PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 129]

Control of VOC Emissions from Gasoline Dispensing Facilities (Stage I and Stage II)

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 129 (relating to general provisions; and standards for sources) as set forth in Annex A. This proposed rulemaking would amend air quality regulations relating to control of volatile organic compound (VOC) emissions during loading of underground gasoline storage tanks (Stage I vapor recovery), during filling of motor vehicles at the pump (Stage II vapor recovery) and during and after decommissioning of Stage II vapor recovery equipment from gasoline dispensing pumps. This proposed rulemaking would also add and amend definitions relating to Stage I and Stage II vapor recovery systems. This proposed rulemaking would amend §§ 121.1, 129.61 and 129.82 (relating to definitions; small gasoline storage tank control (Stage I control); and control of VOCs from gasoline dispensing facilities (Stage II)), and add §§ 129.61a and 129.82a (relating to vapor leak monitoring procedures and other requirements for small gasoline storage tank emission control; and requirements to decommission a Stage II vapor recovery system).

This proposed rulemaking was adopted by the Board at its meeting on May 19, 2020.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form 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 Jesse C. Walker, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov ("Public Participation Center," select "Environmental Quality Board").

C. *Statutory Authority*

This proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (act) (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 and section 5(a)(8) of the act, which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7671q).

D. *Background and Purpose*

Purpose

The purpose of this proposed rulemaking is to require that air quality emission control systems that cause unnecessary excess emissions be removed from gasoline dispensing facilities (GDF) without causing excess emissions in the process and without increasing emissions at GDFs over the long-term. The Stage I and Stage II vapor recovery systems that would be affected by this proposed rulemaking control VOCs and air toxics (including benzene) emitted from gasoline at GDFs. VOC emissions are precursors to the formation of ground-level ozone, a criteria air pollutant and public health and welfare hazard. Air toxics are hazardous air pollutants.

Significant to the protection of air quality are the vapor leak monitoring procedures and other emission control requirements for small gasoline storage tanks that would be required under proposed § 129.61a. These requirements would apply in the five-county Philadelphia area (consisting of Bucks, Chester, Delaware, Montgomery and Philadelphia Counties) and the seven-county Pittsburgh area (consisting of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties). The proposed protections under § 129.61a would help ensure that ozone pollution in these challenging ozone pollution areas does not increase upon decommissioning of Stage II vapor recovery equipment under proposed § 129.82a.

For many years, the Department has required Stage II vapor recovery system installation and implementation in these challenging ozone pollution areas under § 129.82. In this proposed rulemaking, however, the Department proposes to authorize removal of Stage II "vapor balance" vapor recovery systems from GDFs Statewide because they are no longer needed. The Department would require removal of the more prevalent type of Stage II vapor recovery system, known as "vacuum assist," from the five-county Philadelphia and seven-county Pittsburgh areas. (The two types of Stage II vapor recovery systems are described in more detail as follows in this section.) These proposed amendments would protect against redundancies and disbenefits created by using Stage II systems with vehicle-based onboard refueling vapor recovery (ORVR) systems, now that ORVR systems are in widespread use.

The ORVR systems, just like Stage II vapor recovery systems, are designed to reduce fuel vapor emissions from vehicle refueling. The ORVR-equipped vehicles capture 98% of the fugitive emissions caused by refueling. Pertaining to a GDF, a fugitive emission is an air contaminant emitted into the outdoor atmosphere when not properly emitted through a vent. When an ORVR-equipped vehicle is being refueled with a Stage II vacuum assist vapor recovery system, unwanted emissions of VOCs and air toxics may occur through adverse impacts of the ORVR system on the Stage I and Stage II vapor recovery systems. When a vacuum assist Stage II vapor recovery system is used while refueling an ORVR-equipped vehicle, the Stage II vapor recovery system mostly returns fresh air, not gasoline vapors, into the underground storage tank (UST), because nearly all the gasoline vapor is captured by the vehicle's ORVR system. The fresh air returned to the UST pressurizes the empty space in the UST, forcing gasoline vapors out of the liquid gasoline portion in the UST. The pressure builds to a point at which the vapors vent into the atmosphere through a pressure/vacuum vent valve. This venting is inherent in the UST design; it preserves the integrity and prevents damaging the UST, preventing underground leaks. When enough vehicles, approximately 90%, are equipped with ORVR systems in a Stage II area, the excess emissions emitted into the atmosphere due to the

incompatibility between ORVR systems and Stage II vacuum assist vapor recovery systems exceed any emissions benefits.

Also to ensure that ozone pollution does not increase, the Board is proposing to repeal requirements under § 129.82 that a GDF owner or operator in the Philadelphia or Pittsburgh area install a Stage II vapor recovery system. Other proposed amendments are the new and amended definitions under § 121.1 that would be helpful to implementing this proposed rulemaking. The remaining proposed amendments would clarify Stage I vapor recovery system requirements under § 129.61.

Air quality

As mentioned previously, VOCs are precursors for ground-level ozone formation. Ground-level ozone, a public health and welfare hazard, is not emitted directly to the atmosphere from GDFs, but forms from a photochemical reaction between VOCs and nitrogen oxides (NO_x) in the presence of sunlight. The Philadelphia and Pittsburgh areas are the most challenging areas in this Commonwealth to bring into, and in which to maintain, the Federal standards for ground-level ozone.

The United States Environmental Protection Agency (EPA) is responsible for establishing National Ambient Air Quality Standards (NAAQS) for six criteria pollutants considered harmful to public health and welfare, including the environment: ground-level ozone, particulate matter, NO_x, carbon monoxide, sulfur dioxide and lead. Section 109 of the CAA (42 U.S.C.A. § 7409) established two types of NAAQS: primary standards, which are limits set to protect public health; and secondary standards, which are limits set to protect public welfare and the environment, including protection against visibility impairment and from damage to animals, crops, vegetation and buildings. The EPA established primary and secondary ground-level ozone NAAQS to protect public health and welfare.

In 1979, the EPA promulgated the first NAAQS for ground-level ozone based on a 1-hour average concentration of 0.12 parts per million (ppm) (120 parts per billion (ppb)). See 44 FR 8202 (February 8, 1979).

