadelphia County, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), shall pay an annual Title V emission fee of **[$37] $70** per ton for each ton of a regulated pollutant actually emitted from the facility. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. Sources located in Philadelphia County and Allegheny County shall pay the emission fee to the county program if the county Title V program has received approval under section 12 of the act (35 P. S. § 4012) and § 127.706 (relating to Philadelphia County and Allegheny County financial assistance).

(b) **[From November 26, 1994, through 1999, the owner or operator of a phase I affected unit or an active substitution unit as defined by Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642) shall pay an annual emission fee of $14 per ton for each ton of a regulated pollutant actually emitted from the unit. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. Sources located in Philadelphia County and Allegheny County shall pay the emission fee to the county program if the county Title V program has received approval under section 12 of the act (35 P. S. § 4012), and § 127.706. Beginning in the year 2000, sources covered by this subsection shall pay the fees established in subsection (a). The other provisions of this subsection notwithstanding, the owner or operator of a phase I affected unit or an active substitution unit as defined by Title IV of the Clean Air Act will not be required to pay more than $148,000 plus the increase established by subsection (e) for each regulated pollutant emitted from a Title V facility. Substitution units identified as conditional substitution units by the owner or operator shall pay the emission fee established by subsection (a).**

(c)] The emissions fees required by this section shall be due on or before September 1 of each year for emissions from the previous calendar year. The fees required by this section shall be paid for emissions occurring in calendar year **[1994] 2009** and for each calendar year thereafter.

[(d)] (c) As used in this section, the term "regulated pollutant" means a VOC, each pollutant regulated under sections 111 and 112 of the Clean Air Act (42 U.S.C.A. §§ 7411 and 7412) and each pollutant for which a National ambient air quality standard has been promulgated, except that carbon monoxide shall be excluded from this reference.

[(e)] (d) The emission fee imposed under subsection (a) shall be increased in each **calendar** year after **[November 26, 1994] 2010**, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. For purposes of this subsection:

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§ 127.708. Risk assessment.

(*Editor's Note*: The following section is new and printed in regular type to enhance readability.)

(a) Each applicant for a risk assessment shall, as part of the plan approval application, submit the application fee required by this section to the Department.

(b) The owner or operator of a source applying for a risk assessment that is inhalation only with a screening model shall pay a fee equal to:

(1) Five thousand dollars for applications filed during the 2010—2014 calendar years.

(2) Six thousand dollars for applications filed during the 2015—2019 calendar years.

(3) Seven thousand two hundred dollars for applications filed for the calendar years beginning in 2020.

(c) The owner or operator of a source applying for a risk assessment that is inhalation only for all other modeling shall pay a fee equal to:

(1) Nine thousand dollars for applications filed during the 2010—2014 calendar years.

(2) Eleven thousand dollars for applications filed during the 2015—2019 calendar years.

(3) Thirteen thousand dollars for applications filed for the calendar years beginning in 2020.

(d) The owner or operator of a source applying for a risk assessment that is multi-pathway shall pay a fee equal to:

(1) Ten thousand dollars for applications filed during the 2010—2014 calendar years.

(2) Twelve thousand dollars for applications filed during the 2015—2019 calendar years.

(3) Fourteen thousand five hundred dollars for applications filed for the calendar years beginning in 2020.

CHAPTER 139. SAMPLING AND TESTING

(Editor's Note: The following §§ 139.201 and 139.202 are new and printed in regular type to enhance readability.)

Subchapter D. TESTING, AUDITING AND MONITORING FEES

§ 139.201. General provisions.

(a) This subchapter establishes fees for testing, auditing and monitoring activities that the Department undertakes to administer the requirements of the act or the Clean Air Act.

(b) The fees collected under this subchapter shall be made payable to the Pennsylvania Clean Air Fund and deposited into the Clean Air Fund established under section 9.2 of the act (35 P. S. § 4009.2).

(c) The Department will bill the applicant, owner or operator of an air contaminant source for the applicable testing, auditing or monitoring fees after the completion of the required testing, auditing or monitoring activity.

(d) The applicant, owner or operator shall submit payment for the testing, auditing or monitoring fee to the Department within 60 days of the billing date.

(e) At least every 5 years, the Department will provide the EQB with an evaluation of the fees in this subchapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

§ 139.202. Schedule of testing, auditing and monitoring fees.

(a) For testing, auditing and monitoring activities performed by Department personnel for calendar years 2010—2014, the Department will assess a testing, auditing or monitoring fee on the applicant or permittee in accordance with the Schedule of Testing, Auditing and Monitoring Fees listed in Table I for the 2010—2014 calendar years.

(b) For testing, auditing and monitoring activities performed by Department personnel for calendar years 2015—2019, the Department will assess a testing, auditing or monitoring fee on the applicant or permittee in accordance with the Schedule of Testing, Auditing and Monitoring Fees listed in Table I for the 2015—2019 calendar years.

(c) For testing, auditing and monitoring activities performed by Department personnel for calendar years beginning with 2020, the Department will assess a testing, auditing or monitoring fee on the applicant or permittee in accordance with the Schedule of Testing, Auditing and Monitoring Fees listed in Table I for the calendar years beginning with 2020.

TABLE I

Schedule of Testing, Auditing and Monitoring Fees for Activities Performed by Department Personnel

		Fee Amount		
Activity	*Fee Basis*	*Calendar Years*		
		2010—2014	*2015—2019*	*2020+*
(1) CEMS certification activities				
(i) CEMS phase 1 monitoring plan review, initial certification	Base fee (includes one air contamination source):	$1,500	$1,800	$2,200
	Charge for each additional air contamination source:	$500	$600	$700
	Charge for each CEMS:	$200	$240	$300

TABLE I

Schedule of Testing, Auditing and Monitoring Fees for Activities Performed by Department Personnel

Activity	*Fee Basis*	*Fee Amount* *Calendar Years*		
		2010—2014	*2015—2019*	*2020+*
(ii) CEMS phase 1 monitoring plan review, recertification	Base fee (includes one air contamination source):	$750	$900	$1,100
	Charge for each additional air contamination source:	$250	$300	$360
	Charge for each CEMS:	$100	$120	$150
(iii) CEMS phase 3 certification test report review	Base fee (for each submittal):	$750	$900	$1,100
	Charge for each CEMS:	$200	$240	$300
(iv) CEMS test observation	One day, per observer, maximum of two observers*:	$675	$810	$1,000
	Charge for each additional day, per observer, maximum of two observers*:	$350	$420	$500
(2) CEMS test report review activities (not linked with a CEMS phase 1 certification application)				
(i) CEMS level 4 test protocol review	Per submittal:	$500	$600	$700
(ii) CEMS level 4 test report (RATA) review	Base fee (for each submittal):	$500	$600	$700
	Charge for each CEMS:	$150	$180	$200
(3) CEMS audit activities				
(i) CEMS level 1 quarterly report audit, initial submittal	For each initial submittal, whichever is less:			
	Per facility:	$500	$600	$700
	Per air contamination source:	$200	$240	$300
	Per CEMS:	$100	$120	$150
(ii) CEMS level 1 quarterly report audit, resubmittal	Per CEMS:	$200	$240	$300
(iii) CEMS level 2 system inspection audit	Per test program:	$1,000	$1,200	$1,500
(iv) CEMS level 3 analyzer audit	Per air contamination source:	$1,000	$1,200	$1,500
	Charge for each CEMS, per air contamination source:	$200	$240	$300
(v) CEMS level 4 system audit	Base fee per facility (includes one air contamination source):	$2,500	$3,000	$3,600
	For each additional air contamination source at same facility:	$1,000	$1,200	$1,500
	Lb/hr test, per air contamination source:	$500	$600	$700

TABLE I				
Schedule of Testing, Auditing and Monitoring Fees for Activities Performed by Department Personnel				
		Fee Amount		
Activity	*Fee Basis*	*Calendar Years*		
		2010—2014	*2015—2019*	*2020+*
(4) Source testing activities				
(i) Source test protocol review	Per protocol:	$675	$810	$1,000
	Review additional information, per request:	$100	$120	$150
(ii) Trial burn source test protocol review	Per protocol:	$1,700	$2,040	$2,500
(iii) Source test report review	Per air contamination source (as defined in the permit):	$1,000	$1,200	$1,500
	Review of additional test information, per air contamination source, per request:	$300	$360	$450
(iv) Trial burn source test report review	Per trial burn operating scenario:	$3,050	$3,660	$4,400
(v) Source test observation**	Per day, per observer, maximum of two observers*:	$675	$810	$1,000
(vi) Department-conducted source test	Per pollutant or parameter per day, laboratory costs included:	$3,000	$3,600	$4,400

*When more than one observer is required to conduct observation.

**A source test observation does not include visible emission observations that are not part of a Department test plan.

[Pa.B. Doc. No. 09-1927. Filed for public inspection October 16, 2009, 9:00 a.m.]

[25 PA. CODE CHS. 121 AND 129]

Flat Wood Paneling Surface Coating Processes

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 129 (relating to general provisions; and standards for sources) to read as set forth in Annex A.

The proposed rulemaking would amend Chapter 129 to limit emissions of volatile organic compounds (VOCs) from the use and application of coatings and cleaning materials in flat wood paneling surface coating processes. The proposal would add § 129.52c (relating to control of VOC emissions from flat wood paneling surface coating processes) and would amend §§ 121.1 and 129.51 (relating to definitions; and general).

This proposal was adopted by the Board at its meeting on September 15, 2009.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Arleen J. Shulman, Chief, Division of Air Resource Management, P. O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 772-3436, or Kristen Campfield Furlan, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us (Quick Access: Public Participation).

C. *Statutory Authority*

This proposed rulemaking is authorized under section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005), which in subsection (a)(1) grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth, and which in subsection (a)(8) grants the Board the authority to adopt rules and regulations designed to implement the Clean Air Act (CAA).

D. *Background and Purpose*

The purpose of this proposed rulemaking is to reduce VOC emissions from flat wood paneling surface coating

operations. VOCs are a precursor for ozone formation. Ground-level ozone is not emitted directly by surface coatings to the atmosphere, but is formed by a photochemical reaction between VOCs and nitrogen oxides (NOx) in the presence of sunlight. The proposed rulemaking adopts the emission limits and other requirements of the Environmental Protection Agency's (EPA's) 2006 Control Techniques Guidelines (CTG) for flat wood paneling coating to meet Federal CAA requirements.

The EPA is responsible for establishing National Ambient Air Quality Standards (NAAQS) for six criteria pollutants considered harmful to public health and the environment: ozone, particulate matter, NOx, carbon monoxide, sulfur dioxide and lead. The CAA established two types of NAAQS: primary standards, limits set to protect public health; and secondary standards, limits set to protect public welfare, including protection against visibility impairment and from damage to animals, crops, vegetation and buildings. The EPA has established primary and secondary ozone NAAQS to protect public health and welfare.

When ground-level ozone is present in concentrations in excess of the Federal health-based 8-hour NAAQS for ozone, public health and welfare are adversely affected. Ozone exposure correlates to increased respiratory disease and higher mortality rates. Ozone can inflame and damage the lining of the lungs. Within a few days, the damaged cells are shed and replaced. Over a long time period, lung tissue may become permanently scarred, resulting in permanent loss of lung function and a lower quality of life. When ambient ozone levels are high, more people with asthma have attacks that require a doctor's attention or use of medication. Ozone also makes people more sensitive to allergens including pet dander, pollen and dust mites, all of which can trigger asthma attacks.

The EPA has concluded that there is an association between high levels of ambient ozone and increased hospital admissions for respiratory ailments including asthma. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ozone while engaged in activities that involve physical exertion. High levels of ozone also affect animals in ways similar to humans.

In addition to causing adverse human and animal health effects, the EPA has concluded that ozone affects vegetation and ecosystems, leading to reductions in agricultural crop and commercial forest yields by destroying chlorophyll; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests, and other environmental stresses, including harsh weather. In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of parks and recreation areas. Through deposition, ground-level ozone also contributes to pollution in the Chesapeake Bay. The economic value of some welfare losses due to ozone can be calculated, such as crop yield loss from both reduced seed production and visible injury to some leaf crops, including lettuce, spinach and tobacco, as well as visible injury to ornamental plants, including grass, flowers and shrubs. Other types of welfare loss may not be quantifiable, such as the reduced aesthetic value of trees growing in heavily visited parks.

High levels of ground-level ozone can also cause damage to buildings and synthetic fibers, including nylon, and reduced visibility on roadways and in natural areas. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health and welfare, animal and plant health and welfare and the environment.

In July 1997, the EPA established primary and secondary ozone standards at a level of 0.08 parts per million (ppm) averaged over 8 hours. 62 FR 38855 (July 18, 1997). In 2004, the EPA designated 37 counties in this Commonwealth as 8-hour ozone nonattainment areas for the 1997 8-hour ozone NAAQS. This Commonwealth is meeting the 1997 standard in all areas except the five-county Philadelphia and seven-county Pittsburgh-Beaver Valley areas. The areas in which the 1997 standard has been attained are required to have permanent and enforceable control measures to ensure violations do not occur for the next decade. The Commonwealth must demonstrate that the two areas currently not attaining the 1997 standard will meet the 1997 standard as expeditiously as practicable. Should these two areas not attain the standard during the 2009 ozone season, additional reductions will be required.

