

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CHS. 121 AND 126] Gasoline Volatility Requirements

The Environmental Quality Board (Board) amends Chapter 126 (relating to motor vehicle and fuels programs) to read as set forth in Annex A. This final-form rulemaking amends § 126.301 (relating to compliant fuel requirement) to make Chapter 126, Subchapter C (relating to gasoline volatility requirements) no longer applicable to the Pittsburgh-Beaver Valley Area upon the effective date of approval by the United States Environmental Protection Agency (EPA) of the removal, suspension or replacement of Chapter 126, Subchapter C as a Federally-enforceable control measure in the Commonwealth's State Implementation Plan (SIP). Chapter 126, Subchapter C was proposed to be rescinded in the proposed rulemaking published at 47 Pa.B. 1157 (February 25, 2017). However, rescission alone would not remove the ability to enforce these requirements under Federal law through the Commonwealth's EPA-approved SIP. This final-form rulemaking is designed to ensure that Chapter 126, Subchapter C will not be applicable under Commonwealth or Federal law when the EPA approves the necessary Non-Interference Demonstration SIP revision to the Commonwealth's approved SIP. The proposal to delete four definitions in § 121.1 (relating to definitions) is not adopted in this final-form rulemaking.

This final-form rulemaking will be submitted to the EPA for approval as a revision to the Commonwealth's SIP following promulgation of this final-form rulemaking.

This final-form rulemaking is given under Board order at its meeting of December 12, 2017.

A. Effective Date

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

B. Contact Persons

For further information, contact Kirit Dalal, Chief, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3436; or Kristen Furlan, Assistant Director, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. Statutory Authority

This final-form rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth; section 5(a)(8) of the APCA, which grants the Board the authority to adopt rules and regulations designed to implement the Clean Air Act (CAA) (42 U.S.C.A.

§§ 7401—7671q); and section 4(18.3) of the APCA (35 P.S. § 4004(18.3)), which requires the Department and the Board to take actions that result in the rescission of Chapter 126, Subchapter C.

D. Background and Purpose

Chapter 126, Subchapter C applies to gasoline which is to be sold or transferred into or within the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each year. More specifically, refiners, importers, distributors, resellers, terminal owners and operators, and carriers may not sell, exchange or supply gasoline that does not have a Reid vapor pressure (RVP) of 7.8 pounds per square inch (psi) or less (low RVP gasoline) in the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each year. Retailers and wholesale purchaser-consumers may not sell, exchange or supply noncompliant gasoline in the Pittsburgh-Beaver Valley Area between June 1 and September 15 of each year. The Pittsburgh-Beaver Valley Area includes Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. Gasoline vapors include volatile organic compound (VOC) emissions. VOCs are a precursor to the formation of ground-level ozone air pollution and fine particulate matter (PM_{2.5}), both hazards to public health and welfare. Gasoline formulated with an RVP of 7.8 psi or less has lower VOC emissions than gasoline formulated at higher RVP levels. Chapter 126, Subchapter C was promulgated at 27 Pa.B. 5601 (November 1, 1997). These requirements were approved by the EPA at 63 FR 31116 (June 8, 1998), effective July 23, 1998, as a revision to the Commonwealth's SIP and codified at 40 CFR Part 52, Subpart NN (relating to Pennsylvania). Thus, Chapter 126, Subchapter C is a Federally-enforceable control measure to attain and maintain the 1-hour Ozone National Ambient Air Quality Standards (NAAQS) in the Pittsburgh-Beaver Valley Area to protect the public health and welfare.

The act of May 14, 2014 (P.L. 674, No. 50) (Act 50) added section 4(18.3) of the APCA:

Within sixty (60) days of the effective date of this clause, initiate the process of amending the State implementation plan. Upon approval of a revision which demonstrates continued compliance with Federal national ambient air quality standards through utilization of commensurate emission reductions by the Environmental Protection Agency, the board shall promulgate regulations to repeal the provisions of 25 Pa. Code Ch. 126 Subch. C (relating to gasoline volatility requirements).

Act 50 was effective May 14, 2014. According to the Senate Co-Sponsorship Memorandum for Senate Bill 1037, dated June 5, 2013, Act 50 was designed to address the price differential between low RVP gasoline and conventional gasoline in the Pittsburgh-Beaver Valley Area, cited by the legislative sponsors as being as much as a 10 to 15 cents per gallon (cpg) price difference between the two fuels.

The Commonwealth is required to ensure that the removal of Chapter 126, Subchapter C from the SIP complies with section 110(l) of the CAA (42 U.S.C.A. § 7410(l)) (Non-Interference Clause). The Non-Interference Clause prohibits the EPA Administrator from approving a SIP revision if the revision would interfere with any applicable requirement concerning attainment of a NAAQS or reasonable further progress in attaining a

NAAQS, or any other applicable requirement of the CAA. The Department is separately preparing for submittal to the EPA a Non-Interference Demonstration SIP revision that will show continued compliance with the applicable NAAQS and protection of the public health and welfare through the use of commensurate emission reductions to offset the slight increases in emissions of VOC and oxides of nitrogen (NO_x) that will likely result in the near term from removing Chapter 126, Subchapter C as a Federally-enforceable control measure from the SIP. This Non-Interference Demonstration SIP revision will include a request for the EPA to remove § 126.301 and §§ 126.302 and 126.303 (relating to recordkeeping and reporting; and compliance and test methods) from the Commonwealth's Federally-approved SIP.