In 1997, after determining that the 1-hour NAAQS was inadequate to protect public health, the EPA promulgated a new NAAQS based on an 8-hour average of 0.08 ppm averaged over 8 hours. See 62 FR 38856 (July 18, 1997). Because ozone ambient air monitoring data is measured out to three decimal places, the standard effectively became 0.084 ppm with rounding; areas with ozone levels as high as 0.084 ppm (84 ppb) were considered to be meeting the 0.08 ppm standard. In 2004, the EPA designated 37 counties in this Commonwealth as nonattainment areas for the 1997 8-hour ozone NAAQS. See 69 FR 23858, 23931 (April 30, 2004). Based on the certified ambient air monitoring data for the 2017 and 2018 ozone seasons, all monitored areas of this Commonwealth are attaining the 1997 8-hour ozone NAAQS. Maintenance plans have been submitted to the EPA and approved for the 1997 ozone standard. Section 175A(a) of the CAA (42 U.S.C.A. § 7505a(a)) prescribes that the maintenance plans include permanent and enforceable control measures that will provide for the maintenance of the 1997 ozone NAAQS for at least 10 years following the EPA's redesignation of the areas to attainment of the 1997 ozone standard.

In March 2008, the EPA lowered the ozone NAAQS to 0.075 ppm (75 ppb) averaged over 8 hours to provide greater protection for children, other at-risk populations and the environment against the array of ozone-induced adverse health and welfare effects. See 73 FR 16436 (March 27, 2008). In April 2012, the EPA designated five areas in this Commonwealth as nonattainment areas for the 2008 ozone NAAQS. See 77 FR 30088, 30143 (May 21, 2012). These areas include all or a portion of Allegheny, Armstrong, Beaver, Berks, Bucks, Butler, Carbon, Chester, Delaware, Fayette, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, Washington and Westmoreland Counties. The certified 2018 ambient air monitoring data indicate that all ozone monitors in this Commonwealth, except for the Bristol monitor (in Bucks County), and the Northeast Airport and Northeast Waste monitors (in Philadelphia County), are monitoring attainment of the 2008 ozone NAAQS. As with the 1997 ozone NAAQS, the Department must ensure that the 2008 ozone NAAQS is attained and maintained by implementing permanent and enforceable control measures.

On October 1, 2015, the EPA lowered the primary and secondary ozone NAAQS to 0.070 ppm (70 ppb) averaged over 8 hours. See 80 FR 65292 (October 26, 2015). As required under section 107(d) of the CAA (42 U.S.C.A. § 7407(d)), the Commonwealth submitted designation recommendations for the 2015 ozone NAAQS to the EPA on October 3, 2016, based on the ambient ozone concentrations from the 2013 through 2015 ozone seasons. See 46 Pa.B. 5162 (August 20, 2016). The Commonwealth submitted revised designation recommendations to the EPA on April 22, 2017. See 47 Pa.B. 2387 (April 22, 2017). The EPA issued final designations for the attainment/unclassifiable areas on November 16, 2017. See 82 FR 54232 (November 16, 2017). In June 2018, the EPA designated Bucks, Chester, Delaware, Montgomery and Philadelphia Counties as nonattainment for the 2015 ozone NAAQS. See 83 FR 25776 (June 4, 2018). Based on the certified ambient air monitoring data for 2018, eight monitors in seven counties in this Commonwealth have design values that violate the 2015 ozone NAAQS. The monitors are in Allegheny, Bucks, Chester, Delaware, Montgomery, Northampton and Philadelphia Counties. The Department must ensure that the 2015 ozone NAAQS is attained and maintained by implementing permanent and Federally-enforceable control measures as necessary and appropriate.

Reductions in VOC emissions that would be achieved following the implementation of this proposed rulemaking as a final-form rulemaking would enable the Commonwealth to make progress in attaining and maintaining the 1997, 2008 and 2015 8-hour ozone NAAQS. The Department will submit the final regulations to the EPA for approval as a revision to the Commonwealth's State Implementation Plan (SIP).

Stage I vapor recovery systems

This proposed rulemaking would address Stage I vapor recovery system requirements under proposed amendments to § 129.61 and under proposed § 129.61a.

Stage I refers to a vapor recovery system, including equipment and components, that controls the emission into the atmosphere of gasoline vapors during the transfer of gasoline from a gasoline tank truck to a gasoline storage tank at a GDF. A properly operating Stage I vapor recovery system returns vapors to the gasoline tank truck. The equipment and components of a Stage I vapor recovery system also control the emission of gasoline vapors during the storage of gasoline at a GDF.

The Board initially adopted Stage I vapor recovery system requirements for areas of this Commonwealth

with the most persistent ozone pollution problems, including the Philadelphia and Pittsburgh areas. See 28 Pa.B. 1447 (April 28, 1979). The Board later amended the regulations at 10 Pa.B. 3788 (September 27, 1980) and in 1991 expanded the requirements Statewide to address continuing ozone nonattainment problems in this Commonwealth and throughout the Northeast. See 21 Pa.B. 3406 (August 3, 1991). The Board streamlined the regulations in 1995 to eliminate two of three exemptions, rendering the regulations applicable to gasoline storage tanks with a capacity of more than 2,000 gallons, matching the EPA's exemption. See 25 Pa.B. 3849 (September 16, 1995).

In 2008, the EPA adopted National emission standards for hazardous air pollutants (HAP) from gasoline dispensing facilities (NESHAP). See 40 CFR, Part 63, Subpart CCCCCC (relating to National emission standards for hazardous air pollutants for source category: gasoline dispensing facilities). The EPA adopted the NESHAP under section 112 of the CAA (42 U.S.C.A. § 7412) to curb hazardous air pollutants; but not all VOCs are HAPs. The Federal standards in the NESHAP are enforceable by the EPA against sources Nationwide. The NESHAP focuses on controlling the emission of HAPs in gasoline vapors during the loading of USTs, through Stage I vapor recovery systems.

The Commonwealth's existing Stage I vapor recovery regulations, under § 129.61, are more protective of air quality than the NESHAP. This proposed rulemaking, under proposed § 129.61a, would also be more protective than the NESHAP because it would require vapor leak testing to be performed at more GDFs and more often than under the NESHAP. Proposed § 129.61a would also require the use of low permeation gasoline hoses and dripless enhanced conventional nozzles to protect against VOC emissions into the atmosphere, measures not required by the NESHAP. These hoses and nozzles are cost effective measures that would significantly reduce VOC emissions and small gasoline spills. As described previously, the protections under proposed § 129.61a would help ensure that ozone levels would not increase upon decommissioning of Stage II vapor recovery equipment and that current levels of emissions reductions would continue to be achieved at GDFs after decommissioning of Stage II vapor recovery equipment.