In March 2008, the EPA lowered the standards to 0.075 ppm averaged over 8 hours to provide even greater protection for children, other at-risk populations and the environment against the array of ozone-induced adverse health and welfare effects. See 73 FR 16436 (March 27, 2008). As required by the CAA, the Commonwealth submitted recommendations to the EPA in 2009 to designate 29 counties as nonattainment for the 2008 8-hour ozone NAAQS. The EPA is expected to take final action on the designation recommendation by March 2010. The EPA's designations will take effect 60 days after the EPA publishes a notice in the *Federal Register*. Monitors in most urban areas and some rural areas of this Commonwealth are currently not meeting the 2008 ozone standard.

There are no Federal statutory or regulatory limits for VOC emissions from flat wood paneling surface coating operations. State regulations to control VOC emissions from flat wood paneling surface coating operations are required under Federal law, however, and will be reviewed by the EPA to determine whether they meet the "reasonably available control technology" (RACT) requirements of the CAA and its implementing regulations. *Consumer and Commercial Products, Group II: Control Techniques Guidelines in lieu of Regulations for Flexible Packaging Printing Materials, Lithographic Printing Materials, Letterpress Printing Materials, Industrial Cleaning Solvents, and Flat Wood Paneling Coatings*, 71 FR 58745, 58747 (October 5, 2006).

Section 172(c)(1) of the CAA provides that State Implementation Plans (SIPs) for nonattainment areas must include "reasonably available control measures," including RACT, for sources of emissions. See 42 U.S.C. § 7502(c)(1). Section 182(b)(2) of the CAA provides that for moderate ozone nonattainment areas, states must revise their SIPs to include RACT for sources of VOC emission covered by a CTG document issued by the EPA prior to the area's date of attainment. See 42 U.S.C. § 7511a(b)(2). More importantly, section 184(b)(1)(B) of the CAA requires that states in the Ozone Transport Region (OTR), including this Commonwealth, submit a SIP revision requiring implementation of RACT for all sources of VOC emissions in the state covered by a specific CTG. See 42 U.S.C. § 7511c(b)(1)(B).

Section 183(e) of the CAA directs the EPA to list for regulation those categories of products that account for at least 80% of the VOC emissions from consumer and commercial products in ozone nonattainment areas. See 42 U.S.C. § 7511b(e). Section 183(e)(3)(C) of the CAA provides that the EPA may issue a CTG in place of a National regulation for a product category where the EPA determines that the CTG will be "substantially as effective as regulations" in reducing emissions of VOC in ozone nonattainment areas. See 42 U.S.C. § 7511b(e)(3)(C).

In 1995, the EPA listed flat wood paneling coatings on its section 183(e) list and, in 2006, issued a CTG for flat wood paneling coatings. See 60 FR 15264 (March 23, 1995) and 71 FR 58745 (October 5, 2006). In the 2006 notice, the EPA determined that the CTG would be substantially as effective as a National regulation in reducing VOC emissions from this product category in ozone nonattainment areas. See 71 FR 58745.

The CTG provides states with the EPA's recommendation of what constitutes RACT for the covered category. States can use the recommendations provided in the CTG to inform their own determination as to what constitutes RACT for VOC emissions from the covered category. State air pollution control agencies are free to implement other technically sound approaches that are consistent with the CAA requirements and the EPA's implementing regulations or guidelines.

The Department has reviewed the recommendations included in the 2006 CTG for flat wood paneling coatings for their applicability to the ozone reduction measures necessary for this Commonwealth. The Department has determined that the measures provided in the CTG for flat wood paneling coatings are appropriate to be implemented in this Commonwealth as RACT for this category.

This rulemaking, if adopted as a final rule, would assist in reducing VOC emissions locally as well as reducing the transport of VOC emissions and ground-level ozone to downwind states. Adoption of VOC emission requirements for flat wood paneling surface coating operations is part of the Commonwealth's strategy, in concert with other OTR jurisdictions, to further reduce transport of VOC ozone precursors and ground-level ozone throughout the OTR to attain and maintain the 8-hour ozone NAAQS. The proposed rulemaking is required under the CAA requirements that states regulate sources covered by CTGs issued by the EPA and is reasonably necessary to attain and maintain the health-based 8-hour ozone NAAQS in this Commonwealth. When final, this rulemaking will be submitted to the EPA as a revision to the SIP.

The concepts of the proposed rulemaking were discussed with the Air Quality Technical Advisory Committee (AQTAC) at its October 30 and December 11, 2008, meetings. The proposed rulemaking was discussed with the AQTAC on May 28, 2009. The AQTAC concurred with the Department's recommendation to present the proposed amendments to the Board for approval for publication as a proposed rulemaking. The Department also consulted with the Citizens Advisory Council on July 21, 2009, and with the Small Business Compliance Advisory Committee on October 22, 2008, and April 22 and July 22, 2009.

E. *Summary of Regulatory Requirements*

This proposed rulemaking adds the definitions of the following 15 terms to § 121.1 to support the proposed addition of § 129.52c: "Class II hardboard paneling finish," "decorative interior panel," "exterior siding," "exterior trim," "flat wood paneling coating," "hardboard," "hardwood plywood," "MDF-medium density fiberboard," "natural finish hardwood plywood panel," "particleboard," "plywood," "printed interior panel," "thin particleboard," "tileboard" and "waferboard."

The proposed rulemaking would amend § 129.51(a) to extend its coverage to flat wood paneling surface coating processes covered by this proposed rulemaking, as well as to paper, film and foil surface coating processes and large appliance and metal furniture surface coating processes, which are covered in parallel rulemakings. Section 129.51(a) provides an alternative method for owners and operators of facilities to achieve compliance with air emission limits.

The proposed rulemaking would add § 129.52c to regulate VOC emissions from flat wood paneling surface coating processes. The applicability of this new section is described in subsection (a), which establishes that § 129.52c applies to the owner and operator of a flat wood paneling surface coating process, other than a field-applied coating process or a surface coating process regulated under §§ 129.101—129.107 (relating to wood furniture manufacturing operations) or §§ 129.52(f) and 129.52, Table I, Category 11 (relating to surface coating processes; and wood furniture manufacturing operations), if the total actual VOC emissions from all flat wood paneling surface coating operations listed in Table I (relating to emission limits of VOCs for flat wood paneling surface coatings), including related cleaning activities, at the facility are equal to or greater than 15 pounds (6.8 kilograms) per day, before consideration of controls. Field-applied coatings are not subject to this rulemaking because they are regulated under Chapter 130, Subchapter C (relating to architectural and industrial maintenance coatings).

Proposed subsection (b) explains that the requirements of § 129.52c supersede the requirements of a RACT permit for VOC emissions from a flat wood paneling surface coating operation already issued to the owner or operator of a source subject to § 129.52c, except to the extent the RACT permit contains more stringent requirements.

Proposed subsection (c) establishes VOC emission limits. Beginning January 1, 2011, a person may not cause or permit the emission into the outdoor atmosphere of VOCs from a flat wood paneling surface coating process, unless: (1) the VOC content of each as applied coating is equal to or less than the limit specified in the table in § 129.52c; or (2) the overall weight of VOCs emitted to the atmosphere is reduced through the use of vapor recovery, incineration or another method that is acceptable under § 129.51(a). The second option also addresses the overall efficiency of a control system.

Proposed subsection (d) identifies daily records that must be kept to demonstrate compliance with § 129.52c, including records of parameters and VOC content of each coating, thinner, component and cleaning solvent, as supplied, and the VOC content of each as applied coating or cleaning solvent.

Proposed subsection (e) requires that the records be maintained for 2 years and submitted to the Department on request.

Under proposed subsection (f), an owner or operator subject to § 129.52c may not cause or permit the emission into the outdoor atmosphere of VOCs from the application of flat wood paneling surface coatings, unless the coatings are applied using offset rotogravure coating, curtain coating, direct roll coating, reverse roll coating, hand brush or hand roller coating, or high volume-low pressure spray coating. An owner or operator may use another coating application method if a request is submitted in writing that demonstrates that the method is capable of achieving a transfer efficiency equivalent to, or better than, that achieved by the other methods listed in subsection (f), and is approved in writing by the Department prior to use.

Proposed subsection (g) exempts coatings used exclusively for determining product quality and commercial acceptance and other small quantity coatings from the VOC coating content limits in Table I of proposed § 129.52c, if the quantity of coating used does not exceed 50 gallons per year (gpy) for a single coating and a total of 200 gpy for all coatings combined for the facility and if the owner or operator of the facility requests, in writing, and the Department approves, in writing, the exemption prior to use of the coating.

Proposed subsection (h) establishes work practices that an owner or operator of a flat wood paneling surface coating process subject to § 129.52c shall comply with, for coating-related activities.

Proposed subsection (i) establishes work practices that an owner or operator of a flat wood paneling surface coating process subject to § 129.52c shall comply with, for cleaning materials.

Proposed Table I establishes emission limits for VOCs for flat wood paneling surface coatings, expressed in weight of VOC per volume of coating solids, as applied.

F. *Benefits, Costs and Compliance*

Benefits

Implementation of the proposed control measure would benefit the health and welfare of the approximately 12 million humans, animals, crops, vegetation and natural areas of this Commonwealth by reducing emissions of VOCs, which are precursors to ground-level ozone air pollution. Although the proposed amendments are designed primarily to address ozone air quality, the reformulation or substitution of coating products to meet the VOC content limits applicable to users may also result in reduction of hazardous air pollutant (HAP) emissions, which are also a serious health threat.

The proposed rulemaking provides as one compliance option that inks, coatings and adhesives used on or applied to flat wood paneling products manufactured in this Commonwealth meet specified limits for VOC content, usually through substitution of low VOC-content solvents or water for the high VOC-content solvents. The reduced levels of high VOC-content solvents would also benefit water quality through reduced loading on water treatment plants and in reduced quantities of high VOC-content solvents leaching into the ground. Owners and operators of affected flat wood paneling surface coating process facilities may also reduce VOC emissions through the use of add-on controls, or a combination of complying coatings and add-on controls.

The EPA estimates that implementation of the recommended control options for noncomplying flat wood paneling surface coating processes will result in additional reductions of VOC emissions of approximately 20% for interior flat wood paneling coating operations and 80% for exterior siding operations.

In this Commonwealth, about 11 flat wood paneling surface coating operations emitted approximately 440.44 tons of VOCs in 2008. The highest emitting of these facilities has potentially noncomplying interior flat wood paneling coating operations with total VOC emissions of 75.9 tons in 2008. Based on 2008 data, the estimated potential maximum annual additional VOC emission reductions from noncomplying interior flat wood paneling coating operations at this facility would be 15.18 tons (75.9 tons x 20%). No additional VOC emission reductions are expected from this facility for exterior siding coating operations.

The remaining ten facilities emitted a total of 41.74 tons of VOCs in 2008. The maximum anticipated additional annual VOC emission reductions from noncomplying flat wood paneling surface coating operations at these facilities as a result of this proposed rulemaking range from approximately 8.3 tons (41.74 tons x 20%) for interior paneling coating operations to 33.4 tons (41.74 tons x 80%) for exterior siding coating operations.

Compliance Costs

The costs of complying with the proposed new requirements include the cost of using alternative product formulations, including low-VOC or water-based inks, coatings and adhesives, and low-VOC or water-based cleanup solvent products, and the use of add-on controls. Based on information provided by the EPA in the CTG, the cost effectiveness of reducing VOC emissions from flat wood paneling surface coating operations is estimated to range from $1,900 for interior paneling coating operations to $2,600 for exterior siding coating operations per ton of VOC emissions reduced. This range is based on the use of low VOC-content coatings for control.

The total estimated anticipated annual costs to noncomplying facilities would range from $28,842 (15.18 tons VOC emissions reduced x $1,900/ton reduced) to $86,000 (33.3 tons VOC emissions reduced x $2,600/ton reduced). The potential total annual costs of $28,842 to $86,000 to the owners or operators of noncomplying facilities are negligible compared to the improved health and environmental benefits that would be gained from this measure.

The implementation of the work practice requirements for cleaning materials is expected to result in a net cost savings. The recommended work practices should reduce the amount of cleaning materials used by reducing the amount of cleaning materials lost to evaporation, spillage or waste.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing compliance assistance program.

Paperwork Requirements

The owners and operators of affected flat wood paneling surface coating operations would be required to keep daily operational records of information for coatings and cleaning solvents sufficient to demonstrate compliance, including identification of materials, VOC content and volumes used. The records must be maintained for 2 years and submitted to the Department upon request. Persons claiming the small quantity exemption or use of exempt coating would be required to keep records demon-

strating the validity of the exemption. Persons seeking to comply through the use of add-on controls would be required to meet the applicable reporting requirements specified in Chapter 139 (relating to sampling and testing).

