

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CHS. 121 AND 127]

Additional Requirements for Control of Fine Particulate Matter in the Nonattainment New Source Review Program

The Environmental Quality Board (Board) amends Chapters 121 (relating to general provisions) and 127, Subchapters E and H (relating to new source review; and general plan approvals and operating permits) to read as set forth in Annex A. This final-form rulemaking incorporates recently promulgated Federal requirements for the regulation of volatile organic compounds (VOC) and ammonia as precursor emissions to the formation of fine particulate matter, which is particulate matter less than and equal to 2.5 micrometers in diameter (PM_{2.5}). This final-form rulemaking also removes the requirement that applications for plan approvals and operating permits for portable sources be submitted by hand delivery or certified mail return receipt requested to allow for greater flexibility in submitting these applications to the Department of Environmental Protection (Department).

This final-form rulemaking is necessary to address a mandatory 18-month sanction clock, in accordance with section 179 of the Clean Air Act (CAA) (42 U.S.C.A. § 7509), following the United States Environmental Protection Agency's (EPA) determination that the Commonwealth has not met its obligations for the nonattainment new source review (NNSR) permit program, because its existing NNSR program does not include emissions of VOC and ammonia as PM_{2.5} precursors. To stop the sanction clock, the Commonwealth needs to submit this final-form rulemaking to the EPA, for the EPA's technical and administrative review, by November 7, 2019.

This final-form rulemaking will be submitted to the EPA for approval as a revision to the Commonwealth's State Implementation Plan (SIP) following promulgation of the final-form regulation.

This final-form rulemaking was adopted by the Board at its meeting on August 20, 2019.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Virendra Trivedi, Chief, Division of Permits, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Jennie Demjanick, Assistant Counsel, 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's 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 also grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA (42 U.S.C.A. §§ 7401—7671q).

D. *Background and Purpose*

On July 18, 1997, the EPA revised the National Ambient Air Quality Standard (NAAQS) for particulate matter (PM) to add new standards for fine particles, using PM_{2.5} as the indicator. The EPA set the health-based (primary) and welfare-based (secondary) PM_{2.5} annual standard at a level of 15 micrograms per cubic meter (µg/m³) and the 24-hour standard at a level of 65 µg/m³. See 62 FR 38652 (July 18, 1997). Subsequently, on October 17, 2006, the EPA revised the primary and secondary 24-hour NAAQS for PM_{2.5} to 35 µg/m³ from 65 µg/m³. See 71 FR 61236 (October 17, 2006). On January 15, 2013, the EPA lowered the health-based (primary) PM_{2.5} annual standard from 15 µg/m³ to 12 µg/m³. See 78 FR 3086 (January 15, 2013).

On January 15, 2015, the EPA designated five areas in this Commonwealth as moderate nonattainment areas for the 2012 annual PM_{2.5} NAAQS, based on air quality monitoring data from 2011 to 2013. See 80 FR 2206 (January 15, 2015). The nonattainment areas were the Allegheny County Area, Allentown Area (Lehigh and Northampton Counties), Delaware County Area, Johnstown Area (Cambria County and partial Indiana County) and Lebanon County Area.

On April 7, 2015, the EPA issued updated designations, based on complete, quality-assured and certified monitoring data from 2012 to 2014, which reduced the number of nonattainment areas in this Commonwealth to three: the Allegheny County Area, the Delaware County Area and the Lebanon County Area. See 80 FR 18535, 18549 (April 7, 2015).

The EPA subsequently determined that two of these areas—Delaware and Lebanon—attained the 2012 annual PM_{2.5} NAAQS based on complete, quality-assured and certified air quality data that shows that the area is monitoring attainment (Clean Data Determination). See 81 FR 89868 (December 13, 2016) and 82 FR 50851 (November 2, 2017) respectively. These final actions suspended the requirements for the Commonwealth to submit an attainment demonstration and associated reasonably available control measures, reasonable further progress plans, contingency measures and other planning SIP revisions related to the areas' attainment of the 2012 annual PM_{2.5} NAAQS for so long as these areas continue to attain the 2012 annual PM_{2.5} NAAQS.

Section 172(c)(3) of the CAA (42 U.S.C.A. § 7502(c)(3)) requires a comprehensive emissions inventory, which is not suspended by the Clean Data Determinations. The Department submitted emissions inventories for the Delaware County and Lebanon County nonattainment areas on May 5, 2017, and September 25, 2017, respectively. On July 3, 2018, the EPA published a final rule that approved both Delaware County and Lebanon County emissions inventories. See 83 FR 31064 (July 3, 2018).