In 1993, the EPA approved a SIP revision containing the Commonwealth's Stage I vapor recovery regulations. See 58 FR 28362 (May 13, 1993). The Commonwealth's approved SIP is codified under 40 CFR 52.2020 (relating to identification of plan). The EPA's approval of the Stage I vapor recovery regulations, under § 129.61, is codified under 40 CFR 52.2020(c)(1).

Stage II vapor recovery—an overview

This proposed rulemaking would address Stage II vapor recovery requirements under proposed § 129.61a(g)(2)(vii) and (viii), proposed amendments to § 129.82 and proposed § 129.82a. Regulation of Stage II vapor recovery systems was mandated under sections 182 and 184(b)(2) of the CAA (42 U.S.C.A. §§ 7511a and 7511c(b)(2)). The Board first adopted the Stage II vapor recovery system regulations at 22 Pa.B. 585 (February 8, 1992) under § 129.82. In 1999, the Board amended § 129.82 to adjust compliance deadlines at 29 Pa.B. 1889 (April 10, 1999). During that timeframe, amendments to the act were also made. The regulatory and statutory history, the two CAA provisions and the EPA Administrator's lifting of the mandate for states to implement Stage II vapor recovery programs are discussed in more depth under Stage II vapor recovery—regulatory, statutory and SIP history, as follows.

Stage II refers to a vapor recovery system, including equipment and components, that controls the emission into the atmosphere of vapors during the transfer of gasoline from a gasoline storage tank at a GDF to a motor vehicle fuel tank. A Stage II vapor recovery system also controls emissions into the atmosphere of vapors during the storage of gasoline at a GDF. Stage II vapor recovery technology uses special refueling nozzles, dispensing hoses and a system that draws refueling vapors into the UST. A properly operating Stage II vapor recovery system moves the gasoline vapors from the motor vehicle fuel tank during refueling of the vehicle into the UST at the GDF, preventing the vapors from escaping into the ambient air. Stage II vapor recovery systems were also designed to eliminate the influx of air to the UST that would have occurred without the Stage II vapor recovery system as fuel is pumped out. The Stage II vapor recovery system, in turn, prevents gasoline from evaporating from inside the UST.

Stage II vapor recovery—two types

There are two types of Stage II vapor recovery technologies: (1) vapor balance and (2) vacuum assist. The two types of Stage II vapor recovery technologies work in different ways. As mentioned previously, Stage II vapor recovery systems are designed to reduce fuel vapor emissions from vehicle refueling at a GDF. A Stage II vapor recovery system also controls emissions into the atmosphere of vapors during the storage of gasoline at a GDF. Stage II vapor recovery technology uses special refueling nozzles, dispensing hoses and a system that draws refueling vapors into the UST. A Stage II vapor balance vapor recovery system uses direct displacement to collect or process vapors at a GDF. Vapor transfer to the UST is accomplished by the slight pressure created in the motor vehicle fuel tank by the incoming flow of gasoline. This system is passive. A Stage II vacuum assist vapor recovery system creates a vacuum to assist the movement of vapors back into the UST for storage or processing. The vacuum assist system is more complex to operate. It also draws some ambient air into the vapor return hose to the UST, which in turn requires secondary processing to accommodate the excess vapors.

Stage II vacuum assist vapor recovery technology is the prevalent Stage II system technology in this Commonwealth. It is installed at approximately 1,600 GDFs in the five-county Philadelphia and seven-county Pittsburgh areas and represents approximately 95% of the GDFs subject to Stage II vapor recovery requirements in those areas and 93% of all Stage II vapor recovery systems in this Commonwealth. However, an incompatibility exists between Stage II vacuum assist vapor recovery systems and ORVR systems that have been installed in the National motor vehicle fleet since 1998. The widespread use of ORVR systems throughout the motor vehicle fleet will soon cause the use of Stage II vacuum assist vapor recovery systems to create an emissions disbenefit in this Commonwealth and elsewhere in the United States.

For this reason, this proposed rulemaking would require decommissioning of Stage II vacuum assist vapor recovery systems in the five-county Philadelphia and seven-county Pittsburgh areas, under proposed § 129.82a. For Stage II vapor balance vapor recovery systems, however, proposed § 129.82a would allow, not require, decommissioning. Proposed § 129.61a would ensure that

there are not excess emissions of VOC and hazardous air pollutants during or after decommissioning.

Stage II vapor recovery—regulatory, statutory and SIP history

From the 1980s through 1999, the Department and the General Assembly acted to develop Stage II vapor recovery control requirements to reduce pervasive ozone problems in this Commonwealth and to meet CAA requirements. The statutory requirements have since been repealed, leaving only § 129.82 in State law.

The Board proposed the initial Stage II vapor recovery requirements as an ozone reduction measure. See 20 Pa.B. 3174 (June 16, 1990). At that time, 26 counties in California and in several major metropolitan areas in the United States had implemented Stage II vapor recovery programs. See 20 Pa.B. 3174. Refueling of gasoline powered motor vehicles was a major source of uncontrolled VOC emissions in much of the country and the Commonwealth needed the emission reductions to help attain the 1979 1-hour ozone NAAQS. See 20 Pa.B. 3174.

Five months later, on November 15, 1990, Congress enacted broad amendments to the CAA (1990 CAA amendments). In the 1990 CAA amendments, Congress mandated that states implement Stage II vapor recovery requirements by November 15, 1992, in areas classified as moderate or worse for ozone nonattainment. See sections 182(b)(3), (c), (d) and (e) of the CAA (42 U.S.C.A. §§ 7511a(b)(3), (c), (d) and (e)). For states in the Ozone Transport Region (OTR), which includes the Commonwealth, Congress also required statewide implementation of control measures capable of achieving emission reductions comparable to those achievable through the vehicle refueling controls required by section 182(b)(3) of the CAA for moderate ozone nonattainment areas. See section 184(b)(2) of the CAA. These CAA provisions required states to obtain EPA approval of these measures as part of their SIPs to make the measures enforceable under Federal law.

Following the 1990 CAA amendments, the Board withdrew the draft final-form rulemaking it had developed for the Stage II vapor recovery rulemaking it proposed on June 16, 1990. The next year, EPA issued important guidance under section 182(b)(3) of the CAA. The guidance, "Enforcement Guidance for Stage II Vehicle Refueling Control Programs," EPA Office of Air and Radiation, October 1991 (EPA Stage II Enforcement Guidance), addressed the effectiveness of gasoline vapor recovery systems.