The proposed rulemaking was designed to address the legislative mandate to the Board to promulgate regulations to rescind Chapter 126, Subchapter C. This final-form rulemaking's approach of amending § 126.301 rather than rescinding Chapter 126, Subchapter C as proposed is designed to ensure that EPA approval of the Non-Interference Demonstration SIP revision will occur prior to (or coincident with) Chapter 126, Subchapter C being made no longer effective. Upon promulgation of this final-form rulemaking and EPA approval of the Department's Non-Interference Demonstration SIP revision, Chapter 126, Subchapter C will no longer be applicable for the Pittsburgh-Beaver Valley Area. The Department will publish a notice in the *Pennsylvania Bulletin* to inform the public following SIP approval. Coordination of these actions will ensure that affected entities will not be at risk of enforcement proceedings at either the Federal or State level upon the effective date of EPA approval of the Non-Interference Demonstration SIP revision and will achieve the objective of Act 50. Following SIP approval, the Department plans to rescind Chapter 126, Subchapter C through a separate rulemaking.

When Chapter 126, Subchapter C is no longer applicable, the persons, groups and entities, including small businesses, currently subject to Chapter 126, Subchapter C will be subject only to the Federal gasoline volatility requirements. The applicable Federal regulation, 40 CFR 80.27(a)(2) (relating to controls and prohibitions on gasoline volatility), states that the gasoline RVP standard for Pennsylvania year-round is 9.0 psi except in those areas for which the EPA has approved a SIP revision with a lower RVP requirement. Section 80.27(d)(1) of 40 CFR further provides a 1.0 psi RVP allowance for gasoline containing ethanol at 9 to 10 volume percent applicable to Pennsylvania. When Chapter 126, Subchapter C is no longer applicable, a maximum RVP of 10.0 psi will be allowed for gasoline blended with ethanol in all areas of this Commonwealth, except the Philadelphia area where a different type of gasoline is Federally mandated.

This final-form rulemaking applies to gasoline refiners, importers, distributors, resellers, terminal owners and operators, carriers, retailers and wholesale purchaser-consumers who sell, exchange or supply gasoline in the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each year. These entities include owners and operators of facilities and infrastructure in the gasoline supply chain, such as bulk gasoline stations and terminals, other gasoline wholesaler facilities, gasoline stations with and without convenience stores, tanker trucks and petroleum pipelines. When this final-form rulemaking is promulgated and the EPA approves the Non-Interference Demonstration SIP revision, Chapter 126, Subchapter C will no longer apply to these entities.

The Department's assessment of how many entities will potentially be affected by this final-form rulemaking began with searching the North American Industry Classification System (NAICS) codes and the Standard Industrial Classification (SIC) system codes to identify the gasoline-related industry sectors performing activities currently subject to Chapter 126, Subchapter C. Using the NAICS and SIC codes, a review of multiple Department databases identified 33 to 1,252 businesses that may be subject to Chapter 126, Subchapter C. Additionally, the Commonwealth's Small Business Development Center's Environmental Management Assistance Program (EMAP) performed a query of the Hoover's database for a list of potentially subject businesses using NAICS codes provided by the Department. EMAP provided the Department with a list of 768 businesses that are potentially subject to Chapter 126, Subchapter C, of which 642 entities were identified as small businesses. The Department also identified approximately 1,100 potentially affected entities through American FactFinder, a web-based tool of the United States Census Bureau. The Department estimates that as many as 84% of the entities identified from all sources may be small businesses, based on the fact that approximately 84% of the 768 entities identified by EMAP qualified as small businesses.

Based on the available data, after promulgation of this final-form rulemaking and upon EPA approval of the Non-Interference Demonstration SIP revision, refineries may save as much as 0.5 cpg, retailers and wholesale purchaser-consumers may save between 1.4 cpg and 3.2 cpg, and consumers may save between 1.6 cpg and 9.2 cpg. Actual cost savings for an individual refiner will be directly dependent on how much 7.8 psi RVP gasoline a refiner produces during the applicable time period. Actual cost savings for retailers, wholesale purchaser-consumers and consumers will be directly dependent on how much gasoline is purchased from an entity subject to Chapter 126, Subchapter C during the applicable time period.

The Air Quality Technical Advisory Committee (AQTAC) was briefed on this final-form rulemaking on June 15, 2017. Twelve of the 15 members of AQTAC present voted to concur with the Department's recommendation to move this final-form rulemaking forward to the Board for consideration. Two AQTAC members opposed moving this final-form rulemaking forward, but did not provide concerns or comments at the meeting. The remaining member abstained. When AQTAC reviewed the proposed rulemaking at its December 10, 2015, meeting, five AQTAC members did not concur in moving the proposed rulemaking forward to the Board based on concerns over the loss of emission reduction benefits as a result of the rescission, the calculation of emission reduction benefits and the process that would be used by the Department to demonstrate continued compliance with the Federal NAAQS through the use of commensurate emission reductions.

The Small Business Compliance Advisory Committee (SBCAC) was briefed on this final-form rulemaking on July 26, 2017. The members of the SBCAC voted unanimously to concur with the Department's recommendation to move this final-form rulemaking forward to the Board for consideration.

This final-form rulemaking was discussed with the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee (Committee) on June 27, 2017. On the recommendation of the Committee, the members of the CAC concurred on September 19, 2017, with the Department's recommendation to forward this final-form rulemaking to the Board.

The AQTAC, SBCAC and CAC meetings are advertised and open to the public.

E. Summary of this Final-Form Rulemaking and Revisions from Proposed to Final-Form Rulemaking

§ 121.1. *Definitions*

This section contains definitions relating to the air quality regulations. The following definitions were proposed to be deleted: “compliant fuel,” “importer,” “low RVP gasoline” and “Pittsburgh-Beaver Valley Area.” The proposed deletion of these definitions is withdrawn because this final-form rulemaking does not rescind Chapter 126, Subchapter C.

§ 126.301. *Compliant fuel requirement*

This section describes when and where low RVP gasoline is required and details the restrictions on selling, exchanging, supplying, blending, mixing, storing and transferring compliant and noncompliant fuel during the applicable period. The proposed rescission of this section is withdrawn. This section is amended by adding subsection (d) to state that “[t]his subchapter will no longer be applicable to the Pittsburgh-Beaver Valley Area upon the effective date of approval by the EPA of the removal, suspension or replacement of this subchapter as a part of the Commonwealth’s SIP.” This section will no longer be applicable when § 126.301(d) is satisfied.