In August 2016, the EPA published its SIP Requirements Rule, which requires states with nonattainment areas for PM_{2.5} to amend their NNSR regulations to

include emissions of VOC and ammonia as PM_{2.5} precursors. See Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, 81 FR 58010 (August 24, 2016). Section 189(a)(2)(B) of the CAA (42 U.S.C.A. § 7513a(a)(2)(B)) and its implementing regulations at 40 CFR 51.1003(a) (relating to attainment plan due dates and submission requirements) requires all moderate nonattainment area elements to be submitted to the EPA for SIP approval no later than 18 months from the date of designation. The designations were effective on April 15, 2015. See 80 FR 2206, 18535. Accordingly, the required elements were due to the EPA for SIP approval on October 15, 2016. The Clean Data Determinations for the Delaware and Lebanon County Areas do not relieve the Commonwealth of its responsibilities to develop this SIP revision for the NNSR permit program.

This final-form rulemaking amends the § 121.1 (relating to definitions) definition of “regulated NSR pollutant” and the Chapter 127, Subchapter E NNSR permitting regulations to include the PM_{2.5} precursor emissions provisions under the SIP Requirements Rule.

In May 2008, the EPA issued its Implementation Rule which defines a major facility as having the potential to emit: 100 tons per year (TPY) of emissions of VOC or ammonia, or both, in a moderate PM_{2.5} nonattainment area and 70 TPY of VOC or ammonia emissions, or both, in a serious PM_{2.5} nonattainment area. See Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}), 73 FR 28321 (May 16, 2008). The EPA’s Implementation Rule also established a VOC significance threshold of 40 TPY. The Implementation Rule requires states to determine the ammonia significance threshold and the VOC and ammonia offset ratio. The Clean Data Determinations for the Delaware and Lebanon County Areas do not relieve the Commonwealth of its responsibilities to develop this SIP revision for the NNSR permit program.

This final-form rulemaking amends the § 121.1 definitions of “major facility” and “significant” and the Chapter 127 Subchapter E NNSR permitting regulations related to the VOC and ammonia offset ratio provisions under the Implementation Rule. The definition of “major facility” is also amended to include facilities which emit or have the potential to emit: 70 TPY of PM_{2.5} in a serious nonattainment area for PM_{2.5}, 70 TPY of NO_x in a serious nonattainment area for PM_{2.5}, and 70 TPY of SO₂ in a serious nonattainment area for PM_{2.5}.

On November 4, 2016, the South Coast Air Quality Management District (SCAQMD) amended its NNSR program to include ammonia and VOC as precursors to PM_{2.5} (SCAQMD Rule 1325). As part of that rulemaking, SCAQMD added a significance threshold for ammonia of 40 TPY, which is the same significance threshold in this final-form rulemaking. SCAQMD also included an offset ratio for VOC and ammonia of 1:1, which is the same offset ratio in this final-form rulemaking. On May 8, 2017, the California Air Resources Board submitted a SIP revision to the EPA with the amendments to SCAQMD Rule 1325. On November 30, 2018, the EPA issued a conditional approval of the SIP revision. See 83 FR 61551 (November 30, 2018).

After reviewing the data, the Department believes that SCAQMD’s technical rationale, that 40 TPY for ammonia is conservative because NO_x emissions with an established 40 TPY threshold have a greater influence in the formation of secondary ambient PM_{2.5} than ammonia emissions, is technically sound. See Proposed Amended

Rule 1302—Definitions and Proposed Amended Rule 1325—Federal PM_{2.5} New Source Review Program, Final Staff Report, November 2016, Mike Laybourn, Air Quality Specialist, South Coast Air Quality Management District. The Department adopts that rationale as its own for this final-form rulemaking.

This final-form rulemaking includes a significant impact level (SIL) of 1.2 µg/m³ for 24-hour PM_{2.5} and 0.2 µg/m³ for annual PM_{2.5} which conform with the EPA guidance document for SILs entitled, Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program, EPA memorandum, April 17, 2018, Peter Tsigotis, Director, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

The addition of PM_{2.5} SILs will mitigate the effects of PM_{2.5} in nonattainment areas affected by PM_{2.5} emissions from attainment areas. A SIL defines the level of ambient air impact that is considered a “significant contribution” to air quality. If the modeled maximum ambient impacts of a new source or modification are below the SILs, the source: (1) is presumed not to cause or contribute significantly to a Prevention of Significant Deterioration (PSD) increment or NAAQS violation, and (2) is not required to perform the multiple-source, cumulative impacts assessments that are otherwise required under PSD.