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

The proposed amendments will assure that the citizens and the environment of this Commonwealth experience the benefits of reduced emissions of VOCs and HAPs from flat wood paneling surface coating processes. Although the proposed amendments are designed primarily to address ozone air quality, the reformulation or substitution of coating products to meet the VOC content limits applicable to users may also result in reduction of HAP emissions, which are also a serious health threat. The proposed rulemaking provides as one compliance option that inks, coatings and adhesives used on or applied to flat wood paneling products manufactured in this Commonwealth meet specified limits for VOC content, usually through substitution of low VOC-content solvents or water for the high VOC-content solvents. The reduced levels of high VOC-content solvents would also benefit water quality through reduced loading on water treatment plants and in reduced quantities of high VOC-content solvents leaching into the ground. Owners and operators of affected flat wood surface coating process facilities may also reduce VOC emissions through the use of add-on controls, or a combination of complying coatings and add-on controls.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 6, 2009, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by December 21, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by December 21, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by December 21, 2009. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

K. *Public Hearings*

The Board will hold three public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held as follows:

Department of Environmental Protection Southcentral Regional Office Susquehanna Room A 909 Elmerton Avenue Harrisburg, PA 17110	November 17, 2009 2 p.m.
Department of Environmental Protection Southeast Regional Office Delaware Conference Room 2 East Main Street Norristown, PA 19401	November 19, 2009 2 p.m.
Department of Environmental Protection Southwest Regional Office Waterfront Conference Room A and B 400 Waterfront Drive Pittsburgh, PA 15222-4745	November 20, 2009 2 p.m.

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984

(TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

JOHN HANGER,
Chairperson

Fiscal Note: 7-447. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

***Class II hardboard paneling finish*—A finish that meets the specifications of Voluntary Product Standard PS-59-73 as approved by the American National Standards Institute.**

* * * * *

***Decorative interior panel*—Interior wall paneling that is usually grooved, frequently embossed and sometimes grain printed to resemble various wood species. Interior panels are typically manufactured at the same facilities as tileboard, although in much smaller quantities. The substrate can be hardboard, plywood, MDF or particleboard.**

* * * * *

***Exterior siding*—Siding made of solid wood, hardboard or waferboard. Siding made of solid wood or hardboard is typically primed at the manufacturing facility and finished in the field, although some finishing may be performed during manufacturing. The term includes exterior trim.**

***Exterior trim*—Material made out of siding panels and used for edges and corners around the siding. Exterior trim is typically manufactured at the same facility as exterior siding and coated with the same coatings as siding.**

* * * * *

***Flat wood paneling coating*—A protective, decorative or functional material applied to a flat wood paneling product, including a decorative interior panel, exterior siding or tileboard.**

* * * * *

***Hardboard*—A panel manufactured primarily from interfelted lignocellulosic fibers that are consolidated under heat and pressure in a hot-press.**

***Hardwood plywood*—Plywood on which the surface layer is a veneer of hardwood.**

* * * * *

***MDF—Medium density fiberboard*—An engineered wood panel product manufactured from individual wood fibers combined with wax and resin and consolidated under extreme heat and pressure.**

* * * * *

***Natural-finish hardwood plywood panel*—A panel on which the original grain pattern is enhanced by an essentially transparent finish frequently supplemented by filler and toner.**

* * * * *

***Particleboard*—A manufactured board made of individual wood particles that have been coated with a binder and formed into flat sheets by pressure.**

* * * * *

***Plywood*—A structural material made of layers of laminated plies of veneers or layers of wood glued together, usually with the grains of adjoining layers at right angles to each other.**

* * * * *

***Printed interior panel*—A panel on which the grain or natural surface is obscured by filler and basecoat upon which a simulated grain or decorative pattern is printed.**

* * * * *

***Thin particleboard*—Particleboard that has a thickness of 1/4 inch or less.**

* * * * *

***Tileboard*—A premium interior wall paneling product made of hardboard that is used in high moisture areas of the home, including kitchens and bathrooms. Tileboard meets the specifications for Class I hardboard approved by the American National Standards Institute.**

* * * * *

***Waferboard*—A structural material made from rectangular wood flakes of controlled length and thickness bonded together with waterproof phenolic resin under extreme heat and pressure. The layers of flakes are not oriented.**

* * * * *

CHAPTER 129. STANDARDS FOR SOURCES

SOURCES OF VOCs

§ 129.51. General.

(a) *Equivalency*. Compliance with §§ 129.52**, 129.52a, 129.52b, 129.52c** and 129.54—129.73 may be achieved by alternative methods if the following exist:

* * * * *

(3) Compliance by a method other than the use of a low VOC coating or ink which meets the applicable emission limitation in §§ 129.52, **129.52a, 129.52b, 129.52c,** 129.67 and 129.73 **[(relating to surface coating proceses; graphic arts systems; and aerospace manufacturing and rework)]** shall be determined on the basis of equal volumes of solids.

* * * * *

(6) The alternative compliance method is incorporated into a plan approval or operating permit, or both, reviewed by the EPA, including the use of an air cleaning device to comply with § 129.52, § **129.52a,** § **129.52b,** § **129.52c,** § 129.67, § 129.68(b)(2) and (c)(2) or § 129.73.

* * * * *

(*Editor's Note*: Section 129.52c is new and printed in regular type to enhance readability.)

§ 129.52c. Control of VOC emissions from flat wood paneling surface coating processes.

(a) *Applicability*. Except as specified in paragraphs (1)—(3), this section applies to the owner and operator of a flat wood paneling surface coating process if the total actual VOC emissions from all flat wood paneling surface coating operations listed in Table I (relating to emission limits of VOCs for flat wood paneling surface coatings), including related cleaning activities, at the facility are equal to or greater than 15 pounds (6.8 kilograms) per day, before consideration of controls. This section does not apply to the following:

(1) A field-applied coating process.

(2) A coating process regulated under §§ 129.101—129.107 (relating to wood furniture manufacturing operations).

(3) A coating process regulated under §§ 129.52(f) and 129.52, Table I, Category 11 (relating to surface coating processes; and wood furniture manufacturing operations).

(b) *Existing RACT permit*. The requirements of this section supersede the requirements of a RACT permit issued to the owner or operator of a source subject to subsection (a) prior to January 1, 2011, under §§ 129.91—129.95 (relating to stationary sources of NOx and VOCs) to control, reduce or minimize VOCs from a flat wood paneling surface coating process, except to the extent the RACT permit contains more stringent requirements.

(c) *Emission limits*. Beginning January 1, 2011, a person subject to this section may not cause or permit the emission into the outdoor atmosphere of VOCs from a flat wood paneling coating process unless one of the following limitations is met:

(1) The VOC content of each as applied coating is equal to or less than the limit specified in Table I.

(i) The VOC content of each as applied coating, expressed in units of weight of VOC per volume of coating solids, shall be calculated as follows:

$$VOC = (W_o)(D_c)/V_n$$

Where:

VOC = VOC content in lb VOC/gal of coating solids
W_o = Weight percent of VOC (W_v-W_w-W_{ex})
W_v = Weight percent of total volatiles (100%-weight percent solids)
W_w = Weight percent of water
W_{ex} = Weight percent of exempt solvent(s)
D_c = Density of coating, lb/gal, at 25° C
V_n = Volume percent of solids of the as applied coating

(ii) Sampling and testing shall be done in accordance with the procedures and test methods specified in Chapter 139 (relating to sampling and testing).

(2) The overall weight of VOCs emitted to the atmosphere is reduced through the use of oxidation or solvent recovery or another method that is acceptable under § 129.51(a) (relating to general). The overall efficiency of a control system, as determined by the test methods and procedures specified in Chapter 139 (relating to sampling and testing), may be no less than 90% or may be no less than the equivalent efficiency as calculated by the following equation, whichever is less stringent:

$$O = (1 - E/V) \times 100$$

Where:

V = The VOC content of the as applied coating, in lb VOC/gal of coating solids.

E = The Table I limit in lb VOC /gal of coating solids.

O = The overall required control efficiency.

(d) *Compliance monitoring procedures*. The owner or operator of a facility subject to this section shall maintain records sufficient to demonstrate compliance with this section. The owner or operator shall maintain daily records of:

(1) The following parameters for each coating, thinner, other component or cleaning solvent as supplied:

(i) Name and identification number of the coating, thinner, other component or cleaning solvent.

(ii) Volume used.

(iii) Mix ratio.

(iv) Density or specific gravity.

(v) Weight percent of total volatiles, water, solids and exempt solvents.

(vi) Volume percent of solids for each coating used in the flat wood paneling coating process.

(vii) VOC content.

(2) VOC content of each as applied coating or cleaning solvent.

(e) *Recordkeeping and reporting requirements*. The records required under subsection (d) shall be maintained for 2 years and shall be submitted to the Department on request.

(f) *Coating application methods*. A person subject to this section may not cause or permit the emission into the outdoor atmosphere of VOCs from a flat wood paneling surface coating process unless the coatings are applied using one or more of the following coating application methods:

(1) Offset rotogravure coating.

(2) Curtain coating.

(3) Direct roll coating.

(4) Reverse roll coating.

(5) Hand brush or hand roller coating.

(6) High volume-low pressure (HVLP) spray coating.

(7) Other coating application method, if approved in writing by the Department prior to use.

(i) The coating application method must be capable of achieving a transfer efficiency equivalent to or better than that achieved by a method listed in paragraphs (1)—(6).

(ii) The request for approval must be submitted in writing.

(g) *Exempt coatings*. The VOC coating content standards in Table I do not apply to a coating used exclusively for determining product quality and commercial acceptance and other small quantity coatings, if the coating meets the following criteria:

(1) The quantity of coating used does not exceed 50 gallons per year for a single coating and a total of 200 gallons per year for all coatings combined for the facility.

(2) The owner or operator of the facility requests, in writing, and the Department approves, in writing, the exemption prior to use of the coating.

(h) *Work practice requirements for coating-related activities*. The owner or operator of a flat wood paneling surface coating process subject to this section shall comply with the following work practices for coating-related activities:

(1) Store all VOC-containing coatings, thinners and coating-related waste materials in closed containers.

(2) Minimize spills of VOC-containing coatings, thinners and coating-related waste materials and clean up spills immediately.

(3) Convey VOC-containing coatings, thinners and coating-related waste materials from one location to another in closed containers or pipes.

(4) Ensure that mixing and storage containers used for VOC-containing coatings, thinners and coating-related waste materials are kept closed at all times, except when depositing or removing these materials.

(i) *Work practice requirements for cleaning materials.* The owner or operator of a flat wood paneling surface coating process subject to this section shall comply with the following work practices for cleaning materials:

(1) Store all VOC-containing cleaning materials, waste cleaning materials and used shop towels in closed containers.

(2) Minimize spills of VOC-containing cleaning materials and waste cleaning materials and clean up spills immediately.

(3) Convey VOC-containing cleaning materials and waste cleaning materials from one location to another in closed containers or pipes.

(4) Ensure that mixing vessels and storage containers used for VOC-containing cleaning materials and waste cleaning materials are kept closed at all times, except when depositing or removing these materials.

(5) Minimize VOC emissions during cleaning of storage, mixing and conveying equipment.

Table I

Emission Limits of VOCs for Flat Wood Paneling Surface Coatings
Weight of VOC per Volume of Coating Solids, as Applied

Surface Coatings, Inks or Adhesives Applied to the Following Flat Wood Paneling Categories	*lbs VOC per gallon coating solids*	*grams VOC per liter coating solids*
Printed interior panels made of hardwood plywood or thin particleboard	2.9	350
Natural-finish hardwood plywood panels	2.9	350
Class II finishes on hardboard panels	2.9	350
Tileboard	2.9	350
Exterior siding	2.9	350

[Pa.B. Doc. No. 09-1928. Filed for public inspection October 16, 2009, 9:00 a.m.]

[25 PA. CODE CHS. 121 AND 123]
Outdoor Wood-Fired Boilers

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 123 (relating to general provisions; and standards for contaminants) as set forth in Annex A. The proposed amendments would add four new terms and definitions under § 121.1 (relating to definitions). The proposed amendments would add provisions under Chapter 123 for the control of emissions of particulate matter (PM) from the operation of outdoor wood-fired boilers (OWBs).

This notice is given under Board order at its meeting of September 15, 2009.

A. *Effective Date*

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

These amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Pennsylvania State Implementation Plan upon final-form rulemaking.

B. *Contact Persons*

For further information, contact Ron Davis, Chief, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-9257 or Robert “Bo” Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

Information regarding submitting comments on this proposal appear in Section K of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection’s (Department) web site at http://www.depweb.state.pa.us (Quick Access: Public Participation, then Proposals Open for Comment).

C. *Statutory Authority*

This proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

D. *Background and Summary*

On July 18, 1997, the EPA revised the National Ambient Air Quality Standard (NAAQS) for PM to add a new standard for fine particles, using fine particulates equal to and less than 2.5 micrometers in diameter (PM2.5) as the indicator. The EPA set the health-based (primary) and welfare-based (secondary) PM2.5 annual standard at a level of 15 micrograms per cubic meter (μg/m^3) and the 24-hour standard at a level of 65 μg/m.[3] See 62 FR 38652. The health-based primary standard is designed to protect human health from elevated levels of PM2.5, which have been linked to premature mortality and other important health effects. The secondary standard is designed to protect against major environmental effects of PM2.5 such as visibility impairment, soiling and materials damage. The following counties in this Commonwealth have been designated nonattainment for the 1997 fine particulate NAAQS: Allegheny (Liberty-Clairton), Allegheny (remainder), Armstrong, Berks, Beaver, Bucks, Butler,

Cambria, Chester, Cumberland, Dauphin, Delaware, Greene, Indiana, Lancaster, Lawrence, Lebanon, Montgomery and Philadelphia.