On February 8, 1992, to promulgate timely regulations meeting the 1990 CAA amendments, the Board promulgated Stage II vapor recovery regulations through use of the final-omit rulemaking process. See 22 Pa.B. 585. The regulations were substantially similar to the 1990 rulemaking the Board had proposed and withdrawn.

Under the 1992 regulation, § 129.82 called for Stage II implementation beginning in late 1992. The regulations applied in areas of this Commonwealth that were classified as moderate, serious and severe ozone nonattainment areas. See 22 Pa.B. 585. The regulations were designed to address the pervasive ozone nonattainment problem that confronted the Commonwealth. See 22 Pa.B. 585. The requirements applied to the Pittsburgh moderate ozone nonattainment area (consisting of the seven-county Pittsburgh area), the Reading moderate ozone nonattainment area (consisting of Berks County) and the Philadelphia severe ozone nonattainment area (consisting of the five-county Philadelphia area). Implementation began in the five-county Philadelphia area.

Section 129.82 did not include the functional testing and certification requirements or the emission control requirements of the October 1991 EPA Stage II Enforcement Guidance. To correct the deficiencies, the Pennsylvania General Assembly added former section 6.7, formerly regarding control of volatile organic compounds from gasoline dispensing facilities, to the act. Section 6.7 echoed the Stage II vapor recovery regulations, though with later compliance dates by 9 months. Section 6.7 also required use of the functional testing and certification requirements of the EPA's Stage II vapor recovery guidance documents. See section 9 of Senate Bill 1650 of 1992. This Senate Bill was enacted into law as the act of July 9, 1992 (P.L. 460, No. 95) (act 95 of 1992).

The Department submitted the 1992 Stage II vapor recovery regulations to the EPA on March 4, 1992, seeking approval of them as a revision to the Commonwealth's SIP. The EPA proposed concurrent actions on the SIP revision the following year. See 58 FR 62560 (November 29, 1993). The first proposed EPA action proposed limited approval and limited disapproval due to deficiencies in testing, inspection frequency, facility training and percent vapor control requirements and due to a deficiency of not requiring that the Stage II vapor recovery equipment be certified by the California Air Resources Board (CARB) or have an equivalent certification. The second proposed EPA action proposed approval of the Stage II vapor recovery regulations dependent upon the Department supplementing the SIP revision with section 6.7(b), (c) and (h) of the act (35 P.S. § 4006.7(b), (c) and (h)) and with section 17(2) of act 95 of 1992 (which established the effective date of section 6.7).

On June 13, 1994, the EPA published notice of final rulemaking, providing a limited approval and a limited disapproval of the Department's Stage II vapor recovery SIP revision. The EPA approved § 129.82 as submitted but issued the limited disapproval to allow the Department to correct the functional testing and certification requirement deficiencies noted by the EPA in its November 29, 1993, notice of proposed rulemaking. See 59 FR 30302 (June 13, 1994).

On October 26, 1995, the Department submitted a SIP revision to the EPA consisting of section 6.7(b), (c) and (h) of the act and section 17(2) of Act 95 of 1992. This submittal satisfied the SIP deficiencies, enabling the EPA to approve the SIP revision. Now the Commonwealth's EPA-approved SIP established the necessary Stage II vapor recovery control requirements to meet the 1990 CAA amendments. See 60 FR 63938 (December 13, 1995).

The Department had already begun implementing Stage II in the five-county Philadelphia area, but had deferred implementation in the moderate nonattainment areas because it desired time to determine whether the program was, in fact, necessary for attainment of the ozone air quality standard in those areas. The moderate nonattainment areas were Berks County and the seven-county Pittsburgh area. See the Department's notice of suspension of enforcement at 24 Pa.B. 1890 (April 9, 1994) (regarding Stage II policy availability).

For Berks County, implementation never occurred because the area came into attainment of the NAAQS without implementation of § 129.82. In the same timeframe, the EPA promulgated ORVR system requirements for vehicles under section 202(a)(6) of the CAA (42 U.S.C.A. § 7521(a)(6)). Under this CAA provision, this EPA action enabled states to remove Stage II vapor recovery requirements from moderate ozone nonattainment areas. (For more information, see the subheading

Stage II Vapor Recovery—Conflict between Stage II vapor recovery systems and motor vehicle fueling emission controls; the EPA's widespread use determination, as follows.)

For the seven-county Pittsburgh area, implementation began several years later. During the period in which implementation was deferred, the area had monitored attainment of the ozone NAAQS. This had temporarily suspended the requirements for the Department to submit a SIP revision to the EPA showing how the area would come into attainment of the NAAQS under section 182(b) of the CAA. See 61 FR 28061 (June 4, 1996) for the EPA notice explaining this. In 1995, however, exceedances at ambient ozone monitors in the area resulted in a violation of the ozone NAAQS, ending the SIP submittal suspension. See 61 FR 28061. In response, then-Governor Tom Ridge formed a stakeholder group to review the ozone problem and to recommend emission control programs for the area. The Southwest Pennsylvania Ozone Stakeholder Working Group recommended, among other measures, implementing the Stage II vapor recovery control requirements to help the area attain the ozone NAAQS again. See 27 Pa.B. 2239 (May 3, 1997). After considering this recommendation, the Board on May 3, 1997, proposed amendments to the Stage II vapor recovery regulations at 27 Pa.B. 2239.

In its 1997 proposal, the Board proposed amending compliance dates for the seven-county Pittsburgh area under § 129.82(a), adding the functional testing and certification requirements to § 129.82 as a new subsection (d) and making clarifying amendments. See 27 Pa.B. 2239. In reply and to remove conflicting compliance dates, the Pennsylvania General Assembly repealed the Stage II vapor recovery provisions from the act, leaving only the SIP-approved requirement under section 6.7(h) that the Department implement functional testing and certification requirements established by EPA guidance. See the act of November 26, 1997 (P.L. 530, No. 57). On April 10, 1999, the Board finalized the amendments to § 129.82, including the compliance dates, clarifying edits, a possible exit from the program for the Pittsburgh area in 2010 under subsection (d) and the functional testing and certification requirements under subsection (e). See 29 Pa.B. 1889.

The Department submitted the amended regulations to the EPA as a SIP revision on March 3, 2000. The EPA approved the SIP revision. See 66 FR 27875 (May 21, 2001). On July 5, 2012, the Pennsylvania General Assembly repealed the remaining subsection 6.7(h) under the act of July 5, 2012, (P.L. 1109, No. 135).