On April 6, 2018, the EPA published a notice of finding of failure to submit (FFS) SIP revisions for the 2012 annual PM_{2.5} NAAQS, effective May 7, 2018. See 83 FR 14759 (April 6, 2018). The EPA’s FFS included a determination that the Commonwealth has not met its obligations for the NNSR permit program for Allegheny, Delaware and Lebanon Counties because emissions of VOCs and ammonia are not currently regulated as PM_{2.5} precursors. In addition, the FFS included a determination that the following required SIP elements were not submitted for Allegheny County: emissions inventory, control strategy, attainment demonstration, reasonable further progress, qualitative milestones and contingency measures. Because the Allegheny County Health Department (ACHD) is an approved local air pollution control agency under section 12(b) of the APCA (35 P.S. § 4012(b)), it is developing its own SIP revision to address these required SIP elements which the Department will submit to the EPA. In accordance with section 179 of the CAA, a mandatory 18-month sanction clock began on May 7, 2018, the effective date of the FFS.

Section 179 of the CAA authorizes the EPA to use two types of sanctions: 1) imposing what are called “2:1 offsets” on new or modified sources of emissions; and 2) withholding of certain Federal highway funds. Under section 179 of the CAA and its implementing regulations, the Administrator first imposes “2:1 offsets” sanctions for new or modified major stationary sources in the nonattainment area, and then, if the deficiency has not been corrected within 6 months, also applies Federal highway funding sanctions. See 40 CFR 52.31 (relating to selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act). Therefore, if the deficiency is not corrected, the EPA will impose mandatory “2:1 offsets” sanctions beginning November 7, 2019, and highway fund sanctions beginning May 7, 2020. The Commonwealth receives approximately \$1.7 billion in Federal transportation funding annually, which would be at risk if the Commonwealth does not implement one of the previously listed options.

Therefore, to stop the sanction clock and correct the deficiency that the Commonwealth has not met its obligations for the NNSR permit program, because the Commonwealth's existing NNSR program does not include VOC and ammonia as PM_{2.5} precursors, one of the following must occur by November 7, 2019:

1) The Commonwealth submits an updated NNSR regulation that addresses VOC and ammonia as PM_{2.5} precursors as a SIP revision, which the EPA determines to be technically and administratively complete; or

2) The Commonwealth submits a SIP revision for each nonattainment area, and the EPA fully approves and redesignates the area from nonattainment to attainment. Once an area is redesignated as attainment, NNSR would no longer apply.

The Department is pursuing both options to correct the deficiency to ensure that the sanction clock stops by November 7, 2019. The Department submitted the maintenance plans and redesignation to attainment requests for the Delaware and Lebanon County Areas on January 23, 2019, and February 11, 2019, respectively. On July 16, 2019, the EPA proposed to approve these SIP revisions and to determine that the Delaware and Lebanon County Areas meet the 2012 annual PM_{2.5} NAAQS, based on the most recent 3 years of certified air quality data. See 84 FR 33886 (July 16, 2019). The EPA's proposed rule is open for a 30-day public comment period, closing on August 15, 2019. ACHD finalized its nonattainment new source review regulation and plans to submit an attainment demonstration SIP revision for Allegheny County. On May 23, 2019, the Department submitted ACHD's NNSR regulation to the EPA, and ACHD is currently reviewing public comments submitted on its attainment demonstration SIP revision. The EPA must determine that both portions are technically and administratively complete to stop the sanction clock in Allegheny County.

This final-form rulemaking amends § 127.641(c) (relating to application for use of plan approvals and operating permits for portable sources) to remove the requirement that applications for plan approvals and operating permits for portable sources be submitted by hand delivery or certified mail return receipt requested to allow for greater flexibility in submitting these applications to the Department.

This final-form rulemaking helps assure that the citizens of this Commonwealth benefit from reduced emissions of PM_{2.5} and PM_{2.5} precursors from regulated sources. Attaining and maintaining levels of PM_{2.5} below the health-based and welfare-based NAAQS is important to reduce premature mortality and other health and environmental effects associated with PM_{2.5} exposure.

This final-form rulemaking was presented to the Air Quality Technical Advisory Committee (AQTAC) on August 15, 2019, to the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee on August 16, 2019, and to the full CAC on August 20, 2019. Previously, AQTAC and CAC voted unanimously to concur with the Department's recommendation to present the proposed rulemaking to the Board for consideration.

On July 25, 2018, the Small Business Compliance Advisory Committee (SBCAC) stated that the proposed rulemaking did not appear to impact small businesses, that SBCAC considered the Department's presentation on the Annex A as informational only, and that the members did not have comments on the proposed rulemaking. SBCAC then voted unanimously to concur with the Department's recommendation to present the proposed

rulemaking forward to the Board for consideration. Since SBCAC determined that the proposed rulemaking did not affect small businesses and the Department has not changed the Annex A from proposed to final-form, the Department has satisfied the requirement that SBCAC review and advise the Department on rulemakings which affect small business stationary sources, under section 7.8(a)(6) of the APCA (35 P.S. § 4007.8(a)(6)).

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

This final-form rulemaking Annex A does not contain any changes from the proposed rulemaking Annex A.