§ 126.302. *Recordkeeping and reporting*

This section describes the recordkeeping and reporting requirements of Chapter 126, Subchapter C, including when records are required, who shall maintain the records and what must be included in the records. The proposed rescission of this section is withdrawn. This section will no longer be applicable when § 126.301(d) is satisfied.

§ 126.303. *Compliance and test methods*

This section identifies the approved methodology for sampling and testing gasoline to determine RVP. The proposed rescission of this section is withdrawn. This section will no longer be applicable when § 126.301(d) is satisfied.

F. Summary of Major Comments and Responses

The Board approved publication of the proposed rulemaking at its meeting of October 18, 2016.

The proposed rulemaking was published at 47 Pa.B. 1157, with a 66-day public comment period.

Three public hearings were held on March 28, 29 and 30, 2017, in Pittsburgh, Norristown and Harrisburg, respectively. Testimony was not provided at the hearings. The public comment period closed on May 1, 2017. Comments were received from members of the public, the regulated industry and members of the House of Representatives. Comments were also received from the Independent Regulatory Review Commission (IRRC). The comments received on the proposed rulemaking are summarized in this section and are more extensively addressed in a comment and response document which is available from the Department.

IRRC comments—consistency with the intent of the General Assembly

IRRC noted that the proposed rulemaking implements Act 50 by rescinding Chapter 126, Subchapter C and four related definitions from § 121.1. IRRC further noted that the preamble to the proposed rulemaking stated that if the rulemaking was published as a final-form rulemaking, it would be submitted to the EPA for approval as

a SIP revision. IRRC commented that the Board’s plan for implementation of Act 50 would appear to conflict with the legislative directive in Act 50 to promulgate the required regulations after approval of revisions to the Commonwealth’s SIP by the EPA.

IRRC asked why the Board was proceeding with this rulemaking prior to securing approval of the Commonwealth’s SIP revisions from the EPA. IRRC further asked how this plan for implementation was consistent with the intent of the General Assembly. IRRC requested that the Board provide an explanation in the preamble of this final-form rulemaking to explain the Board’s implementation plan and why it believes the plan is consistent with Act 50.

In response, the proposed rulemaking attempted to satisfy both the intent of the General Assembly and the policy in place in EPA Region 3 at the time to accomplish the two substantive requirements of Act 50: rescinding the regulation; and demonstrating commensurate emission reductions. Prior to a recent decision by EPA Region 5 regarding Ohio’s repeal of its low RVP gasoline volatility regulation, it was the policy of the EPA not to approve the removal of a regulation from a state’s SIP unless the regulation had first been repealed at the state level and then submitted as a revision to the state’s SIP. In Ohio, rather than repealing its low RVP gasoline volatility regulation, Ohio amended its regulation to make it no longer effective upon approval by EPA Region 5 of a SIP revision removing the provisions from Ohio’s SIP. The Department discussed this decision with EPA Region 3 and, with the concurrence of EPA Region 3, recommended using Ohio’s approach in this final-form rulemaking.

This final-form rulemaking adds § 126.301(d) to make Chapter 126, Subchapter C no longer applicable to the Pittsburgh-Beaver Valley Area upon the effective date of approval by the EPA of the removal, suspension or replacement of Chapter 126, Subchapter C as a part of the Commonwealth’s SIP. The Department is separately preparing for submittal to the EPA a Non-Interference Demonstration SIP revision that will show continued compliance with the applicable NAAQS and protection of the public health and welfare through the use of commensurate emission reductions to offset the slight increases in VOC and NO_x emissions that will likely result in the near term from removing Chapter 126, Subchapter C as a Federally-enforceable control measure from the SIP and making Chapter 126, Subchapter C no longer effective in this Commonwealth. This Non-Interference Demonstration SIP revision will include a request for the EPA to remove Chapter 126, Subchapter C from the Commonwealth’s Federally-approved SIP.

The coordination of this final-form rulemaking and the Non-Interference Demonstration SIP revision submittal to the EPA allows for the regulated industry and affected citizens to benefit immediately upon the EPA’s approval of the Non-Interference Demonstration SIP revision, which is consistent with the goals of the General Assembly in Act 50. The Department will publish a notice in the *Pennsylvania Bulletin* to inform the public following SIP approval. After publication of the notice in the *Pennsylvania Bulletin*, the Department plans to rescind Chapter 126, Subchapter C.

IRRC comment—protection of the public health, safety and welfare

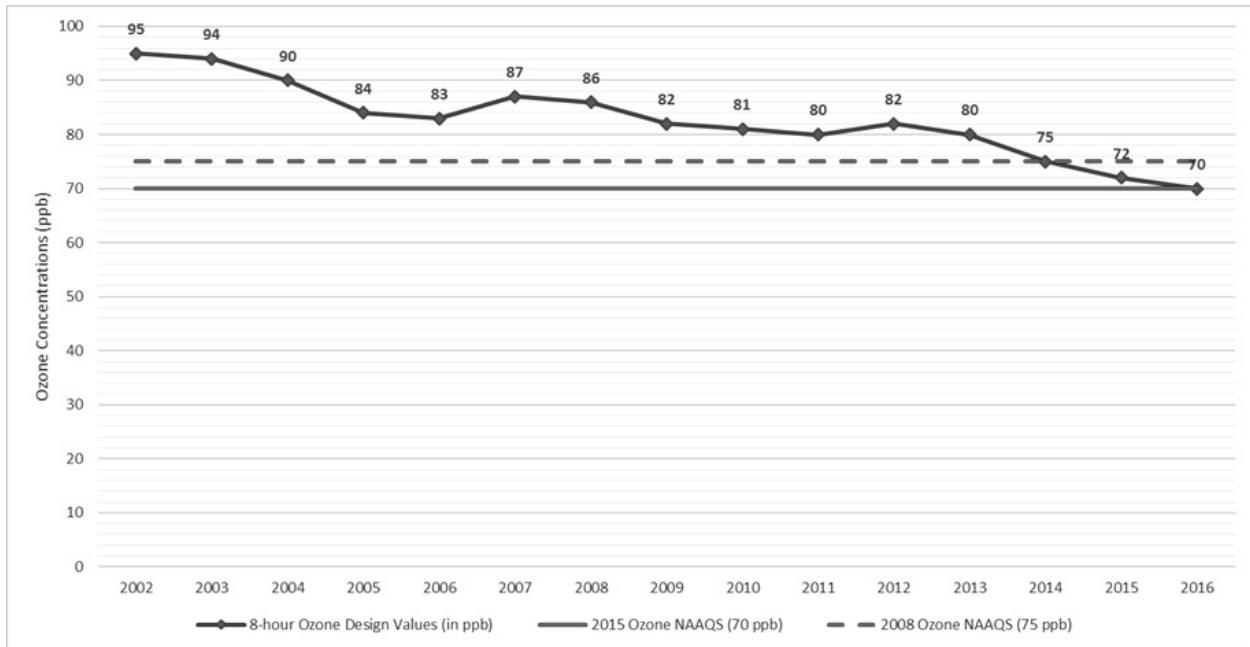
IRRC asked if the health, safety and welfare of the citizens of this Commonwealth would be adequately protected if the proposed rulemaking was adopted as a