Subsequently, on October 17, 2006, the EPA revised the primary and secondary 24-hour NAAQS for PM2.5 to 35 $\mu g/m^3$ from 65 $\mu g/m^3$. See 71 FR 61236. On December 18, 2008, all or portions of the following counties in this Commonwealth were designated by the EPA as nonattainment for the 2006 24-hour fine particulate NAAQS: Allegheny (Liberty-Clairton), Allegheny (remainder), Armstrong (partial), Berks, Beaver, Bucks, Butler, Cambria, Chester, Cumberland, Dauphin, Delaware, Greene (partial), Indiana (partial), Lancaster, Lawrence (partial), Lebanon, Lehigh, Montgomery, Northampton, Philadelphia, Washington, Westmoreland and York.

The health effects associated with exposure to PM2.5 are significant. Epidemiological studies have shown a significant correlation between elevated PM2.5 levels and premature mortality. Other important health effects associated with PM2.5 exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work and restricted activity days), lung disease, decreased lung function, asthma attacks and certain cardiovascular problems. Individuals particularly sensitive to PM2.5 exposure include older adults, people with heart and lung disease and children.

A significant and growing source of PM2.5 emissions in this Commonwealth is from OWBs. OWBs, also referred to as outdoor wood-fired furnaces, outdoor wood-burning appliances, or outdoor hydronic heaters, are free-standing fuel-burning devices designed: (1) to burn clean wood or other approved solid fuels; (2) specifically for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals, such as garages; and (3) to heat building space or water by means of distribution, typically through pipes, of a fluid heated in the device, typically water or a water and antifreeze mixture. OWBs are being sold to heat homes and buildings and to produce domestic hot water.

The emissions, health effects and the nuisance factor created by the use of OWBs are a major concern to the Department. The Northeast States for Coordinated Air Use Management has conducted stack tests on OWBs. Based on the test results, the average PM2.5 emissions from one OWB are equivalent to the emissions from 205 oil furnaces or as many as 8,000 natural gas furnaces. Cumulatively, the smallest OWB has the potential to emit almost 1 1/2 tons of PM every year. Of the estimated 155,000 OWBs sold Nationwide between 1990 and 2005, 95% were sold in 19 states, of which this Commonwealth is one.

Unlike indoor wood stoves that are regulated by the EPA, no Federal standards exist for OWBs and the majority of them are not equipped with pollution controls. The EPA has initiated a voluntary program that encourages manufacturers of OWBs to improve air quality through developing and distributing cleaner-burning, more efficient OWBs. Phase 1 of the program was in place from January 2007 through October 15, 2008. To qualify for Phase 1, manufacturers were required to develop an OWB model that was 70% cleaner-burning than unqualified models by meeting the EPA air emission standard of 0.6 pound PM per million Btu heat input as tested by an independent accredited laboratory. Phase 1 Partnership Agreements ended when the Phase 2 Partnership Agreements were initiated on October 16, 2008. To qualify for Phase 2, manufacturers must develop an OWB model that is 90% cleaner-burning than preprogram, unqualified OWBs and meet the EPA air emissions standard of 0.32 pound PM per million Btu heat output as tested by an independent accredited laboratory. The emission standard established in the proposed rulemaking would be the Phase 2 emission standard described in the EPA voluntary program.

The proposed rulemaking would help assure that the citizens of this Commonwealth will benefit from reduced emissions of PM2.5 from OWBs. Attaining and maintaining levels of PM2.5 below the health-based NAAQS is important to reduce premature mortality and other health effects associated with PM2.5 exposure. There are many citizen complaints regarding the operation of OWBs. This proposed rulemaking would reduce the problems associated with the operation of OWBs, including smoke, odors and burning prohibited fuels including garbage, tires, hazardous waste and the like. Reductions in ambient levels of PM2.5 would promote improved human and animal health and welfare, improved visibility, decreased soiling and materials damage and decreased damage to plants and trees.

While there are no Federal limits for the OWBs that would be subject to regulation under this proposed rulemaking, section 4.2 of the APCA authorizes the Board to adopt regulations more stringent than Federal requirements when the control measures are reasonably necessary to achieve and maintain the ambient air quality standards. See 35 P. S. § 4004.2. These measures are reasonably necessary to attain and maintain the primary and secondary 24-hour NAAQS for PM2.5 in this Commonwealth.

E. *Summary of Regulatory Revisions*

The proposed amendments add definitions under § 121.1 for the following four new terms—"Btu," "clean wood," "outdoor wood-fired boiler" and "Phase 2 outdoor wood-fired boiler."

Section 123.14 (relating to outdoor wood-fired boilers) is proposed to be added. In general, under subsection (a) regarding to applicability, beginning on the effective date of the regulation, the requirements of this proposal apply to a person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes an OWB for use in this Commonwealth; a person who installs an OWB in this Commonwealth; and a person who purchases, receives, leases, owns, uses or operates an OWB in this Commonwealth.

Under subsection (b) regarding Phase 2 outdoor wood-fired boiler, person may not purchase, sell, offer for sale, distribute or install an outdoor wood-fired boiler for use in this Commonwealth unless it is a Phase 2 OWB.

Under subsection (c) regarding setback requirements for Phase 2 outdoor wood-fired boilers, a person may not install a Phase 2 OWB in this Commonwealth unless the boiler is installed a minimum of 150 feet from the nearest property line.

Under subsection (d) regarding stack height requirements for Phase 2 outdoor wood-fired boilers, a person may not install, use or operate a Phase 2 OWB in this Commonwealth unless the boiler has a permanently attached stack. The stack must meet both of the following height requirements: extend a minimum of 10 feet above the ground and extend at least 2 feet above the highest peak of the highest residence located within 150 feet of the OWB.

Under subsection (e) regarding stack height requirements for existing outdoor wood-fired boilers, a person

may not use or operate an OWB that was installed before the effective date of the regulation unless the boiler has a permanently attached stack. The stack must meet both of the following height requirements: extend a minimum of 10 feet above the ground and extend at least 2 feet above the highest peak of the highest residence located within 500 feet of the OWB.

Under subsection (f) regarding allowed fuels, a person that owns, leases, uses or operates a new or existing OWB in this Commonwealth shall use only one or more of the following fuels: clean wood; wood pellets made from clean wood; certain home heating oil, natural gas or propane fuels; or other fuel approved in writing by the Department.

Under subsection (g) regarding prohibited fuels, a person who owns, leases, uses or operates an OWB in this Commonwealth may not burn a fuel or material in that OWB other than those fuels listed under subsection (f).

Under subsection (h) regarding regulatory requirements, a person may not use or operate an OWB in this Commonwealth unless it complies with all applicable Commonwealth regulations and statutes.

Under subsection (i) regarding written notice, prior to the execution of a sale or lease for a new or used OWB, the distributor, seller or lessor shall provide the prospective buyer or lessee with certain information as more fully explained under this subsection.

Under subsection (j) regarding recordkeeping requirements, the distributor, seller or lessor shall keep the records required under subsection (i) onsite for 5 years and provide the records to the Department upon request.

In addition to the summary of the proposed rulemaking, the Board also seeks comments on whether any final rule should include a seasonable prohibition to operate OWBs between the dates of May 1 and September 30. There is concern that while owners and operators may operate these units at a reduced capacity during the summer months, their operation may nevertheless result in increased PM emissions. Consequently, the Board would like to receive comments on whether a seasonal prohibition is an appropriate means to address this air quality issue.

F. *Benefits, Costs and Compliance*

Benefits

The citizens of this Commonwealth will benefit from these proposed amendments because it would help to reduce emissions of PM2.5 from OWBs. Attaining and maintaining levels of PM2.5 below the health-based NAAQS is important to reduce premature mortality and other health effects associated with PM2.5 exposure. There are also many citizen complaints regarding the operation of OWBs. Reductions in ambient levels of PM2.5 would promote improved human and animal health and welfare, improved visibility, decreased soiling and materials damage and decreased damage to plants and trees.

Compliance Costs

The cost of complying with the new requirements includes the cost of designing, manufacturing and distributing an OWB model that meets the EPA Phase 2 emission limit. Currently, there are at least 10 models available Nationally that meet the EPA Phase 2 emission limit. Nonqualifying OWB models cost between $8,000 and $18,000, depending on the size of the unit. It is estimated that the cleaner units may be approximately 15% more expensive because of the changes made to improve the efficiency of these units and reduce their emissions. However, most of these qualifying models are significantly more efficient which means they will burn less wood to produce the same amount of heat, reducing the cost of wood purchases.

Operators of existing OWBs would be required to ensure that the stack height complies with the requirements of the proposed rulemaking. Therefore, operators of existing OWBs may be required to extend the height of the existing stack. A review of the Hearthside Fireplace, Patio and Barbecue Center internet catalog indicated that the cost would be between $73 and $84 for a 2-foot section of chimney pipe and between $119 and $145 for a 4-foot section of chimney pipe.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the newly added requirements and how to comply with them. This will be accomplished through the Department's ongoing compliance assistance program.

Paperwork Requirements

There are some additional paperwork requirements associated with this proposed rulemaking that the regulated community would need to comply with, namely a written notice of information specified under § 123.14(i). Subsection (j) requires that the distributor, seller or lessor shall keep the records required under subsection (i) onsite for 5 years and provide the records to the Department upon request.

G. *Advisory Committee Recommendation*

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this proposed rulemaking. At its May 28, 2009, meeting, the AQTAC recommended adoption of the proposed rulemaking. The Department also consulted with the Citizens Advisory Council on July 21, 2009, the Small Business Compliance Advisory Committee on July 22, 2009, and the Agricultural Advisory Board on August 19, 2009.

H. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. The proposed rulemaking does not directly promote a multimedia approach. The reduced levels of PM2.5, however, will benefit water quality through reduced soiling and quantities of sediment that may run off into waterways. Reduced levels of PM2.5 would therefore promote improved aquatic life and biodiversity, as well as improved human, animal and plant life on land.

I. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 6, 2009, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

K. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by January 4, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by January 4, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which time the final regulation will be considered.

Electronic Comment—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by January 4, 2010. A subject heading of the proposal and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

L. *Public Hearings*

The Board will hold four public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held as follows:

Department of Environmental Protection Rachel Carson State Office Building Conference Room 105 400 Market Street Harrisburg, PA 17101	November 30, 2009 1 p.m.
Department of Environmental Protection Northeast Regional Office Susquehanna Conference Rooms A and B 2 Public Square Wilkes-Barre, PA 18711-0790	December 1, 2009 1 p.m.
Cranberry Township Municipal Building 2525 Rochester Road Cranberry Township, PA 16066-6499	December 2, 2009 1 p.m.
Department of Environmental Protection Northcentral Regional Office Goddard Conference Room 208 West Third Street, Suite 101 Williamsport, PA 17701-6448	December 3, 2009 1 p.m.

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Board may accommodate their needs.

JOHN HANGER,
Chairperson

Fiscal Note: 7-444. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

***Btu—British thermal unit*—The amount of thermal energy necessary to raise the temperature of 1 pound of pure liquid water by 1° F at the temperature at which water has its greatest density (39° F).**

* * * * *

***Clean wood*—The term includes the following:**

(i) Wood that contains no paint, stains or other types of coatings.

(ii) Wood that has not been treated with preservatives, including copper chromium arsenate, creosote, pentachlorophenol or the like.

* * * * *

***Outdoor wood-fired boiler*—**

(i) A fuel-burning device that:

(A) Is designed to burn, or is capable of burning, clean wood or other fuels listed under § 123.14(f) (relating to outdoor wood-fired boilers).

(B) The manufacturer specifies for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals, including structures like garages and sheds.

(C) Heats building space or fluid, or both, through the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.

(ii) The fuel-burning device may also be known as:

(A) Outdoor wood-fired furnace.

(B) Outdoor wood-burning appliance.

(C) Outdoor hydronic heater.

(D) Outdoor water stove.

* * * * *

***Phase 2 outdoor wood-fired boiler*—An outdoor wood-fired boiler that has been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.32 pounds per million Btu output and is labeled accordingly.**

* * * * *

CHAPTER 123. STANDARDS FOR CONTAMINANTS

PARTICULATE MATTER EMISSIONS

(*Editor's Note*: Section 123.14 is new and printed in regular type to enhance readability.)

§ 123.14. Outdoor wood-fired boilers.

(a) *Applicability.*

(1) Beginning on __________ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking.) this section applies to the following:

(i) A person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes an outdoor wood-fired boiler for use in this Commonwealth.

(ii) A person who installs an outdoor wood-fired boiler in this Commonwealth.

(iii) A person who purchases, receives, leases, owns, uses or operates an outdoor wood-fired boiler in this Commonwealth.

(2) This section does not apply to a person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes in this Commonwealth an outdoor wood-fired boiler that does not comply with the Phase 2 outdoor wood-fired boiler particulate matter standards if the person, manufacturer, supplier or distributor demonstrates both of the following:

(i) The outdoor wood-fired boiler is intended for shipment and use outside of this Commonwealth.

(ii) The person, manufacturer, supplier or distributor has taken reasonably prudent precautions to ensure that the outdoor wood-fired boiler is not distributed to or within this Commonwealth.

(b) *Phase 2 outdoor wood-fired boiler.*

(1) A person may not sell, offer for sale, distribute or install an outdoor wood-fired boiler for use in this Commonwealth unless it is a Phase 2 outdoor wood-fired boiler.

(2) A person may not purchase, lease or receive an outdoor wood-fired boiler for use in this Commonwealth unless it is a Phase 2 outdoor wood-fired boiler.