F. Summary of Comments and Responses on the Proposed Rulemaking

The proposed rulemaking was adopted by the Board at its meeting on December 18, 2018, and published at 49 Pa.B. 1146 (March 16, 2019), with a 66-day public comment period. Three public hearings were held on April 16, 17 and 18, 2019, in Harrisburg, Pittsburgh and Norristown, respectively. The public comment period closed on May 20, 2019. The Department received three comments. One commenter supported the proposed rulemaking, while the other two commenters made general comments proposing ways to improve air quality, which are beyond the scope of this final-form rulemaking. On June 19, 2019, the Independent Regulatory Review Commission (IRRC) submitted a letter stating that it has no objections, comments or recommendations to offer on this final-form rulemaking, and that if the Board delivers this final-form rulemaking without revisions, and the House and Senate Environmental Resources and Energy Committees do not take any action, it will be deemed approved. The comments received on the proposed rulemaking are addressed in a separate comment and response document.

G. Benefits, Costs and Compliance

Benefits

As noted in Section D of this preamble, the citizens of this Commonwealth benefit from reduced emissions of PM_{2.5} and PM_{2.5} precursors from regulated sources. Attaining and maintaining levels of PM_{2.5} below the health-based and welfare-based NAAQS is important to reduce premature mortality and other health and environmental effects associated with PM_{2.5} exposure. Reductions in ambient levels of PM_{2.5} also promote improved animal health and welfare, improved visibility, decreased soiling and materials damage, and decreased damage to plants and trees.

However, the Department does not anticipate any immediate emission reductions since this final-form rulemaking is only applicable to the owners and operators of new major sources of ammonia and VOC or existing major sources of ammonia and VOC to which there is a major modification. This final-form rulemaking may result in a reduction of ammonia that would have otherwise been emitted through the application of Lowest Achievable Emission Rate and Emission Reduction Credits. This final-form rulemaking will not result in any additional reduction in VOC emissions since the owner or operator of a facility subject to the VOC portion of this regulation will already be subject to NNSR for VOC emissions as ozone precursors.

Also, regarding applications for plan approvals and operating permits for portable sources, allowing for additional flexibility provides the regulated community with

the option to submit applications in a manner that may be faster and less expensive than the current requirements.

Compliance costs

This final-form rulemaking applies to owners and operators of new or modified major facilities with emissions of VOC or ammonia as PM_{2.5} precursors located within a PM_{2.5} nonattainment area or a PM_{2.5} attainment area that has a significant impact on a PM_{2.5} nonattainment area. The significant impact is determined by the SIL of 1.2 µg/m³ for 24-hour PM_{2.5} and 0.2 µg/m³ for annual PM_{2.5}. It is not expected that any facilities within PM_{2.5} attainment areas will have a significant impact on PM_{2.5} nonattainment areas because no new facilities are known to be constructed or planned to be constructed within PM_{2.5} nonattainment areas that will emit major amounts of VOC or ammonia. There are 17 facilities that have the potential to emit 100 TPY or greater of emissions of VOC, ammonia, or both. The owners and operators of these facilities would be subject to this final-form rulemaking if major modifications occur at the affected facilities for VOC, ammonia, or both, at the facility. The Department is not aware of any upcoming major modifications at these facilities.

In addition, owners and operators of portable sources will be affected when submitting applications to the Department for plan approvals or operating permits. Currently, these applications are required to be either hand delivered or transmitted by certified mail return receipt requested. This final-form rulemaking removes the language on specific delivery method requirements to allow greater flexibility in submitting these applications to the Department.

Compliance assistance plan

The Department plans to educate and assist the public and regulated community in understanding the 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 final-form rulemaking.

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 facility owners and operators that permanently achieve or move beyond compliance.

This final-form rulemaking helps assure that the citizens of this Commonwealth benefit from reduced emissions of PM_{2.5} and PM_{2.5} precursors from regulated sources. Attaining and maintaining levels of PM_{2.5} below the health-based and welfare-based NAAQS is important to reduce premature mortality and other health and environmental effects associated with PM_{2.5} exposure. Reduced levels of PM_{2.5} promote improved visibility, decreased soiling and decreased materials damage.

I. Sunset Review

The Board is not establishing a sunset date for this final-form rulemaking, since it is needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 25, 2019, the Department submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 1146, to IRRC and to 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 and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on October 16, 2019, 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 October 17, 2019, and approved this final-form rulemaking.

K. Findings of the Board

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 at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(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 49 Pa.B. 1146.

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

L. Order of the Board

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

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 127, are amended by amending §§ 121.1, 127.202, 127.203, 127.210 and 127.641 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(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 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 Commonwealth's SIP.

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

PATRICK McDONNELL,
Chairperson

(Editor's Note: See 49 Pa.B. 6649 (November 2, 2019) for IRRC's approval order.)