final-form rulemaking and the EPA did not approve revisions to the Commonwealth's SIP.

This final-form rulemaking is designed to ensure that Chapter 126, Subchapter C will not be applicable under Commonwealth or Federal law when the EPA approves the necessary Non-Interference Demonstration SIP revision to the Commonwealth's SIP. Significant adverse impact on the health, safety or welfare of the citizens of this Commonwealth is not anticipated from removing the low RVP requirements for the Pittsburgh-Beaver Valley Area. Ambient air monitoring in the Pittsburgh-Beaver

Valley Area has demonstrated decreasing levels of ozone concentrations since 2002. Figure 1 shows the downward trend in ozone design values for the Pittsburgh-Beaver Valley Area for 2002–2016. The design value is the annual fourth-highest daily maximum 8-hour ozone concentration measured at an ambient air quality monitor averaged over 3 years. In 2014, the Pittsburgh-Beaver Valley Area came into compliance with the 2008 Ozone NAAQS and in 2016 came into compliance with the more stringent 2015 Ozone NAAQS.

Figure 1. Trend in 8-hour Ozone Design Values from 2002–2016 for the Pittsburgh-Beaver Valley Area



Although the Department projects a small increase in emissions in the affected area in the near term from switching from low RVP gasoline to conventional RVP gasoline, the emission reduction benefits achieved by low RVP gasoline have been declining and will continue to decline steadily in future years, decreasing from 1.63 tons of VOC per day in 2017 to 1.33 tons of VOC per day by 2030. The decline in emission reduction benefits achieved by the low RVP gasoline is due to the implementation of technologies such as electric vehicles and onboard refueling vapor recovery canisters in gasoline-powered vehicles, as well as permanent and enforceable control measures established by the EPA's multiple tiers of fuel and vehicle emission standards that have been implemented beginning in the early 2000s. In addition to the emission reduction benefits of the mobile source control measures, permanent and enforceable control measures for industry and stationary sources have contributed to the consistent downward trend in monitored ozone design values for the Pittsburgh-Beaver Valley Area. Therefore, the removal of the low RVP gasoline volatility requirements as an ozone pollution control measure is very unlikely to have an adverse impact on ozone air quality and the public health and welfare in the Pittsburgh-Beaver Valley Area.

The revised approach taken in this final-form rulemaking will ensure that the health, safety and welfare of the citizens of this Commonwealth will not be negatively impacted if the EPA does not approve the Non-Interference Demonstration SIP revision to the SIP that the Department is preparing to submit. The amendment to § 126.301 ensures that Chapter 126, Subchapter C will remain in effect and the emission reduction benefits from the existing regulation will continue to occur until the EPA approves the Non-Interference Demonstration SIP revision.

Compliance with Act 50

Twenty members of the House of Representatives commented that the proposed rulemaking continued to carry out the General Assembly's directive from Act 50. They also commented that Act 50, which was enacted with substantial bipartisan support in the General Assembly, was enacted in response to the concerns expressed by residents of western Pennsylvania. The Board thanks the Representatives for their support and agrees that the proposed rulemaking complied with the intent of the General Assembly's directive in Act 50. Although this final-form rulemaking alters the approach being used to carry out Act 50 in response to other comments received, the amended approach achieves the goals of Act 50.

General support

Several commentators expressed general support for the proposed rescission of Chapter 126, Subchapter C, referred to by some commentators as low RVP gasoline or summer gas requirements. The Board thanks the commentators for the support.

Reduce costs and improve operations

Several commentators stated that rescinding the gasoline volatility requirements in Chapter 126, Subchapter C will help to reduce the cost of gasoline to the consumer. The Department's analysis of refining costs and terminal and retail prices shows that costs may be reduced for refiners and distributors and possibly gasoline retailers and consumers if the upstream cost savings are passed through the gasoline supply chain. The exact cost savings benefit that may result from the rescission of Chapter 126, Subchapter C is difficult to quantify due to the many factors used to establish the price of petroleum products, as well as the evolving nature of the petroleum products industry in the United States.

The Department's analysis of terminal prices indicated that during the summer months (May 1—September 15) of 2006—2012 (excluding summer 2009), seasonal average rack (terminal) prices in the Pittsburgh metropolitan area ranged from \$0.095 below to \$0.032 above the Statewide average rack (terminal) prices. See Table 6 in the Regulatory Analysis Form for this final-form rulemaking. The Department's analysis of retail gasoline prices indicated that during the summer months (June—September) of 2005—2014, seasonal average retail gasoline prices in the Pittsburgh metropolitan area ranged from \$0.037 below to \$0.092 above the Statewide average retail gasoline prices. In the winter months (October—May), seasonal average retail gasoline prices in the Pittsburgh metropolitan area ranged from \$0.015 below to \$0.101 above the Statewide average retail gasoline prices. See Table 7 in the Regulatory Analysis Form for this final-form rulemaking.