(c) *Setback requirements for Phase 2 outdoor wood-fired boilers.* A person may not install a Phase 2 outdoor wood-fired boiler in this Commonwealth unless the boiler is installed a minimum of 150 feet from the nearest property line.

(d) *Stack height requirements for Phase 2 outdoor wood-fired boilers.* A person may not install, use or operate a Phase 2 outdoor wood-fired boiler in this Commonwealth unless the boiler has a permanently attached stack. The stack must meet both of the following height requirements:

(1) Extend a minimum of 10 feet above the ground.

(2) Extend at least two feet above the highest peak of the highest residence located within 150 feet of the outdoor wood-fired boiler.

(e) *Stack height requirements for existing outdoor wood-fired boilers.* A person may not use or operate an outdoor wood-fired boiler that was installed before __________ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking.) unless the boiler has a permanently attached stack.

(1) The stack must meet both of the following height requirements:

(i) Extend a minimum of 10 feet above the ground.

(ii) Extend at least 2 feet above the highest peak of the highest residence located within 500 feet of the outdoor wood-fired boiler.

(2) If the existing outdoor wood-fired boiler is a Phase 2 outdoor wood-fired boiler, subsection (d) applies.

(f) *Allowed fuels*. A person that owns, leases, uses or operates a new or existing outdoor wood-fired boiler in this Commonwealth shall use only one or more of the following fuels:

(1) Clean wood.

(2) Wood pellets made from clean wood.

(3) Home heating oil, natural gas or propane that:

(i) Complies with all applicable sulfur limits.

(ii) Is used as a starter or supplemental fuel for dual-fired outdoor wood-fired boilers.

(4) Other fuel approved in writing by the Department.

(g) *Prohibited fuels*. A person who owns, leases, uses or operates an outdoor wood-fired boiler in this Commonwealth may not burn a fuel or material in that outdoor wood-fired boiler other than those fuels listed under subsection (f).

(h) *Regulatory requirements*. A person may not use or operate an outdoor wood-fired boiler in this Commonwealth unless it complies with all applicable Commonwealth regulations and statutes including the following:

(1) Section 121.7 (relating to prohibition of air pollution).

(2) Section 123.1 (relating to prohibition of certain fugitive emissions).

(3) Section 123.31 (relating to limitations).

(4) Section 123.41 (relating to limitations).

(5) Section 8 of the act (35 P. S. § 4008) regarding unlawful conduct.

(6) Section 13 of the act (35 P. S. § 4013) regarding public nuisances.

(i) *Written notice.*

(1) Prior to the execution of a sale or lease for a new or used outdoor wood-fired boiler, the distributor, seller or lessor shall provide the prospective buyer or lessee with a copy of this section and a written notice that includes the following:

(i) An acknowledgement that the buyer was provided with a copy of this section.

(ii) A written list of the fuels allowed under subsection (f).

(iii) A written statement that a person who owns, leases, uses or operates an outdoor wood-fired boiler in this Commonwealth may not burn a fuel or material in that outdoor wood-fired boiler other than those fuels listed under subsection (f).

(iv) A written statement that even if the requirements set forth in this section are met, the installation and operation of the outdoor wood-fired boiler may be subject to other applicable Commonwealth regulations and statutes including the regulations and statutes listed under subsection (h).

(v) A written statement that even if the requirements set forth in this section are met, the installation and operation of the outdoor wood-fired boiler may be subject to local regulations or local stack height or setback requirements that will further limit or prohibit the use of the purchased or leased outdoor wood-fired boiler.

(vi) A written statement that the stack height and setback requirements provided under this section may not be adequate in some areas of this Commonwealth due to terrain that could render the operation of the outdoor wood-fired boiler a nuisance or public health hazard.

(2) The written notice must be signed and dated by the buyer or lessee and the distributor, seller or lessor when the sale or lease of the outdoor wood-fired boiler is completed. The written notice must include the following:

(i) The name, address and telephone number of the buyer or lessee.

(ii) The name, address and telephone number of the distributor, seller or lessor.

(iii) The location where the outdoor wood-fired boiler will be installed.

(iv) The make, model name or number and date of manufacture of the outdoor wood-fired boiler.

(j) *Recordkeeping requirements*. The distributor, seller or lessor shall keep the records required under subsection (i) onsite for 5 years and provide the records to the Department upon request.

[Pa.B. Doc. No. 09-1929. Filed for public inspection October 16, 2009, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 435a, 461a, 465a, 467a AND 501a]

Employee Credentials, Design Standards and Internal Controls

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1207(3), (5), (9) and (11) and 1322 (relating to regulatory authority of the Board; and slot machine accounting controls and audits), proposes to amend Chapters 435a, 461a, 465a, 467a and 501a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

The proposed rulemaking revises the Board's requirements for the display of Board issued credentials, permits the use of nonfixed seating and makes a number of other changes related to internal controls which improve the clarity of the current requirements and make revisions which will simplify, improve the effectiveness of or add some additional flexibility to existing provisions.

Explanation of Amendments to Chapters 435a, 461a, 465a, 467a and 501a

In § 435a (relating to employees), subsection (c) has been amended to relax the existing requirement that all of a slot machine licensee's employees display their Board credentials when they are working in the licensed facility. Employees whose jobs require them to be on the gaming floor or in restricted areas will continue to be required to display their Board credentials, but employees who are not required to be on the gaming floor or in a restricted area will only have to carry their credential. This will allow employees not working in sensitive areas, for whom the display of their credential may interfere with job performance, to just carry their credential. Also, to give slot machine licensees some additional flexibility, food and beverage employees working on the gaming floor will be allowed to just carry their Board credential if their employer issued access badge displays a unique employee identification number. This will ensure that the surveillance department and the Board's casino compliance representatives will still have a means to visually verify the identity of these individuals.

In § 461a.7 (relating to slot machine minimum design standards), subsection (s) has been amended to give slot machine licensees the option to use fixed or nonfixed seating for slot machines. Currently, slot machine licensees must use fixed seating unless they file a petition asking for a waiver of the fixed seating requirement. Under this revision, slot machine licensees will be allowed to use nonfixed seating if the slot machine licensee provides a 48-inch minimum aisle width and submits, to the Bureau of Gaming Operations, a certification from local building and fire safety officials or a certification from an architect registered in this Commonwealth that the use of nonfixed seating complies with all building and fire safety codes.

In § 461a.10 (relating to automated gaming voucher and coupon redemption machines), subsections (g), (i) and (o) that relate to internal controls have been deleted and relocated to the new § 465a.34 (relating to automated gaming voucher and coupon redemption machine account-

ing controls). Since Chapter 461a deals mainly with equipment standards and Chapter 465a contains internal control requirements, the internal control requirements related to automated gaming voucher redemption machines, automated coupon redemption machines, bill breakers or some combination thereof are more appropriately placed in Chapter 465a. Similarly, § 461a.11 (relating to automated gaming voucher and coupon redemption machines: accounting controls) has been deleted in its entirety and the provisions in § 461a.11 have been moved to § 465a.34.

Also in § 461a.10, in subsection (t)(4)(iv) and (v), the word "dispensed" has been replaced with "accepted." This correction reflects the fact that the gaming voucher, coupon and currency storage box contains the currency that has been inserted into the automated gaming voucher and coupon redemption machine, and has nothing to do with the currency that is dispensed by the automated gaming voucher and coupon redemption machine. Additionally, subparagraphs (vi), (viii) and (x) have been deleted. The information listed in these subparagraphs is captured by the software for the automated gaming voucher and coupon redemption machine and is found on the other reports. Therefore, there is no need for this information to also be provided as part of the gaming voucher, coupon and currency storage box report.

In § 461a.19 (relating to remote system access), subsection (c) has been revised to require that a slot machine licensee must establish and obtain Board approval of internal controls that will be used to protect the integrity of the slot machine licensee's computer systems and related data before the slot machine licensee may allow a licensed manufacturer's employee to have remote access to its computer systems when there is an emergency. Because it would be difficult for the slot machine licensee to monitor what the manufacturer's employee is doing in this situation, it is imperative that the slot machine licensee have adequate protocols in place to prevent any unauthorized access to systems that are unaffected by the emergency. Requiring that these protocols be included in a slot machine licensee's internal controls will provide a mechanism for the Board to make sure that adequate protections are in place.

In §§ 465a.9 and 465a.33 (relating to surveillance system; surveillance department control; surveillance department restrictions; and access to areas containing central computer control equipment), the information required to be recorded in the access log books for the surveillance room and the areas containing central computer control equipment has been revised so that these requirements are the same for both log books. Making these formats the same should make compliance easier for the slot machine licensees.

In § 465a.18 (relating to transportation of slot cash storage boxes to and from bill validators; storage), subsection (d)(2), relating to slot cash storage boxes not contained in a bill validator, is being revised to make the key control requirements consistent with the key control requirements for slot cash storage boxes that are in bill validators. The existing key control requirements in subsection (d)(2) are unnecessarily more restrictive. The revised language will make the requirements in subsection (d)(2) the same as the requirements in subsection (c)(1)(ii).

In § 465a.33, a number of changes have been made to improve the clarity of this section and ensure that the operator of the central computer control system and the casino compliance representatives are notified whenever someone is going to enter the areas that contain the central computer control equipment. Also, as noted earlier, the log book requirements in this section and in § 465a.9 have been revised to match each other. This should make compliance easier for the slot machine licensees.

In § 467a.1 (relating to gaming floor plan), the citation in subsection (a)(2)(iv) has been updated to read "461a.7(s)." The subsections in § 461a.7 were previously amended but this citation was not changed as part of that amendment.

In § 501a.6 (relating to check cashing), subsection (b) has been revised to allow a slot machine licensee to cash checks for patrons that have been issued by the slot machine licensee. Currently, if a slot machine licensee issues a check to a patron, which frequently happens when the patron wins a large jackpot, the slot machine licensee can not cash that check for the patron later. However, the slot machine licensee may accept that check to establish a customer deposit, which the customer can then close and receive cash. This change will eliminate the need to open a customer deposit just to cash a check that the slot machine licensee has issued to the patron.

Affected Parties

Slot machine licensees will benefit from the additional operating flexibility some of these amendments provide. Slot machine licensees who allow remote access to their computer systems will also be required to submit internal controls governing that access and will be required to notify the Board's casino compliance agents and the Department of Revenue's contractor whenever access is being provided to the areas housing the central computer control equipment.

Fiscal Impact

Commonwealth

The Board does not anticipate that there will be any significant costs or savings to the Board or any other Commonwealth agency as a result of this rulemaking.

Political Subdivisions

This proposed rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

Private Sector

This proposed rulemaking may result in some small savings or additional costs to slot machine licensees. However, the Board does not expect that these savings or costs will be significant.

General Public

This proposed rulemaking will have no fiscal impact on the general public.

Paperwork requirements

This proposed rulemaking will simplify the log book requirements and reduce the need for slot machine licensees to file petitions with the Board relating to the use of nonfixed seating or display of Board credentials. It will also make it easier for patrons to cash checks issued by a slot machine licensee as payment for jackpot winnings.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed

rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-106.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 6, 2009, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request and is available on the Board's web site at www.pgcb.state.pa.us.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

GREGORY C. FAJT,
Chairperson

Fiscal Note: 125-106. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 435a. EMPLOYEES

§ 435a.6. Board credentials.

* * * * *

(c) A State employee required to obtain a Board credential shall carry the Board credential on his person at all times while engaged in the performance of his duties on the premises of a licensed facility. An individual who is not a State employee, who is required to obtain a Board credential **and whose duties do not require the individual to be on the gaming floor or in a restricted area, shall carry the Board credential on his person at all times while engaged in the performance of his duties on the premises of a licensed facility. An individual who is not a State employee, who is required to obtain a Board credential and whose duties require the individual to be on the gaming floor or in a restricted area**, shall display the Board credential on his person at all times while engaged in the performance of his duties on the premises of a licensed facility. **A food and beverage employee of a slot machine licensee who is required to obtain a Board credential and whose duties require the individual to be on the gaming floor may carry, instead of display, the Board credential if:**

(1) The employee displays the access badge required under § 465a.12 (relating to access badges and temporary access credentials).

(2) The access badge displays a unique identification number that has been assigned to that employee.

* * * * *

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 461a. SLOT MACHINE TESTING AND CONTROL

§ 461a.7. Slot machine minimum design standards.

* * * * *

(s) Seating made available by a slot machine licensee for use during slot play **[must] may** be fixed and stationary **[in nature] or nonfixed**. **[Slot] When fixed and stationary** seating **is used, it** must be installed in a manner that effectively precludes its ready removal by a patron but permits controlled removal, for example for American With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) purposes, by slot operations department personnel. **When nonfixed seating is used, the slot machine licensee shall:**

(1) Maintain a minimum aisle width of 48 inches, measured from the seat back to seat back when the nonfixed seating is vacant and is touching or is as close as possible to the slot machine at which the nonfixed seating is being used.

(2) Provide to the Bureau of Gaming Operations copies of a certification obtained from the local building code or fire safety officials or a certification from an architect registered in this Commonwealth that the use of the nonfixed seating complies with applicable building and fire safety code requirements.

* * * * *

§ 461a.10. Automated gaming voucher and coupon redemption machines.