Fiscal Note: Fiscal Note 7-551 remains valid for the final adoption of the subject regulations.

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:

* * * * *

Major facility—

(i) A facility which emits or has the potential to emit 100 TPY or more of a regulated NSR pollutant, except that lower emissions thresholds apply as follows:

(A) Fifty TPY of VOCs in a serious nonattainment area for ozone.

(B) Fifty TPY of VOCs in an area within an ozone transport region except for a severe or extreme nonattainment area for ozone.

(C) Twenty-five TPY of VOCs in a severe nonattainment area for ozone.

(D) Ten TPY of VOCs in an extreme nonattainment area for ozone.

(E) Seventy TPY of PM-10 in a serious nonattainment area for PM-10.

(F) Fifty TPY of CO in a serious nonattainment area for CO.

(G) Seventy TPY of PM_{2.5} in a serious nonattainment area for PM_{2.5}.

(H) Seventy TPY of NO_x in a serious nonattainment area for PM_{2.5}.

(I) Seventy TPY of SO₂ in a serious nonattainment area for PM_{2.5}.

(J) Seventy TPY of VOCs in a serious nonattainment area for PM_{2.5}.

(K) Seventy TPY of ammonia in a serious nonattainment area for PM_{2.5}.

(ii) For the purposes of applying the requirements of Chapter 127, Subchapter E to the owner or operator of a facility located in an ozone nonattainment area or in an ozone transport region which emits or has the potential to emit NO_x, as follows:

(A) One hundred TPY or more of NO_x in an ozone nonattainment area classified as marginal, basic or moderate.

(B) One hundred TPY or more of NO_x in an ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when the area is located in an ozone transport region.

(C) One hundred TPY or more of NO_x in an area designated under section 107(d) of the Clean Air Act (42 U.S.C.A. § 7407(d)) as attainment or unclassifiable for ozone that is located in an ozone transport region.

(D) Fifty TPY or more of NO_x in a serious nonattainment area for ozone.

(E) Twenty-five TPY or more of NO_x in a severe nonattainment area for ozone.

(F) Ten TPY or more of NO_x in an extreme nonattainment area for ozone.

(iii) A physical change that occurs at a facility which does not exceed the major facility thresholds specified in Chapter 127, Subchapter E is considered a major facility if the change constitutes a major facility by itself.

(iv) A facility which is major for VOCs or NO_x is considered major for ozone.

(v) Notwithstanding the provisions under subparagraphs (i) and (ii), a facility which emits or has the potential to emit 25 TPY or more of NO_x or VOC and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

* * * * *

Regulated NSR pollutant—

(i) NO_x or VOCs.

(ii) A pollutant for which the EPA has promulgated a NAAQS.

(iii) A pollutant that is a constituent or precursor of a pollutant listed under subparagraph (i) or (ii), if the constituent or precursor pollutant may only be regulated under NSR as part of regulation of the pollutant listed under subparagraph (i) or (ii). Precursors identified by the Administrator of the EPA for purposes of NSR are the following:

(A) VOCs and NO_x are precursors to ozone in all ozone nonattainment areas.

(B) SO₂, VOCs and ammonia are precursors to PM_{2.5} in all PM_{2.5} nonattainment areas.

(C) Nitrogen oxides are presumed to be precursors to PM_{2.5} in PM_{2.5} nonattainment areas unless the Department demonstrates to the satisfaction of the Administrator of the EPA or the Administrator of the EPA determines that NO_x emissions from a source in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(iv) PM_{2.5} and PM-10 emissions, including gaseous emissions from a facility or activity that condense to form particulate matter at ambient temperatures, as specified in § 127.201(g) (relating to general requirements).

* * * * *

Significant—

(i) In reference to a net emissions increase or the potential of a facility to emit one of the following pollutants at a rate of emissions that would equal or exceed the following emissions rates except as specified in subparagraphs (ii)—(v):

<i>Pollutant</i>	<i>Emissions Rate</i>
Carbon monoxide (CO):	100 TPY
Nitrogen oxides (NO _x):	40 TPY
Sulfur oxides (SO _x):	40 TPY
Ozone:	40 TPY of VOCs or 40 TPY of NO _x
Lead:	0.6 TPY
PM-10:	15 TPY
PM _{2.5} :	10 TPY of PM _{2.5} ; 40 TPY of SO ₂ ; 40 TPY of VOCs; 40 TPY of ammonia; 40 TPY of NO _x , unless the Department demonstrates to the EPA's satisfaction or the EPA determines that the NO _x emissions are not a significant contributor to PM _{2.5} nonattainment in the area.

(ii) The emissions rate that is significant for VOCs in a serious or severe ozone nonattainment area is 25 TPY.