In addition to the SIP revision that the Department plans to submit for approval of this proposed rulemaking, when adopted as a final-form rulemaking, the Department intends to submit a SIP revision to ensure removal of section 6.7 of the act from the SIP. This would leave only § 129.82 in the SIP for Stage II vapor recovery requirements.

Stage II Vapor Recovery—conflict between Stage II vapor recovery systems and motor vehicle fueling emission controls; the EPA's widespread use determination

In addition to requiring that states adopt Stage II vapor recovery controls, Congress in the 1990 CAA amendments required the EPA Administrator to promulgate, by November 1, 1991, standards for vehicle-based onboard systems for the control of vehicle fueling emissions, including VOCs. See section 202(a)(6) of the CAA. These vehicle-based onboard systems are the ORVR systems mentioned previously under the subheading, Purpose, and under the subheading, Stage II vapor recovery—two types. Congress realized that ORVR systems would eventually replace the need for Stage II vapor recovery systems, so Congress created two off-ramps under section 202(a)(6) of the CAA. One of the off-ramps was the opportunity for states to remove Stage II vapor recovery requirements for moderate nonattainment areas upon the EPA's promulgation of ORVR standards.

The EPA promulgated the ORVR requirements in 1994. See 59 FR 16262 (April 6, 1994). Although a state could remove Stage II vapor recovery requirements in moderate ozone nonattainment areas at that point, a state could retain its Stage II vapor recovery requirements if the requirements continued to be useful and needed. The Department did not seek to remove the Stage II vapor recovery program applicability for this Commonwealth's moderate ozone nonattainment areas at that time.

Under the second off-ramp under section 202(a)(6) of the CAA, Congress authorized the EPA Administrator to waive CAA Stage II vapor recovery requirements for serious, severe and extreme ozone nonattainment areas upon determining that ORVR systems are in widespread use. In 2012, the EPA published a notice of final rulemaking determining that ORVR systems are in widespread use Nationally throughout the motor vehicle fleet (widespread use determination). See 77 FR 28772 (May 16, 2012). Based on this determination, the EPA Administrator waived the CAA requirement that states with serious, severe and extreme ozone nonattainment areas adopt and implement programs requiring Stage II vapor recovery systems, effective May 16, 2012. See 77 FR 28772, 28778. The widespread use determination and waiver of requirements are found in 40 CFR 51.126 (relating to determination of widespread use of ORVR and waiver of CAA section 182(b)(3) Stage II gasoline vapor recovery requirements). For an EPA Fact Sheet about the EPA's widespread use determination, see https://www.epa.gov/sites/production/files/2015-09/documents/stage_2_vapor_factsheet.pdf.

In its widespread use notice, the EPA explained that phasing out the use of Stage II vapor recovery systems could lead to long-term cost savings for affected gas station owners and operators while maintaining air quality protections. See 77 FR 28772, 28780. The EPA also stated that the EPA would issue nonbinding guidance on developing and submitting approvable SIP revisions to remove Stage II vapor recovery programs from the SIP. See 77 FR 28772. On August 7, 2012, the EPA issued the guidance. In the guidance, entitled "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures," EPA, H. Lynn Dail et. al., EPA-457/B-12-001, August 7, 2012 (Decommissioning Guidance), the EPA addressed how states should demonstrate that removing Stage II vapor recovery requirements will not cause "backsliding" and, for states in the OTR, how OTR states should demonstrate that they require "comparable measures" under section 184(b)(2) of the CAA.

Using the EPA's Decommissioning Guidance, the Department completed its analysis of the effects that incompatibility between Stage II vacuum assist vapor recovery systems and ORVR systems has on emissions. Modeling shows that the equipment incompatibility will result in overall excess VOC emissions in this Commonwealth in 2021 in the seven-county Pittsburgh area and in 2022 in

the five-county Philadelphia area without removal of these Stage II vapor recovery systems. Overall emissions will increase because emissions due to incompatibility will be greater than the emission reductions achieved by using Stage II vapor recovery systems to pump gasoline into vehicles not equipped with ORVR systems because ORVR-equipped vehicles are a larger share of the highway vehicle fleet. Excess VOC emissions would also result without the corresponding requirements to offset VOC emissions caused by, and following, the decommissioning of Stage II vapor recovery equipment.

Stage II vapor recovery—Pennsylvania Bulletin notices of Stage II enforcement discretion

Because of the EPA's widespread use determination and the Department's intention to remove certain Stage II vapor recovery requirements, the Department on August 18, 2012, issued a notice of suspension of enforcement of the Stage II vapor recovery requirements from new and newly affected GDFs in the five-county Philadelphia and seven-county Pittsburgh areas. See 42 Pa.B. 5437 (August 18, 2012). The suspension of enforcement applied to the owners and operators of new GDFs that began operation after July 31, 2012, and GDFs that were newly affected after July 31, 2012. The Department continued to enforce the requirements applicable to existing facilities subject to the Stage II vapor recovery requirements until further notice.

On November 12, 2016, the Department issued a supplemental notice of suspension of enforcement of the Stage II vapor recovery requirements. In this notice, the Department suspended enforcement against owners and operators who would be adding new gasoline dispensers or replacing gasoline dispensers at affected GDFs. See 46 Pa.B. 7204 (November 12, 2016). The Department noted that gasoline dispensing equipment installed after that date may be subject to future regulations developed for GDFs. For owners and operators of GDFs with Stage II vapor control systems in place to meet the Stage II vapor recovery requirements, the Department continued to require operation and maintenance of those systems under § 129.82.

Consultations

In developing this proposed rulemaking, the Department sought input from the City of Philadelphia Air Management Services (AMS) and the Allegheny County Health Department (ACHD) because these two entities enforce gasoline vapor recovery system regulations. Philadelphia AMS and ACHD are air pollution control programs approved by the Department under section 12 of the act (35 P.S. § 4012), regarding powers reserved to political subdivisions. The Philadelphia AMS and ACHD regulations could be affected by this proposed rulemaking if it is adopted as a final-form rulemaking. For this reason, Philadelphia AMS and the ACHD may amend their regulations in light of this proposed rulemaking.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) and the Small Business Compliance Advisory Committee (SBCAC) in developing this proposed rulemaking. On April 11, 2019, and April 17, 2019, respectively, AQTAC and SBCAC concurred with the Department's recommendation to move this proposed rulemaking forward to the Board for consideration for adoption and publication as a proposed rulemaking for public comment.