* * * * *

(g) An automated gaming voucher and coupon redemption machine must have, at a minimum, the following:

(1) One lock securing the compartment housing the storage box and one lock securing the storage box within the compartment, the keys to which must be different from each other. **[The key to the lock securing the compartment housing the storage box shall be controlled by the slot operations department. The key to the lock securing the storage box within the compartment shall be controlled by the finance department.]**

(2) One lock securing the compartment housing the currency cassettes**[, the key to which shall be controlled by the finance department]**.

(3) One lock securing the contents of the storage box, the key to which must be different from the keys referenced in paragraphs (1) and (2). **[This key shall be controlled by an employee of the finance department other than the employee controlling the keys referenced in paragraphs (1) and (2).]**

* * * * *

(i) An automated gaming voucher and coupon redemption machine's currency cassettes must be designed to preclude access to its interior. **[Access to each currency cassette shall be controlled by the finance department.]**

* * * * *

(o) An automated gaming voucher and coupon redemption machine must detect, display and record electronically the error conditions in paragraphs (1)—(4). These error conditions must disable the automated gaming voucher and coupon redemption machine and prohibit new transactions **[and may only be cleared by either the finance department or slot operations department]**.

* * * * *

(t) An automated gaming voucher and coupon redemption machine or ancillary systems, applications and equipment associated with the reconciliation thereof, must be capable of producing the following reports upon request:

* * * * *

(4) *Gaming voucher, coupon and currency storage box report.* The report must be generated, at a minimum, whenever a gaming voucher, coupon and currency storage box is removed from an automated gaming voucher and coupon redemption machine. The report must include the following:

* * * * *

(iv) Total value of currency **[dispensed] accepted**.

(v) Total number of bills **[dispensed] accepted** by denomination.

(vi) **[Total dollar value of gaming vouchers accepted.**

(vii)] Total count of gaming vouchers accepted.

[(viii) Total dollar value of coupons accepted.

(ix)] (vii) Total count of coupons accepted.

[(x) Details required to be included in the gaming voucher transaction report required by paragraph (1) and the coupon transaction report required in paragraph (2).]

* * * * *

§ 461a.11. **[Automated gaming voucher and coupon redemption machines: accounting controls] (Reserved)**.

[Prior to commencing use of an automated gaming voucher redemption machine, an automated coupon redemption machine, bill breaker or some combination thereof, a slot machine licensee shall establish a comprehensive system of internal controls addressing the distribution of currency or coin, or both, to the machines, the removal of gaming vouchers, coupons or currency accepted by the machines and the reconciliations associated therewith. The internal controls shall be submitted to, and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols).]

§ 461a.19. Remote system access.

* * * * *

(c) **[A slot machine licensee authorizing access to a system by a licensed manufacturer under this section shall be responsible for implementing a system of access protocols and other controls over the physical integrity of that system and the remote access process sufficient to insure appropriately limited access to software and the system wide reliability of data.] Prior to granting remote system access, a slot machine licensee shall establish a system of internal controls applicable to remote system access. The internal controls shall be submitted to and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols). The internal control procedures submitted by the slot machine licensee shall be designed to protect the physical integrity of the systems listed in subsection (a) and the related data and be capable of limiting the remote access to the system or systems requiring technical support.**

CHAPTER 465a. ACCOUNTING AND INTERNAL CONTROLS

§ 465a.9. Surveillance system; surveillance department control; surveillance department restrictions.

* * * * *

(p) Entrances to the surveillance monitoring rooms may not be visible from the gaming floor. A person entering the surveillance monitoring room who is not an employee of the surveillance department assigned to the monitoring room on the particular shift corresponding to the time of entry shall sign a monitoring room entry log upon entering the monitoring room. The monitoring room entry log shall be:

* * * * *

(3) Signed by each person entering the monitoring room, with each entry containing the following:

(i) The date and time of **[entering the monitoring room] each entry**.

(ii) The entering person's name**, Board-issued credential number** and **[his]** department or affiliation.

* * * * *

§ 465a.18. Transportation of slot cash storage boxes to and from bill validators; storage.

* * * * *

(d) Slot cash storage boxes not contained in a bill validator, including emergency slot cash storage boxes that are not actively in use, shall be stored in the count room or other secure area outside the count room approved by the Board, in an enclosed storage cabinet or trolley and secured in the cabinet or trolley by a separately keyed, double locking system. The keys shall be maintained and controlled as follows:

* * * * *

(2) The key to the second lock shall be maintained and controlled by **[a] the** security department. Access to the security department's key shall be **[limited to a supervisor of that department] controlled, at a minimum, by a sign-out and sign-in procedure**.

* * * * *

§ 465a.33. Access to areas containing central computer control equipment.

(a) A slot machine licensee shall develop and submit to the Board and the Department, as part of the submission

required under § 465a.2 (relating to internal control systems and audit protocols), procedures for safeguarding and limiting access to the central control computer (CCC) equipment housed within the licensed facility. At a minimum, these procedures must include the following requirements:

(1) The area containing CCC equipment must:

(i) Be secured with a manual key lock system**, the keys to which must be different from any other keys used in the licensed facility**.

* * * * *

(2) **Access to the area containing the CCC system equipment may not be permitted unless prior arrangements have been made with the operator of the CCC system and the casino compliance representatives at the licensed facility.**

(3) All keys which access the area containing CCC equipment shall be maintained by the slot machine licensee's security department. **[Access to the] The** keys may only be **[authorized] signed out** by the director of security or the security shift manager **[with] to employees of the Department or the operator of the CCC system who are on the authorized access list. The authorized access list shall be obtained from the Department and made available to the casino compliance representatives at the licensed facility. A verbal** notification **shall be made** to the surveillance monitoring room**, the operator of the CCC system** and the casino compliance representatives at the licensed facility **prior to signing out the keys**.

[(3)](4) The slot machine licensee shall maintain an access log for the area containing CCC equipment. The log shall be maintained in a book with bound numbered pages that cannot be readily removed and placed in close proximity to the CCC equipment. Casino compliance representatives at the licensed facility may review the log upon request. The log shall be stored and retained in accordance with § 465a.6 (relating to retention, storage and destruction of books, records and documents). The following information shall be recorded in a log:

(i) The date and time of each entry **[and exit]**.

(ii) The **entering person's** name**, [and]** Board-issued credential number **[of each person who initiates, performs or supervises the entry] and department or affiliation**.

(iii) The **[purpose of entry] reason for entering the area containing CCC equipment**.

(iv) The name of the person authorizing the person's entry into the area containing CCC equipment.

(v) The date and time of exiting the area containing CCC equipment.

[(4) The slot machine licensee's security department shall maintain a list of employees who are authorized to have access to the area containing CCC equipment. The list shall be obtained from the Department and made available to the casino compliance representatives at the licensed facility.]

(5) **[Emergency access to individuals] Individuals** who are not authorized to have access to the area containing CCC equipment may only be granted **access for emergency situations requiring environmental adjustments** with a security escort. When emergency access is granted, the slot machine licensee shall provide notice to the Department and the casino compliance representatives at the licensed facility **[as soon as possible] prior to permitting entry to the area containing CCC equipment**.

§ 465a.34. Automated gaming voucher and coupon redemption machine accounting controls.

(a) Prior to commencing use of an automated gaming voucher redemption machine, an automated coupon redemption machine, bill breaker or some combination thereof, a slot machine licensee shall establish a comprehensive system of internal controls. The internal controls shall be submitted to, and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols).

(b) The internal controls required by subsection (a) must include procedures which:

(1) Address the distribution of currency or coin, or both, to the machines, the removal of gaming vouchers, coupons or currency accepted by the machines and the reconciliations associated therewith.

(2) Require that the key to the lock securing the compartment housing the storage box in the automated gaming voucher redemption machine, automated coupon redemption machine, bill breaker or combination thereof shall be controlled by the slot operations or security department and that the key to the lock securing the storage box within the compartment shall be controlled by the finance department.

(3) Require that the key to the lock securing the compartment housing the currency cassettes in the automated gaming voucher redemption machine, automated coupon redemption machine, bill breaker or combination thereof shall be controlled by the finance department.

(4) Require that the lock securing the contents of the storage box in the automated gaming voucher redemption machine, automated coupon redemption machine, bill breaker or combination thereof, the key to which must be different from the keys referenced in paragraphs (1) and (2), be controlled by an employee of the finance department other than the employee controlling the keys referenced in paragraphs (1) and (2).

(5) Require that the keys to the locks securing the contents of the currency cassettes in the automated gaming voucher redemption machine, automated coupon redemption machine, bill breaker or combination thereof be controlled by the finance department.

(6) Require either the finance department or slot operations department to clear the error conditions listed in § 461a.10(o) (relating to automated gaming voucher and coupon redemption machines).

CHAPTER 467a. COMMENCEMENT OF SLOT OPERATIONS

§ 467a.1. Gaming floor plan.

(a) An applicant for, or holder of a slot machine license, shall submit to the Board a floor plan of its gaming floor and the restricted areas servicing the slot operation. A floor plan must be:

* * * * *

(2) Certified by an architect licensed to practice in this Commonwealth and depict the following:

* * * * *

(iv) Each slot seat on the gaming floor in compliance with **[§ 461a.7(t)] § 467a.7(s)** (relating to slot machine minimum design standards).

* * * * *

CHAPTER 501a. COMPULSIVE AND PROBLEM GAMBLING REQUIREMENTS

§ 501a.6. Check cashing.

* * * * *

(b) A holder of a license, certification or registration from the Board or any employee authorized by a holder of a license, certification or registration from the Board may accept a personal check, wire transfer or cash equivalent, such as a recognized traveler's check, cashier's check or money order. **A slot machine licensee may accept a check issued to a patron by the slot machine licensee.**

[Pa.B. Doc. No. 09-1930. Filed for public inspection October 16, 2009, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 62]

[L-2009-2069117/57-268]

Natural Gas Distribution Company; Business Practices

The Pennsylvania Public Utility Commission (Commission) on April 30, 2009, adopted a proposed rulemaking order which establishes standard business practices and communication standards for natural gas distribution companies (NGDCs).

Executive Summary

In its October 2005 *Report to the General Assembly*, the Commission found that effective competition was not in Pennsylvania's Statewide retail natural gas market, based in part on the low participation rate of natural gas suppliers (NGSs). (Docket No. I-00040103.) The lack of uniformity in NGDC business practices, operating rules and supplier tariffs was cited as a possible market barrier to supplier entry and participation.

Based on the Commission's findings, a collaborative of natural gas industry stakeholders (SEARCH) was convened to discuss ways to increase competition. The *SEARCH Report* suggested that standardizing NGDC operating rules, business practices, requirements, penalties and procedures could remove barriers to NGS participation. The Commission adopted this suggestion in its September 11, 2008, *Final Search Order and Action Plan*, Docket No. I-00040103F0002, and directed that a proposed rulemaking be initiated to revise and, when feasible, to standardize NGDC business practices, operating rules and supplier coordination tariffs.

This rulemaking sets forth proposed regulations in §§ 62.181—62.185 that direct NGDCs to submit standard supplier coordination tariffs (SCTs), and to implement standard business practices and communication standards and formats that are cost-effective and remove market barriers. Proposed regulation § 62.184 provides for NGDC recovery of reasonable costs prudently incurred directly attributable to the implementation.

Public Meeting held
April 30, 2009

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson, Concurring in result only, Statement; Robert F. Powelson; Kim Pizzingrilli; Wayne E. Gardner

Natural Gas Distribution Company Business Practices; Doc. No. L-2009-2069117

SEARCH Final Order and Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market; Doc. No. I-00040103F0002

Proposed Rulemaking Order

By the Commission:

On September 11, 2008, the Commission adopted its *Final SEARCH Order and Action Plan* which was based on the discussions held by the SEARCH[1] stakeholders.[2] Order entered September 11, 2008 at Docket No. I-00040103F0002 (SEARCH Order). The Action Plan was designed to increase effective competition in Pennsylvania's retail natural gas market by increasing the participation of NGSs in the market. In the SEARCH Order, we directed that a proposed rulemaking be initiated to revise and, when feasible, to standardize NGDC business practices, operating rules and supplier coordination tariffs.

By this order, we issue for comment the proposed regulations that, *inter alia*, direct NGDCs to submit standard SCTs, and to implement standard business practices and communication standards and formats that the Commission determines to be cost-effective and that remove market barriers. The proposed regulations also provide for NGDC recovery of reasonable costs prudently incurred directly attributable to the implementation.

We also announce our intent to initiate a stakeholder process that will run concurrently with the rulemaking and will provide an additional avenue for public input. The stakeholder process will be used to develop a standard SCT, and will make recommendations for the adoption of standard business practices for the retail natural gas market.

Discussion

In the *SEARCH Order's* Action Plan, the Commission directed that a proposed rulemaking be prepared "to revise and, when feasible, standardize supplier coordination tariffs and NGDC system operating rules, business practices, requirements, penalties and procedures to remove or reduce barriers to supplier participation in the retail natural gas market." *SEARCH Order*, page 32.

The order further directed that the major issues to be addressed would include:

[1] SEARCH is an acronym for "Stakeholders Exploring Avenues for Removing Competition Hurdles."