(iii) For purposes of applying Chapter 127, Subchapter E to the owner or operator of modifications at a major facility located in an ozone nonattainment area or in an ozone transport region that emits or has the potential to emit NO_x, the emissions rate that is significant and other requirements for VOCs in subparagraphs (i) and (ii) apply to NO_x emissions.

(iv) The emissions rate that is significant for CO in a serious nonattainment area is 50 TPY if the EPA has

determined that the affected facility contributes significantly to CO levels in that area.

(v) The emissions rate that is significant for VOCs in an extreme nonattainment area for ozone is any amount above zero.

* * * * *

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

Subchapter E. NEW SOURCE REVIEW

§ 127.202. Effective date.

(a) The special permit requirements in this subchapter apply to an owner or operator of a facility to which a plan approval is issued by the Department after May 19, 2007, except the special permit requirements for precursors to PM_{2.5}, which apply as follows:

- (1) NO_x and SO₂ after September 3, 2011.
- (2) VOCs and ammonia after December 21, 2019.

(b) For SO_x, PM_{2.5}, PM-10, lead and CO, this subchapter applies until a given nonattainment area is redesignated as an unclassifiable or attainment area. After a redesignation, special permit conditions remain effective until the Department approves a permit modification request and modifies the permit.

§ 127.203. Facilities subject to special permit requirements.

(a) This subchapter applies to the construction of a new major facility or modification at an existing major facility located in a nonattainment area, an ozone transport region or an attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:

<i>Pollutant</i>	<i>Averaging time</i>				
	<i>Annual</i>	<i>24 (hours)</i>	<i>8 (hours)</i>	<i>3 (hours)</i>	<i>1 (hours)</i>
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	-
PM-10	1.0 µg/m ³	5 µg/m ³	-	-	-
CO	-	-	0.5 mg/m ³	-	2 mg/m ³
Lead	-	0.1 µg/m ³	-	-	-
PM _{2.5}	0.2 µg/m ³	1.2 µg/m ³	-	-	-
		* * * * *			

§ 127.210. Offset ratios.

(a) The emissions offset ratios for NSR purposes and ERC transactions subject to the requirements of this subchapter must be in an amount equal to or greater than the ratios specified in the following table:

Required Emission Offsets for Existing Sources, Expressed in Tons per Year

<i>Pollutant / Area</i>	<i>Flue Emissions</i>	<i>Fugitive Emissions</i>
PM-10 and SO _x	1.3:1	5:1
Volatile Organic Compounds		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.3:1
Moderate Areas	1.15:1	1.3:1
Marginal/Incomplete Data Areas	1.15:1	1.3:1
Transport Region	1.15:1	1.3:1
NO _x		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.2:1
Moderate Areas	1.15:1	1.15:1

Required Emission Offsets for Existing Sources, Expressed in Tons per Year

<i>Pollutant/Area</i>	<i>Flue Emissions</i>	<i>Fugitive Emissions</i>
Marginal/Incomplete Data Areas	1.15:1	1.15:1
Transport Region	1.15:1	1.15:1
Carbon Monoxide		
Primary Nonattainment Areas	1.1:1	1.1:1
Lead	1.1:1	1.1:1
PM _{2.5}		
PM _{2.5} Nonattainment Area		
PM _{2.5}	1:1	1:1
PM _{2.5} Precursors		
SO ₂	1:1	1:1
NO _x	1:1	1:1
VOCs	1:1	1:1
Ammonia	1:1	1:1

(b) In complying with the emissions offset requirements of this subchapter, the emission offsets obtained shall be of the same NSR regulated pollutant unless interpollutant offsetting is authorized for a particular pollutant in accordance with subsection (c).

(c) The Department may, based on a technical assessment, establish interpollutant trading ratios for offsetting PM_{2.5} emissions or PM_{2.5} precursor emissions in a specific nonattainment area or geographic area in this Commonwealth. The interpollutant trading ratios shall be subject to public review and comment for at least 30 days prior to submission to the EPA for approval as a SIP revision.

(d) If the EPA promulgates PM_{2.5} interpollutant trading ratios in 40 CFR Part 51 (relating to requirements for preparation, adoption, and submittal of implementation plans), the ratios will be adopted and incorporated by reference.

Subchapter H. GENERAL PLAN APPROVALS AND OPERATING PERMITS

USE OF PLAN APPROVALS AND OPERATING PERMITS FOR PORTABLE SOURCES

§ 127.641. Application for use of plan approvals and operating permits for portable sources.

(a) A source proposing to use a plan approval or an operating permit for a portable source shall notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating under the plan approval and operating permit for portable sources.

(b) For applications for sources operating at multiple temporary locations the following apply:

(1) A separate application form and fee may be required to be submitted for each location.

(2) The applicant shall notify the Department and the municipality where the operation shall take place in advance of each change in location.