In the most recent 5 years of data, Pittsburgh metropolitan area average retail gasoline prices have been higher than the Statewide average retail gasoline prices in summer and winter. Because winter and summer prices have been higher, it is unclear how much of the summer price differential is due to the low RVP gasoline requirement and how much is due to local market forces and other factors. It is also difficult to determine if the cost savings that may result from this final-form rulemaking action will be passed on to the consumer when Chapter 126, Subchapter C is no longer applicable.

Further, if Chapter 126, Subchapter C is no longer applicable, this may allow for petroleum products to be supplied to western Pennsylvania from Midwestern refineries due to repurposing and switching directions of product flow in the gasoline supply pipelines. These and other potential changes for the area's gasoline supply could influence the price for gasoline blends in the Pittsburgh-Beaver Valley Area going forward as much as, or more than, Chapter 126, Subchapter C becoming no longer applicable.

Two commentators did not agree with the statement in the executive summary of the proposed rulemaking that businesses involved in gasoline transport and storage are unlikely to see much impact, if any, as the type of gasoline being transported does not directly affect the business operation. The commentators stated that logistics companies must set aside tanks each summer and, on an annual basis, segregate batches of the boutique 7.8 psi RVP gasoline for the Pittsburgh-Beaver Valley Area,

resulting in resupply limitations, constrained assets and an ongoing need to protect the restrictive 7.8 psi RVP of the Pittsburgh fuel along the pipeline. The commentators stated that less tank segregation would create efficiencies in distribution, which should improve the flow of petroleum products within this Commonwealth. The Board appreciates the insight provided by these commentators. The executive summary and Regulatory Analysis Form for this final-form rulemaking have been revised to reflect this clarification.

One commentator stated that the Board's analysis in the Regulatory Analysis Form severely underestimated the total amount of low RVP gasoline consumed in the Pittsburgh-Beaver Valley Area in the summer months. The estimate was that fuel consumption was 16.7 million gallons for the summer months (June—September) of 2013. The Board thanks the commentator for this information. The Department determined that the data source it used for estimating the 2013 Statewide retail gasoline sales during the development of the proposed rulemaking was inaccurate. The Department used Statewide retail gasoline sales data collected by the Department of Revenue for this final-form rulemaking. Total estimated Commonwealth retail gasoline sales during the low RVP season (May 1—September 15) based on 2016 Department of Revenue data were approximately 1.92 billion gallons. As in the original analysis, Statewide retail gallons sold were apportioned to the Pittsburgh-Beaver Valley Area based on the percentage of vehicle miles travelled by gasoline-powered vehicles in the Pittsburgh-Beaver Valley Area as a portion of Statewide gasoline-powered vehicle miles travelled, which is about 18.3%. Based on this percentage, the 2016 total for low RVP gasoline retail sales during the summer months in the Pittsburgh-Beaver Valley Area is estimated at approximately 352 million gallons. This does not change the Department's estimates of emission reductions, because the emission reductions were developed independently of gallons of gasoline sold. Emissions were estimated with a computer model. Highway vehicles emissions were estimated using the EPA's MOVES2014 Model. Nonroad emissions were estimated using MOVES2014a. The model estimates emissions using a variety of inputs, including, among other factors, traffic volumes, vehicle speeds, vehicle fleet mix, fuel characteristics and parameters of the Commonwealth's vehicle inspection and maintenance testing program. Gasoline consumption is not used as an input into the computer model.

Another commentator estimated that the historical difference in retail price between the 7.8 psi low RVP gasoline and 9.0 psi (with a 1.0 psi waiver) RVP gasoline in the surrounding Pennsylvania counties to be approximately 9 cpg. The commentator estimated that the savings for the area could be as much as \$8.9 million for the May 1—September 15 time frame. This estimate appears to be based on the volume of fuel delivered to the area by this commentator only and does not include fuel delivered by other entities. The Department's examination of retail prices for the proposed rulemaking indicated that retail prices for low RVP fuel in the Pittsburgh metropolitan area were 9 cpg more on average than the Statewide average retail gasoline price during the June—September 2014 summer season. However, retail prices for low RVP gasoline were between 1.6 cpg and 9.2 cpg more on average for the most recent 5 years of available data (2011—2015). The Department updated its estimates of potential cost savings in the Regulatory Analysis Form for this final-form rulemaking based on the revised data relating to fuel consumption in the affected area. For the

purposes of this estimate, the Department assumed that consumers in the Pittsburgh metropolitan area will be paying the Statewide average retail gasoline prices if Chapter 126, Subchapter C is no longer applicable. Based on the most recent 5 years of available data, consumers would potentially save from 1.6 cpg to 9.2 cpg. Using a summer season (May 1—September 15) fuel consumption estimate of approximately 352 million gallons in the Pittsburgh-Beaver Valley Area, the Department estimated that the potential total cost savings for consumers resulting from this final-form rulemaking would range from \$5.632 million (1.6 cpg × 352 million gallons × \$1/100 cents) to \$32.384 million (9.2 cpg × 352 million gallons × \$1/100 cents). This calculation is based on the assumption that consumers may be purchasing low RVP fuel as early as the May 1 compliance date for refiners and terminals, rather than the later June 1 compliance date for retailers and wholesale purchaser-consumers. Potential cost savings for an individual consumer would be directly dependent on how much low RVP gasoline a consumer would purchase from a retail entity subject to Chapter 126, Subchapter C from June 1—September 15; low RVP fuel may be available for purchase from retailers as early as May 1, which would increase the period in which consumers could experience cost savings from the rescission of Chapter 126, Subchapter C. For example, a consumer that purchases a total of 100 gallons of low RVP gasoline could potentially save from \$1.60 (1.6 cpg × 100 gallons × \$1/100 cents) to \$9.20 (9.2 cpg × 100 gallons × \$1/100 cents) for the season.