[2] The Stakeholders had been convened in accordance with 66 Pa.C.S. § 2204(g) (relating to investigation and report to General Assembly) based on the Commission finding that "effective competition" did not exist in the retail natural gas market. See Investigation into the Natural Gas Supply Market: Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market, Order entered at Docket No. I-00040103. The *SEARCH Report* was drafted by Commission staff as a neutral overview of the discussions regarding the possible avenues to increase competition in Pennsylvania's retail natural gas supply market. The final version of the report was released as a companion to the *SEARCH Final Order* and *Action Plan*.

• The elimination or revision of inflexible or unreasonable nomination rules and delivery requirements.

• The adoption of wider tolerance bandwidths, where justified, and the elimination or revision of other rules affecting system flow that do not negatively impact system reliability.

• The revision of unreasonable cash out rules and penalties.

• The adoption of best business practices related to information exchange and data transfer, including the possible standardization of NGDC business practices by the adoption of certain NAESB [North American Energy Standards Board] practices.

The use and standardization of Electronic Bulletin Boards will also be addressed.

SEARCH Order, pages 32-33 (footnote omitted).

These issues are addressed under the corresponding sections of the rulemaking below.

§ 62.181. General.

Proposed § 62.181 sets forth the purpose of these proposed regulations and summarizes its contents. The purpose of this subchapter is to establish standard business practices, including supplier tariffs for implementation by the NGDCs. Using a common set of business practices, including standard supplier tariffs, facilitates the participation of NGSs in the retail market, reduces the potential for mistakes or misunderstandings between NGSs and NGDCs, and increases efficiency in industry operations. NGDCs are directed to implement a standard SCT, business practices and communications standards as directed by the Commission. NGDCs are authorized to recover reasonable costs prudently incurred of implementing and promoting natural gas competition in the Commonwealth.

§ 62.182. Definitions.

Terms appearing in this subchapter relating to NGDC business practices and NGDC/NGS interactions are defined.

§ 62.183. NGDC Customer Choice System Operations Plan.

Section 62.183 directs NGDCs to file system operations plans for Commission review, and to serve a copy of the plan on the Office of Consumer Advocate, the Office of Small Business Advocate, and NGSs licensed in the NGDC's service territory. Copies of the plan shall be provided to other NGSs upon request and shall be posted on the NGDC's web site. The contents of the NGDC's plan are to include an SCT, business practices and standards, and communications standards that comply with the provisions of the subchapter. The plan is also to include a copy of each standard agreement, form or contract that will be used by NGSs in operating on the system.

The customer choice system operations plan serves two purposes. First, it is a compliance filing that demonstrates that the NGDC has adopted a standard SCT and other business practices and standards consistent with the requirements of this subchapter. Second, the plan acts as a complete, single source for all the information that a supplier needs to know to conduct business and operate on the NGDC's system. Having all the necessary information in one place and having it freely accessible to all, will lower an entry barrier for NGSs contemplating market entry, and will reduce the potential for mistakes or misunderstandings between NGSs and NGDCs. In the time, it should increase efficiency in industry operations and should result in increased NGS participation in the retail natural gas market.

§ 62.184. Natural Gas Distribution Company Costs of Competition Related Activities

In the Proposed Rulemaking Order on Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets, Order entered March 27, 2009 at Docket No. L-2008-2069114 (*PRO*), we determined that NGDCs could recover reasonable costs related to promoting competition in the retail gas market through the use of a surcharge. We also proposed the adoption of an automatic adjustment mechanism for the surcharge and determined that, because the surcharge will be paid by all customers, it would not be used in calculating the price to compare.

> In our Action Plan, we concluded that the NGDCs "should be able to recover reasonable costs that are prudently incurred in connection with the implementation of any changes designed to promote the development of effective competition in the retail market." Action Plan at 21. Such costs also include expenses associated with increasing customer participation in the market such as modifications to NGDC billing systems or increased consumer education activities. Id. We determined that we would allow NGDCs to recover these costs through a surcharge with an automatic adjustment mechanism. We are adopting such a mechanism today in § 62.226.
>
> However, we note that to the extent it helps promote competition, the surcharge for competition related activities benefits all customers and, therefore, it should be paid by all customers, shoppers and non-shoppers alike. Because of that, this surcharge should not be considered in the calculation of the price to compare.

PRO, page 7.

Proposed § 62.184 in Annex A reiterates the language in proposed § 62.226 that authorizes NGDCs to recover reasonable costs prudently incurred in support of increasing competition through the use of surcharge with an automatic adjustment mechanism. In the event that § 62.226 is finalized while this rulemaking is pending, § 62.184 will be revised to cite to § 62.226.

§ 62.185. Supplier Coordination Tariff, Business Practices And Standards.

The *SEARCH Order*, quoting the *SEARCH Report*, discussed streamlining and/or standardizing certain business interactions between NGDCs and NGSs rather than requiring NGDCs to migrate to a preferred asset management system.

> Requiring all NGDCs to migrate to a preferred model for managing system assets would require comprehensive legislative changes and subsequent Commission proceedings to ensure due process related to property rights. However, certain business practices governing interactions between the suppliers and the NGDC can be tailored to operate within the preferred model. *SEARCH Report*, page 13. This preferred model would streamline and/or standardize certain interactions between the NGSs and NGDCs involving gas supply management on the NGDC system.

SEARCH Order, pages 27-28.

It was determined that these best business practices could be defined and memorialized in a generic supplier's tariff, or promulgated in Commission regulations. *SEARCH Report*, page 13.

A suggested approach to achieve some level of standardization was through the adoption of business practices and forms that were developed by the North American Energy Standards Board (NAESB). The reason for this approach was that changes to NGDC business practices would require less time to implement and would result in lower costs to the NGDCs and their customers because of the previous work that NAESB had already completed in this area. *SEARCH Report*, page 14.

NAESB[3] is a nonprofit, standards development organization accredited by the National Standards Institute.[4] NAESB develops definitions, standards and principles for the wholesale and retail natural gas industry through an open and balanced process involving all stakeholders—NGDCs, NGSs, pipeline operators, consumer representatives and regulatory agencies. NAESB standards and definitions for the wholesale natural gas industry have been adopted by the FERC as regulations and are required to be included or incorporated into interstate pipeline tariffs.

The suggestion to use NAESB standards for developing standards for the Pennsylvania retail market was based on the work of a subgroup of the SEARCH Inter-Company Activity Subgroup. This technical subgroup, which was comprised of representatives from NGDCs, NGSs and pipelines, reviewed each NAESB standard and business practice and identified agreement and disagreement on eight operational issues that included NAESB wholesale gas nomination standards and retail business practices in nine areas: (1) market participant interactions; (2) creditworthiness; (3) billing and payments; (4) distribution company/supplier disputes; (5) Electronic Data Interexchange and Internet Electronic Delivery Mechanisms; (6) Quadrant Specific Electronic Delivery Mechanism; (7) contracts; (8) customer information and customer enrollment, (9) drop and account maintenance. *SEARCH Report*, p. 13.

This subgroup's work clearly demonstrates that standardizing business practices requires resolution of many complicated and interrelated issues. Commission working groups and other stakeholder processes have been very successful in developing proposed regulations and technical standards where the issues are complex and consensus is not easily reached. Therefore, we believe that the most efficient way to develop a standard SCT and best business practices is through the use of a stakeholder process.

Accordingly, we plan to utilize a stakeholder process in conjunction with this rulemaking. This process will proceed concurrently with the proposed rulemaking and will provide another avenue for public input.

To initiate this stakeholder process, we will issue for comment a draft SCT and draft best business practices for use in Pennsylvania's retail markets. This straw man proposal will be based on comments and other documents submitted in the SEARCH[5] process and in our investigation into natural gas competition at Docket No. I-00040103. NAESB standards that are cost-effective and that remove barriers to market entry and participation will be incorporated in the straw man proposal as well as the specific rules related to nomination and delivery requirements that are included in proposed § 62.185(c)(3) in Annex A.

After comments and reply comments are submitted to the straw man proposal, we will schedule a technical conference to receive additional input. We intend to complete the stakeholder process no later than August 1, 2009.

In regard to the instant proposed rulemaking, § 62.185(a) is a general statement related to the scope of the section. It states that the Commission may adopt best business practices and standards that facilitate supplier participation in the retail market and may direct NGDC and NGS compliance with the standards. It also states that NAESB standards and model agreements that are cost effective and remove market barriers for suppliers will be considered for adoption.

Proposed § 62.185(b) addresses SCTs. The section states that the Commission may establish and revise the standard SCT, and will direct NGDCs to implement an SCT based on the standard SCT that conforms to the NGDC's customer choice system operations plan. The NGDC's existing SCT, if any, will remain in effect until the Commission approves an SCT or tariff supplement that complies with this regulation.

Proposed § 62.185(c) states that the Commission may establish business practices as necessary to implement the Act, and may direct their adoption by NGDCs and NGSs. The NGDC's implementation of business practices and standards will be included in the NGDC's customer choice system operations plan.

Proposed § 62.185(c)(3) sets forth proposed standards on five technical subjects: imbalance trading, tolerance bands, cash out and penalties, nominations, and capacity. Because of the complexity of each of the subjects, we recognize that it may not be feasible to draft a regulation that can be applied in every situation. For this reason, we will instruct the stakeholders to consider developing best practices for use by NGDCs in addition to regulations for these subjects.

Proposed § 62.185(d) addresses communication standards and formats. This section states that the Commission may establish and revise electronic data communication standards and formats and may direct their implementation by NGDCs and NGSs. Standards and formats may be implemented for nominations and delivery requirements and customer enrollment, usage and billing and payments.

Additionally, proposed § 62.185(d) makes the NGDC responsible for testing and certifying NGSs on the approved communications standards. Also, this proposed section states that the Commission, after notice and opportunity to be heard, may direct an NGDC to install and upgrade a billing system, electronic bulletin board, software and other communication or data transmission equipment and facilities to implement established electronic data communications standards and formats.

In regard to the implementation of proposed § 62.185(d), we will convene a separate working group of technical experts to establish electronic data communication standards and formats. NGDC participation in the working group will be made mandatory. The working group will be led by Commission staff and will make recommendations in regard to the standards and formats that should be adopted. In making these recommendations, consideration should be given to incorporating

[3] NAESB is a successor to the Gas Industry Standards Board (GISB), an organization that was incorporated in 1994 to develop business practice standards and communications and e-commerce protocols for the interstate natural gas industry. GISB's best known work involved the development of electronic transfer mechanism EDM standards which have been adopted for use in Pennsylvania's electric generation market.

[4] The American National Standards Institute oversees the creation, promulgation and use of thousands of standards and guidelines that directly impact businesses.

[5] *The Statement and Combined Assessment Report on Market Participant Interactions*, prepared for the Commission by the Inter-Company Activity NAESB Subgroup, dated October 31, 2006, shall also be considered in regard to uniform electronic communications transactions.

NAESB standards that are cost-effective and that remove barriers to market entry for suppliers.

The stakeholder collaborative will also be assigned the task of developing a plan, including a time frame, for implementation of electronic data communications standards and formats. The plan should identify priorities for implementation, including interim steps that should be taken immediately to rectify market barriers in information exchange (Information Exchange and Data Transfer). The technical working group will carry out its work in accordance with this plan.

Conclusion

The use of a common set of business practices and supplier coordination tariffs not only will increase efficiency in industry operations, but also, and most importantly, will facilitate the entry and participation of NGSs in the retail natural gas supply market. The purpose of this proposed rulemaking is to develop and to codify these standards for Pennsylvania's natural gas retail market. The scope of, and the time frame for this undertaking is ambitious, and its completion will require the commitment and cooperation of all industry stakeholders. We are convinced that the effort will be worthwhile as the resulting market place will better support supplier participation and thus, will increase competition for natural gas supply. We anticipate and appreciate your comments on this proposed rulemaking.

Accordingly, pursuant to §§ 501, 504 and 2201—2212 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504 and 2201—2212; sections 201 and 202 of the act of July 31, 1968, (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder in 4 Pa. Code §§ 7.231—7.234, we are proposing to amend our regulations as set forth in Annex A, attached hereto;

Therefore, it is Ordered That:

1. A rulemaking docket shall be opened to amend the regulations in 52 Pa. Code Chapter 62 (relating to natural gas supply customer choice) by adding §§ 62.181—62.185 as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. An original and 15 copies of written comments referencing the docket number of the proposed regulations be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. Reply comments may be submitted in the same manner no later than 15 days after the end date for filing comments. To facilitate posting, all filed comments shall be forwarded by means of electronic mail to Patricia Krise Burket at pburket@state.pa.us, Annunciata Marino at annmarino@state.pa.us and Cyndi Page at cypage@state.pa.us.

6. A copy of this order and Annex A shall be served on all jurisdictional natural gas distribution companies, all licensed natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate and all other parties that filed comments at the Docket No. I-00040103.

7. The Director of Operations shall implement the stakeholder process to create a standard supplier coordination tariff; to develop best business practices for use in natural gas retail markets and to establish a plan for the implementation of electronic data communications standards and formats as set forth in this order.

8. The Director of Operations, with the assistance of the Bureau of Fixed Utility Services and other bureaus as may be necessary, shall initiate a working group to establish electronic data communication standards and formats as set forth in this order.

9. The contact persons for this proposed rulemaking are Patricia Krise Burket, Law Bureau, (717) 787-3464 (legal) and Annunciata Marino, (717) 772-2151 (technical).