The Department also conferred with the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee concerning this proposed rulemaking on May 5, 2019. On May 22, 2019, the CAC concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking.

This proposed rulemaking is consistent with section 4.2(a) of the act (35 P.S. § 4004.2(a)), and is reasonably necessary to achieve and maintain the health-based and welfare-based 8-hour ground-level ozone NAAQS and to satisfy related CAA requirements in this Commonwealth. Decommissioning of Stage II vacuum assist vapor recovery systems is needed to avoid excess VOC and air toxic emissions. Vapor leak testing and related GDF emission control requirements are needed to ensure that there is no backsliding from emission reductions currently accounted for under the existing regulations.

If this proposed rulemaking is published in the *Pennsylvania Bulletin* as a final-form rulemaking, the Department will submit the final-form rulemaking to the EPA for approval as a revision to the Commonwealth's SIP codified at 40 CFR Part 52, Subpart NN (relating to Pennsylvania). Control measures approved by the EPA as elements of the SIP are Federally-enforceable.

E. *Summary of Regulatory Requirements*

This proposed rulemaking would amend § 121.1 by adding and amending definitions. This proposed rulemaking would also amend §§ 129.61 and 129.82, and add §§ 129.61a and 129.82a.

§ 121.1. Definitions

This proposed rulemaking would revise § 121.1 to amend the terms "CARB Executive Order" and "gasoline dispensing facility" and add the terms "decommission," "monthly throughput," "Phase I vapor recovery system," "Phase II vapor recovery system," "pressure/vacuum vent valve," "Stage I enhanced vapor recovery system," "Stage I vapor recovery system," "Stage II vacuum assist vapor recovery system," "Stage II vapor balance vapor recovery system," "Stage II vapor recovery system," "storage tank system," "UMI," "UMX," "ullage" and "underground storage tank" to support the proposed amendments to Chapter 129.

The proposed amendment of the definition of "CARB Executive Order" would expand the applicability of the term to include Executive Orders that CARB issues for Stage I equipment and other related equipment covered by this proposed rulemaking. The existing definition applies only to the Pennsylvania Clean Vehicles Program in Chapter 126, Subchapter D (relating to Pennsylvania clean vehicles program).

This proposed rulemaking would add a definition of "decommission" to describe the meaning of the term as it is used under proposed § 129.82a. The definition relates to the process to disconnect a Stage II vapor recovery system.

This proposed rulemaking would amend the definition of "gasoline dispensing facility" to clarify that it is a stationary source that contains a storage tank.

This proposed rulemaking would add the definition of "monthly throughput" to explain how to calculate monthly throughput to determine if a facility in the five-county Philadelphia or seven-county Pittsburgh area has met the throughput threshold that triggers leak monitoring requirements under proposed § 129.61a and Stage II vapor recovery requirements under § 129.82. The definition is taken from the NESHAP at 40 CFR 63.11132 (relating to what definitions apply to this subpart?).

This proposed rulemaking would add the definition of "Phase I vapor recovery system" because the term is

used in a CARB test procedure title in proposed § 129.61a(b)(4). This CARB-derived definition means the same thing as the EPA-derived definition of the term "Stage I vapor recovery system," also added in this proposed rulemaking. See the explanation of "Stage I vapor recovery system" as follows.

This proposed rulemaking would add the definition of "Phase II vapor recovery system" because the term is used in a CARB executive order title in § 129.61a(e)(2) and (k)(3) and § 129.82(c)(1)(i). This CARB-derived definition means the same thing as the EPA-derived definition of the term "Stage II vapor recovery system," also added in this proposed rulemaking.

This proposed rulemaking would add the definition of "pressure/vacuum vent valve" to describe the operation and purpose of this component of a Stage I vapor recovery system.

This proposed rulemaking would add the definition of "Stage I enhanced vapor recovery system" to explain that the system must have received the necessary certification as specified by the required CARB Executive Order. A Stage I enhanced vapor recovery system is a type of Stage I vapor recovery system.

This proposed rulemaking would add the definition of "Stage I vapor recovery system" to describe the purpose and operation of the system. The definition also includes "Phase I vapor recovery system" and "Stage I enhanced vapor recovery system." See the previous explanations regarding the definition of these two terms.

This proposed rulemaking would add definitions of the two types of "Stage II vapor recovery systems." The two systems are subject to different requirements in this proposed rulemaking. They are described as follows.

The first type of "Stage II vapor recovery system" is a "Stage II vacuum assist vapor recovery system." The proposed definition of this term describes the purpose and operation of the system to make a distinction between a vacuum assist system and the second type of system, namely a vapor balance system.

The proposed definition of "Stage II vapor balance vapor recovery system" describes the purpose and operation of the vapor balance system.

This proposed rulemaking would add the definition of "Stage II vapor recovery system" to describe the purpose and operation of the system. The definition also refers to "Phase II vapor recovery system." See the previous explanation regarding the definition of "Phase II vapor recovery system."

This proposed rulemaking would add the definition of "storage tank system" because the term is used throughout proposed §§ 129.61a and 129.82a. The proposed definition would be the definition for the term under § 245.1 (relating to definitions).

This proposed rulemaking would add the definition of "ullage" to describe the meaning of this technical word in the context of measuring the vapor leak rate from a gasoline storage tank system under proposed § 129.61a(e)(2)(iv).

This proposed rulemaking would add the definitions of "UMI" and "UMX" to specify certification requirements for persons performing specified work on USTs under proposed §§ 129.61a(q) and 129.82(e). The proposed terms would have the meanings as defined under the term "certification categories" under § 245.1.

This proposed rulemaking would add the definition of "underground storage tank" because the term is used under proposed §§ 129.61a and 129.82a. The proposed definition would be the definition for the term under § 245.1.

§ 129.61. Small gasoline storage tank control (Stage I control)

The proposed amendments to § 129.61 would make several clarifications. The proposed amendments would clarify the applicability of Stage I vapor recovery control requirements under subsection (a), the requirements for transferring gasoline from a tank truck into a gasoline storage tank at a GDF under subsection (b) and the requirements pertaining to gasoline tank truck dispensing tanks under subsection (c). The proposed amendments would remove the vapor disposal regulatory cross-references from subsection (b) because the requirements are adequately addressed under subsection (c). Subsection (c) clarifies that the dispensing tank of a gasoline tank truck must remain vapor tight at all times except that the dispensing tank may be opened after the vapors are properly disposed. The exception is needed for necessary actions surrounding maintenance and other operational requirements. The proposed amendments would add subsection (d) to inform the owner and operator of a gasoline storage tank subject to Stage I vapor recovery control requirements that the owner or operator may also be subject to the vapor leak monitoring and other requirements for small gasoline storage tank emission controls under proposed § 129.61a.