Several commentators stated that requiring the use of a boutique gasoline blend has a direct economic cost on the residents of western Pennsylvania. The Board agrees that making Chapter 126, Subchapter C no longer applicable may result in cost savings for affected entities in the Pittsburgh-Beaver Valley Area. However, as previously mentioned, many factors influence the pricing of gasoline.

Many commentators stated that improved emission controls on vehicles and new requirements for fuel content eliminate the need for the low RVP gasoline requirements. As mentioned previously, the Board notes that improvements in vehicle technology, such as onboard refueling vapor recovery systems, and more stringent regulations for vehicle emission controls and fuel content, such as EPA's Tier 3 regulations published at 79 FR 23414 (April 28, 2014) will likely result in diminishing emission reduction benefits from the low RVP gasoline blend. Although the emission reduction benefits diminish over time, the Department plans to demonstrate that the remaining lost emission reduction benefits from making Chapter 126, Subchapter C no longer applicable are offset by commensurate emission reductions in the Non-Interference Demonstration SIP revision submitted to the EPA.

Issues concerning air quality

Several commentators stated that there will likely be minimal adverse impact on local air quality due to the rescission of the low RVP gasoline requirement. The Board agrees that the environmental benefits of the low RVP gasoline requirements will likely diminish over the next 10—15 years. Using EPA-approved computer models, the Department modeled the change in emissions that would result from 7.8 psi RVP gasoline being replaced by 10.0 psi RVP gasoline. The modeling indicated that emissions from gasoline-powered highway and nonroad sources using 10.0 psi RVP gasoline in the Pittsburgh-Beaver Valley Area would increase by 1.63 tons of VOC emissions and 0.35 ton of NO_x emissions per summer day

in 2017, compared to the baseline emissions of these sources when using 7.8 psi RVP gasoline. The modeling indicates that these increased emissions will diminish to 1.33 tons per day of VOC emissions and 0.01 ton per day of NO_x emissions by 2030. The Department plans to demonstrate through a Non-Interference Demonstration SIP revision submittal to the EPA that removing the low RVP gasoline volatility requirements from the Commonwealth's SIP will not interfere with attainment or reasonable further progress for any applicable NAAQS, by offsetting the lost emission reductions with emission reductions from other control measures and projects.

A commentator stated that the emission reduction benefits of the low RVP gasoline volatility program in the Pittsburgh market have diminished due to the EPA implementing the requirements in 40 CFR Part 63, Subpart BBBBBB (relating to National emission standards for hazardous air pollutants for source category: gasoline distribution bulk terminals, bulk plants, and pipeline facilities). This subpart requires more stringent controls, monitoring, recordkeeping and reporting for gasoline distribution bulk terminals, bulk plants and pipeline facilities. The Board agrees that emissions from gasoline storage tanks are well controlled. The Department's emissions inventory indicates that total emissions in the Pittsburgh-Beaver Valley Area from storage tanks that store gasoline, both fixed roof and floating roof tanks, are less than 10 tons of VOCs per year or 0.03 ton per day. The methodology for estimating these emissions indicates that the change in total emissions resulting from storing gasoline with an RVP of 10.0 psi instead of 7.8 psi will be minimal.

G. Benefits, Costs and Compliance

Benefits and costs of this final-form rulemaking, and compliance with it, will occur when §§ 126.301—126.303 become no longer applicable as a result of the EPA approving the Non-Interference Demonstration SIP revision.

Benefits

The benefits of this final-form rulemaking are expected to outweigh the costs and short-term environmental effects of making the requirements for low RVP gasoline no longer applicable upon the effective date of the EPA's approval of the removal, suspension or replacement of Chapter 126, Subchapter C as a Federally-enforceable control measure in the Commonwealth's SIP. The VOC emission reduction benefits from requiring low RVP gasoline in the Pittsburgh-Beaver Valley Area steadily decline in future years, decreasing from VOC emission reductions of 1.63 tons per day in 2017 to VOC emission reductions of 1.33 tons per day by 2030. The NO_x emission reduction cobenefits of low RVP gasoline decline from 0.35 ton per day in 2017 to 0.01 ton per day in 2030. The Commonwealth plans to demonstrate to the EPA through a Non-Interference Demonstration SIP revision that these small increases in VOC emissions will be offset with VOC emission reductions achieved from other control measures when the low RVP gasoline requirements are no longer effective.

One potential benefit of this final-form rulemaking is the elimination of the costs for blending gasoline with an RVP of 7.8 psi or less to be exchanged, supplied or sold in the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each year. These cost savings may be passed down through the gasoline supply chain, potentially lowering costs for consumers. Another potential benefit may be a reduction in the recordkeeping and

reporting obligations experienced by the regulated community to comply with Chapter 126, Subchapter C.

As previously discussed, owners and operators of facilities and infrastructure in the gasoline supply chain, including refineries, bulk gasoline stations and terminals, other gasoline wholesaler facilities, gasoline stations with and without convenience stores, tanker trucks and petroleum pipelines, may benefit from this final-form rulemaking financially and through reduced recordkeeping and reporting obligations. As many as 84% of these entities may be small businesses.

The population of the Pittsburgh-Beaver Valley Area was approximately 2,353,045 in 2015. Most gasoline consumers in the Pittsburgh-Beaver Valley Area likely use gasoline for operating gasoline-powered vehicles and off-road equipment. Gasoline consumers in the Pittsburgh-Beaver Valley Area, consumers in the adjacent counties who purchase gasoline in the Pittsburgh-Beaver Valley Area and consumers traveling through the Pittsburgh-Beaver Valley Area may benefit economically if cost savings are passed through to the retail establishments and the ultimate consumers.