By the Commission

JAMES J. MCNULTY,
Secretary

Statement of Vice Chairperson Tyrone J. Christy

Before the Commission for consideration is the initiation of a proposed rulemaking proceeding to promulgate regulations that are designed to encourage increased natural gas supply competition among our jurisdictional NGDCs and licensed NGSs. The genesis of this rulemaking is the Commission's *Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market* that was released in October 2005. In that report, the Commission determined that effective competition did not exist in Pennsylvania's retail natural gas market, and subsequently reconvened the stakeholders in the natural gas industry to identify existing barriers to competition. In our *SEARCH Final Order* and *Action Plan* issued on September 11, 2008, the Commission identified several initiatives to eliminate these barriers to competition. The rulemaking before us today addresses the standardization of NGDC business practices, operating rules and supplier coordination tariffs (SCT).

Besides issuing these proposed regulations for comment, the Commission also is initiating a stakeholder process to run concurrently with the proposed rulemaking. The purpose of this group is to develop a standard SCT and to make recommendations for the adoption of standard business practices for the retail natural gas market. In order to begin this process the Commission intends to issue a draft SCT and a draft "best business practices" plan for comments and reply comments. A technical conference then will be held to finalize these proposed documents. Additionally, the Commission intends to convene a separate technical working group for the purpose of establishing communication standards.

My main concerns as we embark on this process are the potential cost ramifications of some of the proposed changes in operational rules and practices. Changes are being proposed with regard to imbalance trading, tolerance bands, cash-out rules, nominations and capacity access. Throughout this proposed rulemaking it is stated that only those practices and standards determined to be cost-effective by the Commission will be implemented. "Cost effective" is not defined by the Order, and therefore can be subjective. While some provisions may be deemed

cost effective to alternative suppliers, they could be detrimental to non-shopping customers. The Order further states that the proposed regulations will limit NGDC cost recovery to reasonable costs prudently incurred that are directly attributable to the implementation of these changes. In order to provide for recovery of these potential costs, the proposed regulations will establish an automatically adjusted surcharge mechanism to be paid by all customers, whether they decide to exercise their right to choose or not. As such, this charge will not be included within the NGDC's price to compare. Also, as the proposed surcharge is to be determined within each NGDC's annual 1307(f) proceeding, these proceedings will become more complicated in the future, potentially increasing the costs of all parties participating in the adjudication of these cases, including the Commission.

What this means in plain English is that we potentially are imposing new non-bypassable costs on Pennsylvania gas consumers so that we can create a more competitive environment for alternative suppliers. If the goal of competition is to level the playing field and provide consumers with choices that could result in cost savings, then I would support such charges. However, if the end results of leveling the playing field is simply to add new non-bypassable costs that otherwise would not have been incurred, then I would be less inclined to support such charges. Alternative gas suppliers have a significant hurdle here to demonstrate that savings are possible with retail natural gas choice in the residential sector, particularly when the NGDCs are required by statute to procure their gas supply under a Commission approved least cost procurement standard with no provision for a profit on that cost. While both NGDCs and alternative suppliers generally obtain natural gas from the same market, alternative suppliers must earn a profit on that gas—otherwise they would not be in business. The alternative suppliers must find enough efficiencies somewhere in their gas procurement practices to earn a profit while undercutting what has been blessed as a least cost gas procurement by the NGDC.

Therefore, I request parties to consider addressing in their comments, which are due within 45 days of publication in the *Pennsylvania Bulletin*, and in their reply comments due 15 days thereafter, the potential costs involved in the implementation of the directives within this rulemaking. I believe it is incumbent upon the Commission to determine beforehand the economic effect of these proposals.

Because of my concern over the unknown magnitude and nature of these potential costs, I will concur in the result only of this proceeding for the purpose of seeking comments from interested parties.

TYRONE J. CHRISTY,
Vice Chairperson

Fiscal Note: 57-268. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE

Subchapter F. NATURAL GAS DISTRIBUTION COMPANY BUSINESS PRACTICES

(*Editor's Note*; Proposed §§ 62.181 and 62.185 are new and are printed in regular type to enhance readability.)

§ 62.181. General.

The use of a common set of business practices, including standard supplier tariffs, facilitates the participation of NGSs in the retail market, reduces the potential for mistakes or misunderstandings between NGSs and NGDCs, and increases efficiency in industry operations. This subchapter requires NGDCs to implement a standard supplier coordination tariff, business practices and communication standards and formats as directed by the Commission. NGDCs are authorized to recover reasonable and prudently incurred costs of implementing and promoting natural gas competition in this Commonwealth.

§ 62.182. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Asset management—A function of the system operations of an NGDC relative to daily NGS and pipeline interactions relating to nominations, capacity, storage, delivery, balancing, reconciliation, penalties, forecasts and customer requirements, to assure safe, reliable natural gas service to the end user.

Balancing—The act of equalizing receipts and deliveries of gas into or withdrawals from an interstate gas pipeline or an NGDC's distribution system. Balancing may be accomplished daily, monthly or seasonally, with fees or penalties generally assessed for excessive imbalances.

Business practices—The use of a common set of formats, definitions and standards relating to business operations.

Capacity—The maximum quantity of natural gas that can be produced, transported, stored, distributed, or used in a given period of time under specified conditions.

Cash out—A generic term used to describe the corrective measures taken when an NGS's imbalance of natural gas supply in the system exceeds the prescribed tolerance.

City gate—The site where an NGDC receives and measures gas from a pipeline company.

Electronic bulletin board—A computer system that provides current natural gas information on nominations, interruptions, rates and other items.

Gas daily average—Index price for natural gas as published daily by Platts Gas Daily.

Imbalance—When an NGS receives or delivers a quantity of natural gas, then delivers or redelivers a larger or smaller quantity of natural gas to another party.

Intraday cycle—Under NAESB pipeline industry standards, one of two nomination cycles that permit a nomination to be made on the day of gas flow.

NAESB—North American Energy Standards Board—NAESB is a nonprofit standards development organization which develops business practice standards and communications and e-commerce protocols for the wholesale and retail natural gas industry.

NGDC—Natural gas distribution company—A natural gas distribution company as defined in 66 Pa.C.S. § 2202 (relating to definitions).

NGS—Natural gas supplier—A supplier as defined by 66 Pa.C.S. § 2202.

Nominations—A precise listing of the quantities of gas to be transported during any specified time period. A nomination includes all custody transfer entities, loca-

tions, compressor fueled and other volumetric assessments, and the precise routing of gas through the pipeline network. Nominations often create contract rights and liabilities.

OFO—Operational flow order—An order issued by an NGDC as defined in § 69.11 (relating to definitions).

PGC—Purchased gas cost—Natural gas costs which are collected, with adjustments, by NGDCs from their customers under 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments).

SCT—Supplier coordination tariff—The formal rules and regulations of an NGDC for providing NGS service to customers. It contains a compilation of all of the effective rate schedules of a particular company and the general terms and conditions of service.

Storage—Storing gas that has been transferred from its original location in underground reservoirs. Gas is usually stored in the summer for winter delivery reducing peak winter pipeline requirements. Storage can be in either the market or producing areas.

Timely cycle—Under NAESB pipeline standards, the initial nomination cycle where a nomination is due 12:30 p.m. prior to the day of gas flow.

Tolerance band—A range of acceptable values for the measured difference between the gas volume that is nominated to be delivered in a certain time frame and the gas volume that is delivered during that time frame by an NGS.

Uniform electronic transactions—Standard formats that allow all parties to develop the business process and automated systems needed to facilitate the exchange of business information in the energy industry in this Commonwealth.

§ 62.183. NGDC customer choice system operations plan.

(a) An NGDC shall file a customer choice system operations plan for Commission review to comply with this subchapter.

(b) The NGDC shall serve copies of the plan on the Office of Consumer Advocate, the Office of Small Business Advocate, and NGSs registered in the NGDC's service territory. Copies of the plan shall be provided upon request and shall be made available to the public on the NGDC's web site.

(c) A customer choice system operations plan must include the following elements:

(1) An SCT that complies with this subchapter.

(2) Business practices and standards that comply with this subchapter.

(3) Communication standards that comply with this subchapter.

(4) Copies of standard agreements, forms or contracts that will be used by NGSs.

§ 62.184. NGDC cost recovery.

(a) As part of its next annual filing under 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments), an NGDC may include a proposed tariff rider to establish a nonbypassable reconcilable surcharge filed within the requirements of 66 Pa.C.S. § 1307 designed to recover the reasonable and prudently incurred costs of implementing and promoting natural gas competition within this Commonwealth.

(b) The surcharge shall be calculated annually and adjusted to account for past over- or under-collections in conjunction with the 1307(f) process to become effective with new PGC rates.

(c) The surcharge shall be recovered on a per unit basis on each unit of commodity which is sold or transported over its distribution system without regard to the customer class of the end user.

(d) Before instituting the surcharge, an NGDC shall remove the amounts attributable to promoting retail competition from its base rates. This may be done through a 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) rate case filed not less than 5 years after first seeking recovery through a 66 Pa.C.S. § 1307 nonbypassable mechanism.

(e) Until an NGDC which seeks a nonbypassable recovery of its costs of promoting retail competition files a base rate case under 66 Pa.C.S. § 1308(d), the NGDC shall eliminate the effect of recovery of these costs in base rates through the filing of a credit to its base rates equal to the amount in base rates. This may be accomplished through the use of a revenue neutral adjustment clause that would credit base rates for the costs associated with promoting retail competition that are currently reflected in base rates. Costs would be fully recoverable through a nonbypassable reconcilable surcharge. The adjustment clause would be established through the filing of a fully allocated cost of service study and a proposed tariff rider in the NGDC's proceeding, under 66 Pa.C.S. § 1307(f). The credit and surcharge shall be adjusted at least annually through the 66 Pa.C.S. § 1307(f) process.

(f) The revenue neutral adjustment clause rider shall remain in effect until establishment of new base rates under 66 Pa.C.S. § 1308(d) which include a fully allocated cost of service study to remove these costs from base rates.

(g) The surcharge shall be subject to audit.

§ 62.185. Supplier coordination tariff, business practices and standards.

(a) *General.* The Commission may adopt best business practices and standards that will facilitate supplier participation in the retail natural gas market and will direct NGDCs and NGSs to comply with the practices and standards. NAESB standards and model agreements that are determined to be cost-effective and which remove market barriers for supplier participation will be considered for adoption.

(b) *Supplier coordination tariff.* The Commission may establish a standard SCT and will direct that an NGDC implement an SCT that conforms to the standard SCT. The standard SCT may be revised in accordance with Commission orders, policies and regulations. The current version of the standard SCT will be made available on the Commission web site.

(1) An NGDC shall implement an SCT based on a standard format SCT that is consistent with its customer choice system operations plan.

(2) The NGDC shall file an SCT in accordance with Commission orders, policies and regulations. When the NGDC has an existing SCT, the NGDC shall file a tariff supplement.

(3) The NGDC's current supplier tariff or supplement shall remain in effect until the Commission approves an SCT or tariff supplement filed in compliance with this section.

(c) *Business practices and standards.* The Commission may establish best business practices and standards as necessary to implement the provisions of 66 Pa.C.S. Chapter 22 (relating to natural gas competition), and may direct their implementation by NGDCs and NGSs.

(1) An NGDC's implementation of business practices and standards shall be consistent with its customer choice system operations plan.

(2) An NGDC's business practices and the process by which they are adopted may not undermine existing negotiated settlements with NGSs, may not compromise the safety, efficiency, security and reliability of system operations, and may not be discriminatory.

(3) An NGDC shall implement the following standards:

(i) *Imbalance trading.* An NGDC shall facilitate NGS imbalance trading. An NGS's customers' natural gas usage shall be balanced against NGS deliveries on the same monthly schedule. For computational purposes relating to balancing, an NGDC shall eliminate separate pooling for an NGS's interruptible customers so they are deemed to be in the same operating pool.

(ii) *Tolerance bands.* A tolerance band shall provide for a deviation in the volume of gas delivered of at least 10% of the volume nominated by the NGS, thus establishing a tolerance band that spans 90% to 110% of the volume of gas nominated.

(iii) *Cash out and penalties.* An NGDC shall cash out imbalances that fall within the 10% tolerance band at 100% of the gas daily average at the applicable index for the pool level. Outside the 10% tolerance band, a multiplier of 110% for under-deliveries and 90% for over deliveries shall apply, except during periods of gas shortage requiring the issuance of an OFO to protect the safe and reliable operation of the NGDC system.

(iv) *Nominations.* An NGDC shall support all four NAESB nominations cycles and support the timely cycle and at least one intraday cycle.

(v) *Capacity.* An NGDC shall provide full access to pipeline and storage capacity and will support daily nominations and delivery requirements that reflect current pool consumption conditions.

(d) *Communication standards and formats.* The Commission may establish electronic data communication standards and formats and may direct their implementation by NGDCs and NGSs. Standards and formats may be implemented for nominations and delivery requirements and customer enrollment, usage and billing and payments.

(1) An NGDC shall be responsible for NGS testing and certification in regard to approved electronic data communication standards and formats.

(2) The Commission may, subject to notice and an opportunity to be heard, direct an NGDC to install and upgrade a billing system, electronic bulletin board, software and other communication or data transmission equipment and facilities to implement established electronic data communications standards and formats.

(3) Communication standards and formats shall be revised in accordance with Commission orders, policies and regulations.

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