§ 129.61a. Vapor leak monitoring procedures and other requirements for small gasoline storage tank emission control

This proposed rulemaking would add § 129.61a to establish requirements for periodic and continuous vapor leak monitoring and related requirements applicable to the owner or operator of a GDF with a small gasoline storage tank in the five-county Philadelphia or seven-county Pittsburgh area with a capacity of greater than 2,000 gallons. A "small gasoline storage tank" is defined in existing § 121.1 as a tank from which gasoline is dispensed to motor vehicle gasoline tanks.

Proposed § 129.61a would apply only to the 12 counties listed under proposed subsection (a). These are the same 12 counties subject to the § 129.82 Stage II vapor recovery regulations, described as follows. A GDF owner or operator, including a GDF owner or operator who decommissions Stage II vapor recovery equipment under proposed § 129.82a, would be required under proposed § 129.61a, to monitor leaks and make repairs in the GDF's Stage I vapor control system similarly to how leaks are monitored and repaired at GDFs with Stage II vapor recovery systems under § 129.82.

Proposed subsection (a) describes applicability. This subsection would specify that proposed § 129.61a would apply to the owner and operator of a gasoline storage tank with a capacity of greater than 2,000 gallons that is subject to the Stage I vapor recovery control requirements under § 129.61 only if the GDF is located in one of the 12 counties in the five-county Philadelphia and seven-county Pittsburgh areas, and only if the monthly throughput of the GDF exceeds the applicable threshold specified under proposed paragraph (1) or (2). The throughput thresholds in paragraphs (1) and (2) are the same as those under existing § 129.82, which in turn are based on section 182(b)(3)(A) of the CAA (42 U.S.C.A. § 7511a(b)(3)(A)). The thresholds would exclude GDFs with low through-

puts and would specify a higher throughput threshold under proposed paragraph (2) for a GDF owned or operated by an independent small business marketer of gasoline, consistent with section 324 of the CAA (42 U.S.C.A. § 7625) regarding vapor recovery for small business marketers of petroleum products. The GDFs with throughputs below the applicability thresholds would account for a small percentage of the gasoline throughputs (less than 2%) and, therefore, the cost-effectiveness of controlling these sources would be very low. Approximately 1/3 of GDFs have throughputs below the threshold of paragraph (1). See Section F of this preamble, and Questions 15, 16, 17 and 24 of the Regulatory Analysis Form for this proposed rulemaking and for more information on benefits and impacts of this proposed rulemaking to small businesses.

Proposed paragraphs (1) and (2) of subsection (a) further explain that throughputs would be assessed annually for determining applicability of proposed § 129.61a, beginning with the calendar year that precedes the year in which this proposed rulemaking is published as a final-form rulemaking.

Proposed subsection (a)(3) would explain that once an affected GDF in the five-county Philadelphia or seven-county Pittsburgh area exceeds the throughput of paragraph (1) or (2) in a calendar year, it remains subject to proposed § 129.61a even during times when the throughput falls below the threshold. This is consistent with the approach the EPA follows in the NESHAP. See 40 CFR 63.11111(i) (relating to Am I subject to the requirements in this subpart?). See Sections D, F and G in this preamble for further discussion of the NESHAP. This approach serves to avoid confusion for the purpose of compliance and enforcement.

Proposed subsection (b) would specify the four CARB vapor recovery test procedures that the GDF owner or operator must follow to meet the vapor leak monitoring procedures under proposed § 129.61a. This subsection would specify CARB test procedures because CARB staff have become the world's foremost experts on controlling emissions at GDFs. Regulatory bodies in the United States that require vapor leak monitoring predominantly rely on CARB test procedures. For example, the EPA, under section 4.2 of its Stage II Enforcement Guidance, requires Stage II vapor recovery systems to be CARB-approved or to be of equivalent quality. The nearby states of Delaware, Maryland (for Baltimore City and 11 counties), New Jersey and New York (for the New York and lower Orange County metropolitan areas) require GDF owners and operators to follow CARB testing requirements. See 7 Del. Code Regs. § 1124-36.0; Md. Code Regs. 26.11.24; N.J. Admin. Code § 7:27-16.3; and N.Y. Comp. Codes R. & Regs. Tit. 6, § 230.2. The owner or operator of a GDF may need to perform up to four of the listed CARB vapor recovery test procedures to monitor for leaks, namely (1) CARB TP-201.1E—Leak Rate and Cracking Pressure/Vacuum Vent Valves, (2) CARB TP-201.3—Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, (3) CARB TP-201.3C—Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks and (4) CARB TP-201.1B—Static Torque of Rotatable Phase I Adaptors.

Proposed subsection (c) would specify a choice of two compliance options for satisfying monitoring requirements for GDF owners to comply with the vapor leak monitoring requirements under this section. The owner and operator of a GDF would have the option to comply by using periodic or continuous vapor leak rate monitoring. For the periodic monitoring option, requirements under subsection (d) would be followed. For the continuous monitoring option, requirements under subsections (e), (h), (i) and (j) would be followed.

Proposed subsection (d) would apply to a GDF owner or operator who chooses to demonstrate compliance by using periodic vapor leak rate monitoring under subsection (c). Paragraph (1) would require the GDF owner or operator to conduct periodic vapor leak testing by following the following three CARB vapor recovery test procedures listed under subsection (b), namely TP-201.1E, TP-201.3 and TP201.3C. The fourth CARB test procedure listed under subsection (b), TP-201.1B, would be required if the UST is equipped with a rotatable adaptor. The test procedures must all be completed at least once during a 12-month period.

Proposed paragraph (1)(i) specifies that the tests may be conducted simultaneously, consecutively or separately during the 12-month period. This is to allow owners and operators of GDFs flexibility in scheduling leak monitoring tests.