Compliance costs

For the reasons previously discussed, this final-form rulemaking is expected to result in cost savings or little to no adverse financial impact for most affected entities. Businesses involved in the sale of gasoline, including gas stations, bulk terminals and wholesalers, will likely see an economic benefit from the elimination of the requirement to obtain and sell gasoline with an RVP of 7.8 psi or less if the cost savings of blending the special fuel are passed down the supply chain from the refinery and terminal to the retail gas station. The ultimate consumer may or may not see a cost savings at the pump. Businesses involved in gasoline transport and storage will likely see some cost reductions due to the increased efficiency resulting from not having to segregate the 7.8 psi RVP gasoline.

Recordkeeping requirements for all affected entities may be reduced or simplified since the businesses will not be required to document the transfer of gasoline with an RVP of 7.8 psi. This may or may not lead to cost savings as the records kept are likely to continue to be kept for business purposes by terminals and retailers.

Compliance assistance plan

The Department does not anticipate that compliance assistance will be required, as this final-form rulemaking will make requirements, including recordkeeping and reporting requirements, no longer applicable upon the effective date of the EPA approval of the removal, suspension or replacement of Chapter 126, Subchapter C as a part of the Commonwealth's SIP. The Department will respond to questions that affected facilities may have about transitioning from 7.8 psi RVP gasoline to 9.0 or 10.0 psi RVP gasoline through the Department's ongoing compliance assistance program.

In addition, the Department will rescind policy document # 273-4000-008, "Policy for Sampling and Determination of Compliance with Low RVP Gasoline Requirements in the Pittsburgh-Beaver Valley Ozone Non-attainment Area," when Chapter 126, Subchapter C is no longer applicable.

Paperwork requirements

The owner or operator of a facility subject to Chapter 126, Subchapter C is required to maintain records sufficient to demonstrate compliance with the applicable

requirements. This final-form rulemaking will make the recordkeeping and reporting requirements for owners and operators of affected facilities no longer applicable upon the effective date of the EPA approval of the removal, suspension or replacement of Chapter 126, Subchapter C as a part of the Commonwealth's SIP.

H. Pollution Prevention

The 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.

Although slight increases in VOC and NOx emissions are expected with the ending of the low RVP gasoline requirements, the emission increases are expected to be offset by emission reductions from other control measures. The ozone air quality in the Pittsburgh-Beaver Valley Area has consistently improved since the first Ozone NAAQS was implemented and is expected to continue to do so as a result of current permanent and enforceable control measures and regulations. To demonstrate compliance with Act 50 and with the Non-Interference Clause, the Commonwealth plans to identify equivalent emission reductions to offset the emission reductions that will be lost in future years after Chapter 126, Subchapter C is no longer applicable.

I. Sunset Review

Upon the effective date of the EPA approval of the removal, suspension or replacement of Chapter 126, Subchapter C as a part of the Commonwealth's SIP, Chapter 126, Subchapter C will no longer be applicable.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 10, 2017, the Department submitted a copy of the notice of proposed rulemaking, published at 47 Pa.B. 1157, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the House Committee, and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on February 21, 2018, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 22, 2018, and approved this final-form rulemaking.

K. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) At least a 60-day public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 47 Pa.B. 1157.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

L. Order

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 126, are amended by amending § 126.301 to read as set forth in Annex A.

(Editor's Note: The proposed amendment of § 121.1 and the proposed rescission of §§ 126.301—126.303 have been withdrawn by the Board. The amendment to § 126.301 was not included in the proposed rulemaking published at 47 Pa.B. 1157.)

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the House and Senate Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Chairperson of the Board shall certify this order and Annex A, as approved for legality and form, and deposit them with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking will be submitted to the EPA as a revision to the Pennsylvania SIP.

(f) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PATRICK McDONNELL,
Chairperson

(Editor's Note: See 48 Pa.B. 1482 (March 10, 2018) for IRRC's approval order.)

Fiscal Note: Fiscal Note 7-529 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE III. AIR RESOURCES
CHAPTER 126. MOTOR VEHICLE AND FUELS PROGRAMS
Subchapter C. GASOLINE VOLATILITY REQUIREMENTS

§ 126.301. Compliant fuel requirement.

(a) This subchapter applies to gasoline which is sold or transferred into or within the Pittsburgh-Beaver Valley Area during the period May 1 through September 15, 1998, and continuing every year thereafter.

(b) A refiner, importer, distributor, reseller, terminal owner and operator or carrier, may not:

(1) Sell, exchange or supply gasoline that is not a compliant fuel during the period described in subsection (a).

(2) Blend, mix, store or transport or allow blending, mixing, storing or transporting of compliant fuel with noncompliant fuel during the period described in subsection (a).

(c) A retailer or wholesale purchaser-consumer may not sell, exchange or supply gasoline that is not a compliant fuel during the period June 1 through September 15, 1998, and continuing every year thereafter.

(d) This subchapter will no longer be applicable to the Pittsburgh-Beaver Valley Area upon the effective date of approval by the EPA of the removal, suspension or replacement of this subchapter as a part of the Commonwealth's SIP.

[Pa.B. Doc. No. 18-526. Filed for public inspection April 6, 2018, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CH. 801]

General Policies

Summary: This document contains rules that amend the regulations of the Susquehanna River Basin Commission (Commission) to codify the Commission's Access to Records Policy providing rules and procedures for the public to request and receive the Commission's public records.

Dates: The rule is effective March 19, 2018.

Addresses: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788.

For Further Information Contact: Jason E. Oyler, Esq., General Counsel, 717-238-0423, ext. 1312; joyler@srbc.net. Also, for further information on the final rule, visit the Commission's website at <http://www.srbc.net>.

Supplementary Information: Notice of proposed rulemaking was published in the *Federal Register* on October 12, 2017 (82 FR 47407); *New York Register* on October 25, 2017; *Pennsylvania Bulletin* on October 21, 2017; and *Maryland Register* on October 27, 2017. The Commission convened a public hearing on November 2, 2017, in Harrisburg, Pennsylvania. A written comment period was held open through November 13, 2017.