(c) The application required by this section shall be submitted to the Department.

(d) The Department will take action on the application within 30 days of receipt.

[Pa.B. Doc. No. 19-1891. Filed for public inspection December 20, 2019, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 105a]

Automated Speed Enforcement Systems; Temporary Regulations

The Department of Transportation (Department) under the act of October 19, 2018 (P.L. 563, No. 86) (75 Pa.C.S. §§ 3368 and 3369 (relating to speed timing devices; and automated speed enforcement systems in active work zones)) (act), promulgates these temporary regulations pertaining to the certification and use of automated speed enforcement systems (systems), as set forth in Annex A.

Purpose

The purpose of this Chapter 105a (relating to automated speed enforcement systems—temporary regulations) is to set forth temporary regulations governing the certification and use of systems, including the approval, testing, certification and calibration of speed timing devices used in systems. Section 3369(h)(2) of 75 Pa.C.S. grants authority to the Department to promulgate temporary regulations for the certification and the use of systems.

Significant Provisions of the Temporary Rulemaking

The significant provisions of Chapter 105a include:

Sections 105a.1 and 105a.2 (relating to purpose; and definitions) set forth the purpose of the chapter and definitions, respectively. The definitions applicable to this temporary rulemaking are consistent with the definitions set forth in 75 Pa.C.S. §§ 3368 and 3369, except where there is a need to define a term not defined by statute.

Section 105a.3 (relating to system and speed timing device minimum requirements) establishes minimum requirements for systems and speed timing devices, including the requirements for the approval of speed timing devices utilized in systems. Notably, minimum requirements delineate several technical requirements that systems must possess to comply with the limitations and plain meaning of the act.

Section 105a.4 (relating to system and speed timing device use and certification) sets forth criteria for the use of systems, including speed timing devices used in systems, which includes system testing, certification and calibration consistent with existing law and the act.

Persons and Entities Affected

These temporary regulations are necessary to implement the act, which is premised on bringing positive safety improvements to all citizens. These temporary regulations will affect all motorists operating vehicles where a system is authorized by the act, and where motorists engage in conduct resulting in a warning or fine under 75 Pa.C.S. § 3369(c). Positive impacts to worker safety and the traveling public within authorized work zones and on specific highways identified by the act is anticipated. System administrators and system operators must comply with these temporary regulations in the use and operation of systems.

Fiscal Impact

Because this temporary rulemaking governs the use and calibration of systems and speed timing devices used in systems that will be utilized by a system operator or administrator selected under competitive procurements, fiscal impacts directly related to this temporary rulemaking will be borne as a portion of administrative costs to implement the program. Precise costs are difficult to ascertain. It is estimated that the Department will expend 100 employee hours (absorbed by current staff) to review each system submission to the Department.

Regulatory Review

Under 75 Pa.C.S. § 3369(h)(2)(ii), the Department is authorized to promulgate temporary regulations to facilitate the prompt implementation of the act. The temporary regulations adopted by the Secretary are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law (CDL), the Regulatory Review Act (71 P.S. §§ 745.1—745.14) and section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)).

It is hereby ordered that these temporary regulations shall be effective upon publication in *Pennsylvania Bulletin*, subject to the sunset provisions set forth as follows.

Sunset Provisions

No sunset date is established by the act. Under 75 Pa.C.S. § 3369(h)(1), the Department and the Pennsylvania Turnpike Commission are to establish a 5-year automated speed enforcement system program (program). These temporary regulations remain effective for the duration of the program; and so long as the use of systems is authorized. The Department will monitor the effectiveness of these temporary regulations.

Contact Person

The contact person for this regulation is Daniel P. Farley, PE, Section Chief, Bureau of Maintenance and Operations, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, (717) 783-0333.

YASSMIN GRAMIAN, PE,
Acting Secretary

Fiscal Note: 18-482. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VI. OPERATION OF VEHICLES

CHAPTER 105a. AUTOMATED SPEED ENFORCEMENT SYSTEMS—TEMPORARY REGULATIONS

- Sec.
- 105a.1. Purpose.
- 105a.2. Definitions.
- 105a.3. System and speed timing device minimum requirements.
- 105a.4. System and speed timing device use and certification.

§ 105a.1. Purpose.

This chapter sets forth temporary regulations for the approval, testing, certification, calibration and use of automated speed enforcement systems, including speed timing devices used in automated speed enforcement systems, authorized by 75 Pa.C.S. §§ 3368 and 3369 (relating to speed timing devices; and automated speed enforcement systems in active work zones).

§ 105a.2. Definitions.

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

Automated speed enforcement system—An electronic traffic sensor system that:

(1) is able to automatically detect vehicles exceeding the posted speed limit with a type of speed timing device; and

(2) produces a recorded image that shows:

(i) a clear and legible identification of only the vehicle's license plate;

(ii) location; and

(iii) date and time.