The Commission received one comment on the proposed rule, which was supportive of the Commission's efforts to formalize its Access to Records Policy. The Commission also received two comments after the close of the official public comment period suggesting some changes to rulemaking.

Based upon input from the Commission's member jurisdictions, subsection (b)(4) is amended and a new subsection (f) is added to create an exception to records subject to public access for those internal, pre-decisional deliberations between staff and member jurisdictions working in cooperation with the Commission. The Commission will also modify § 801.14(b)(1) to clarify that it does not prohibit the Commission from providing salary information in response to records requests, as the Com-

mission has historically released these records upon request. Section 801.14(b)(8) is also modified to exclude the provision of financial documents related to critical infrastructure.

Based on public input the Commission clarifies the following:

- The Commission does intend to review and revisit its Access to Records Policy after adoption of the final rule to update its procedures.
- The final rule, § 801.14(c)(3), provides that the Commission must respond in a reasonable time frame. The Commission works with requesters and generally responds to records requests within 30 days of the request. The reasonable timeframe language allows the Commission to deal with requests varying in complexity and magnitude while continuing to balance prompt access to records with the agency's other obligations and limitations.

Through this final rule, the Commission continues its long tradition of transparency by formalizing the key elements of its Access to Records Policy in duly promulgated regulations. The Commission's 2009 Access to Records Policy, which remains in effect, can be found at: http://www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf. The Commission's current records processing fee schedule can be found at: <http://www.srbc.net/pubinfo/docs/RecordsProcessingFeeScheduleUpdatedAddress.pdf>.

List of Subjects in 18 CFR Part 801

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 801 as follows:

PART 801—GENERAL POLICIES

1. The authority citation for part 801 is revised to read as follows:

Authority: Secs. 3.1, 3.4, 3.5(1), 15.1 and 15.2, Pub.L. 91-575 (84 Stat. 1509 et seq.)

2. Add § 801.14 to read as follows:

§ 801.14 Public access to records.

(a) *Purpose.* The Commission, as an independent compact agency, is not subject to any of its member jurisdictions' laws regarding public access to records. Nevertheless, the Commission wishes to assure, to the maximum extent practicable, the availability of Commission records consistent with the Susquehanna River Basin Compact. The Commission shall maintain an "Access to Records Policy" that outlines the details and procedures related to public access to the Commission's records. Any revisions to this policy shall be consistent with this section and undertaken in accordance with appropriate public notice and comment consistent with requirements of 18 CFR 808.1(b).

(b) *Scope.* This section shall apply to all recorded information, regardless of whether the information exists in written or electronic format. There is a strong presumption that records shall be public, except where considerations of privacy, confidentiality, and security must be considered and require thoughtful balancing. The Commission shall identify types of records that are not subject to public access:

(1) Personnel or employment records, excluding salary information;

(2) Trade secrets, copyrighted material, or any other confidential business information;

(3) Records exempted from disclosure by statute, regulation, court order, or recognized privilege;

(4) Records reflecting internal pre-decisional deliberations, including deliberations between the commission and representatives of member jurisdictions;

(5) Records reflecting employee medical information, evaluations, tests or other identifiable health information;

(6) Records reflecting employee personal information, such as social security number, driver's license number, personal financial information, home addresses, home or personal cellular numbers, confidential personal information, spouse names, marital status or dependent information;

(7) Investigatory or enforcement records that would interfere with active enforcement proceedings or individual due process rights, disclose the identity of public complainants or confidential sources or investigative techniques or endanger the life or safety of Commission personnel; or

(8) Records related to critical infrastructure, excluding financial records, emergency procedures, or facilities.

(c) *Procedures.* The Access to Records Policy will detail the necessary procedures for requesting records and processing records requests:

(1) Requests shall be in writing and shall be reasonably specific;

(2) The Commission shall identify an Access to Records Officer to handle requests;

(3) The Commission shall respond to a records request within a reasonable time and in consideration of available resources and the nature of the request;

(4) The Commission shall not be required to create a record that does not already exist, or to compile, maintain, format or organize a public record in a manner in which the Commission does not currently practice;

(5) A procedure shall be identified for electronic transfer, copying or otherwise providing records in a manner that maintains the integrity of the Commission's files; and

(6) A procedure shall be identified for handling review of requests that seek access to information that has been identified as confidential and for notifying the person(s) who submitted the confidential information that it is subject to a records request.

(d) *Fees.* The Commission shall adopt and maintain a "Records Processing Fee Schedule." The fees shall be calculated to reflect the actual costs to the Commission for processing records requests and may include the costs of reproducing records and the cost to search, prepare and/or redact records for extraordinary requests.

(e) *Appeals.* Any person aggrieved by a Commission action on a records request shall have 30 days to appeal a decision in accordance with 18 CFR 808.2.

(f) *Disclosure to consultants, advisory committees, and State and local government officials and employees.* Data and information otherwise exempt from public disclosure may be disclosed to Commission consultants, advisory committees, and state and local government officials and employees for use only in their work in cooperation with the Commission. Such persons are thereafter subject to the same restrictions with respect to the disclosure of such data and information as any other Commission employee.

Dated: March 13, 2018.

ANDREW D. DEHOFF,
Executive Director

Fiscal Note: Fiscal Note 72-14 remains valid for the final adoption of the subject regulation.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART IV. SUSQUEHANNA RIVER BASIN
COMMISSION
CHAPTER 801. GENERAL PROVISIONS**

Sec.
801.14. Incorporation by reference.

§ 801.14. Incorporation by reference.

The regulation set forth in 18 CFR 801.14 (relating to public access to records) is incorporated by reference and made part of this title.

[Pa.B. Doc. No. 18-527. Filed for public inspection April 6, 2018, 9:00 a.m.]