Speed timing device—As used in 75 Pa.C.S. § 3368 (relating to speed timing devices).

System—An automated speed enforcement system.

System device—A system or device used in a system, including a speed timing device.

System operator—A person who is responsible for operation of a system.

§ 105a.3. System and speed timing device minimum requirements.

(a) A system must automatically detect vehicles exceeding the posted speed limit with a type of speed timing device and produce a recorded image that shows:

(1) a clear and legible identification of only the vehicle's license plate;

- (2) location; and
- (3) date and time.

(b) Each speed timing device used in a system must be approved by the Department under 75 Pa.C.S. § 3368 (relating to speed timing devices). Approval under 75 Pa.C.S. § 3368 shall mean that the speed timing device used in a system has been published by the Department in the *Pennsylvania Bulletin* as meeting the following:

(1) the speed timing device is listed on the current Conforming Product List maintained by the National Highway Traffic Safety Administration, which is available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/combined_cpl_august_15_2018_portrait_format.pdf, as such speed timing devices meet or exceed current technical specifications of the National Highway Traffic Safety Administration; or

(2) the speed timing device is tested and approved by an independent third party as capable of meeting the calibration standards of 67 Pa. Code § 105a.4 (relating to system and speed timing device use and certification) or the current technical specifications of the National Highway Traffic Safety Administration. These specifications for speed timing devices are available, as follows:

(i) Speed-Measuring Device Specifications: Down-the-Road RADAR Module, available at <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812266-downroadradarmodule.pdf>.

(ii) Speed-Measuring Device Performance Specifications: Across-the-Road Radar Module, available at <https://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/810845.pdf>.

(iii) LIDAR Speed-Measuring Device Performance Specifications, available at <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/809811-lidarspeedmeasuringdevice.pdf>.

§ 105a.4. System and speed timing device use and certification.

(a) *Minimum requirements.* A system administrator and system operator must only use a system meeting the minimum requirements of § 105a.3 (relating to system and speed timing device minimum requirements).

(b) *Proof of training.* A system operator shall complete training offered by the manufacturer of the system, including training on any devices critical to the operation of the system, or the manufacturer's representative in the procedures for setting up, testing and operating a system. Upon completion of the training, the manufacturer or manufacturer's representative shall issue a signed certificate to the system device operator, which shall be admitted as evidence in any court proceeding for a violation involving a system device.

(c) *Daily log.* A system device operator shall fill out and sign a daily log for a system, which:

(1) states the date, time and location of the device setup;

(2) states that the system device operator successfully performed and the system device passed the self-tests specified by the manufacturer of the system device;

(3) shall be kept on file; and

(4) shall be admitted in any proceeding for a violation involving a system device.

(d) *Annual calibration check.* A system device shall undergo an annual calibration check performed by a calibration laboratory. As part of the annual calibration check, each speed timing device used in a system shall be calibrated and tested to meet one of the following standards:

(1) The Department's existing regulations at 67 Pa. Code §§ 105.1—105.95 (relating to mechanical, electrical and electronic speed-timing devices);

(2) The current technical specifications of the National Highway Traffic Safety Administration referenced above in § 105a.3(b); or

(3) The manufacturer's specifications and calibration standards for the speed timing device if an approved calibration laboratory confirms:

(i) the device meets the manufacturer's specifications and calibration standards; and

(ii) the device is accurate when field tested against a speed timing device approved under 67 Pa. Code §§ 105.1—105.95.

(e) *Approved calibration laboratories.* Approved calibration laboratories shall be the speed timing device calibration stations appointed by the Department under 67 Pa. Code §§ 105.1—105.95.

(f) *Annual system inspection.* An annual inspection of the system must be performed by an approved calibration laboratory to confirm through field testing that a system meets the manufacturer's specifications and the minimum requirements of § 105a.3. The annual system inspection may be conducted concurrent with an annual calibration check authorized under subsection (d).

(g) *Certificates of calibration and inspection.* The calibration laboratory shall issue a signed certificate of calibration after the annual calibration check, which shall be kept on file and shall be admitted as evidence in any proceeding for a violation involving a system device. An approved calibration laboratory must also issue a certificate of annual system inspection confirming that a system meets the manufacturer's specifications and the minimum requirements of § 105a.3.

(h) *Verification.* The notice of violation must include written verification that the system was operating correctly at the time of the alleged violation and the date of the most recent inspection that confirms the system to be operating properly. A system administrator or system operator shall include the then-current certificates of calibration and inspection required under subsection (g) and the daily log required under subsection (c) with the written verification.

[Pa.B. Doc. No. 19-1892. Filed for public inspection December 20, 2019, 9:00 a.m.]