Subparagraphs (ii), (iii) and (iv), working in tandem, would be meant to encourage GDF owners and operators to perform frequent visual leak monitoring inspections between annual leak tests and to make necessary repairs soon after a leak is detected. Proposed subparagraph (ii) specifies that repairs may not be made to the Stage I vapor recovery system on the day that CARB TP-201.3 or CARB TP-201.3C is performed prior to completion of the test procedure. If a leak test fails, a repair to a component on, or a correction to, a vapor recovery system must be made within 10 days under proposed subparagraph (iii). Proposed subparagraph (iv) specifies that if a repair to a component on, or correction to, the Stage I vapor recovery system is needed to pass CARB TP-201.3 then CARB TP-201.3 must be conducted once every 6 months. The generally applicable once-in-every-12-month testing requirement may resume after two consecutive once-in-every-6-month period CARB TP201.3 test procedures do not reveal a failure requiring a repair or correction. This proposed requirement is to encourage owners and operators to perform the required leak inspections on a regular basis and make the necessary repairs as vapor leaks occur. Periodic leak inspections at the GDF would reduce the likelihood of an owner or operator having to conduct once-in-every-6-month testing.

Under proposed subsection (d)(2), the recordkeeping requirements for each test procedure performed under paragraph (1) are listed. The recorded information would allow the Department to track the leak rate monitoring performed and the associated action taken by the GDF owner or operator.

Proposed subsection (e) would apply to a GDF owner or operator who chooses to demonstrate compliance by using continuous vapor leak rate monitoring under subsection (c). Proposed subsection (e) would specify the design, installation, operation and maintenance of a Stage I enhanced vapor recovery system and a continuous pressure monitoring system. Both of these systems would be required to conduct continuous vapor leak rate monitoring.

Proposed subsection (e)(1) would specify that a Stage I enhanced vapor recovery system must be certified by a CARB Executive Order. A CARB-certified Stage I enhanced vapor recovery system ensures a proper level of vapor tightness at a GDF to ensure that a continuous pressure monitor, required under subsection (e)(2), can work properly.

Proposed subsection (e)(2) would require a continuous pressure monitoring system that meets specified CARB certification requirements. Subparagraphs (i) through (vi) specify the equipment and operational characteristics that the continuous pressure monitoring system would need to meet. CARB deems that by complying with these characteristics continuous pressure monitoring is at least as stringent as once-in-every-12-month leak monitoring conducted under CARB test procedures.

Proposed subsection (f) would apply to all GDF owners and operators who install a Stage I vapor recovery system under § 129.61a. Paragraph (1) specifies requirements for leak rate monitoring test procedures that would be performed within 10 days of installation of the Stage I vapor recovery system. The GDF owner or operator would need to conduct and pass 3 leak rate monitoring CARB test procedures, TP-201.1E, TP-201.3 and TP201.3C. If the UST is equipped with a rotatable adaptor, the GDF owner or operator would need to conduct an additional test, TP-201.1B.

Proposed subsection (f)(2) lists the recordkeeping requirements for each test procedure performed under paragraph (1). This information would allow the Department to track the leak rate monitoring performed and associated actions taken by the GDF owner or operator.

Proposed subsection (f)(3) would require that the GDF owner or operator maintain onsite a copy of the CARB Executive Order issued for the Stage I enhanced vapor recovery system under subsection (e)(1). This would allow an inspector to determine if the proper equipment is installed at a facility that uses a continuous pressure monitoring system.

Proposed subsection (f)(4) would require installation and maintenance of a pressure/vacuum vent valve on the atmospheric vent of a UST to prevent fugitive emissions when these emissions occur. Examples of when these emissions occur most are when the atmospheric pressure changes, when gasoline is not withdrawn from the UST for prolonged periods and when the GDF receives a gasoline delivery. This requirement would ensure that pressure/vacuum vent valves are installed at all times.

Proposed subsection (g) would apply to all GDF owners and operators who install a Stage I vapor recovery system under proposed § 129.61a. Proposed subsection (g) would require regular leak monitoring inspections. By following a schedule and examining potential problem spots where the vapor tightness of a Stage I vapor recovery system could easily become compromised, a person may prevent larger leaks. Larger leaks are often caused by the misuse or misoperation of a Stage I vapor recovery system and are usually apparent with a visual inspection. Small leaks, which are more difficult to discover, become large leaks over the course of several weeks or months and may be discovered by leak monitoring inspection.

Proposed subsection (g)(1) would require the GDF owner or operator to inspect after each tank truck delivery some common sites on the Stage I vapor recovery system that may become compromised during a tank truck delivery.

Proposed subsection (g)(2) would require the GDF owner or operator to inspect once per month components of the Stage I vapor recovery system that are less likely to be damaged during normal operation of the GDF.

Proposed subsection (g)(3) would require the GDF owner or operator to make a repair or correction to a failed component of the Stage I vapor recovery system as soon as possible before the next monthly inspection.

Proposed subsection (g)(4) would list the needed recordkeeping requirements for each inspection of, and correction to, a Stage I vapor recovery system and repair to a failed component of a Stage I vapor recovery system under this subsection. These recorded items would allow the Department to track the leak rate monitoring performed, and associated actions taken, by the GDF owner or operator.

Proposed subsection (h) would apply to a GDF owner or operator who chooses the compliance option under subsection (c) of installing a continuous pressure monitor to perform leak monitoring. Proposed subsection (h) would specify how a continuous pressure monitor must operate to be an equivalent form of leak monitoring as annual leak monitoring. This proposed subsection would specify the operating parameters of the continuous pressure monitoring system, and related measurements, recordkeeping and record storage requirements, testing requirements and schedule for repairs.

Proposed subsection (i) would apply to a GDF owner or operator who chooses the compliance option under subsection (c) of installing a continuous pressure monitor to perform leak monitoring. Proposed subsection (i) specifies what actions must occur the first time the continuous pressure monitoring system determines that the vapor leak rate standard is exceeded. This subsection includes requirements for the GDF owner and operator and also for operation of the continuous pressure monitoring system. This subsection would require the continuous pressure monitoring system to activate an alarm and would direct the owner or operator to determine the cause of the vapor leak rate failure and take corrective action within 7 calendar days of the first exceedance alarm. The owner or operator would be required to record relevant information pertaining to indication of vapor leak rate failure and corrective action taken. Proposed paragraph (2)(i) would authorize a GDF owner or operator to turn off an alarm system without meeting the certification requirements of subsection (q) when a correction or repair is not required.

Proposed subsection (j) would apply to a GDF owner or operator who chooses the compliance option under subsection (c) of installing a continuous pressure monitor to perform leak monitoring. If the continuous pressure monitoring system determines that the vapor leak rate standard is exceeded within 7 calendar days following the correction made after the first alarm, this could be an indication of a problem with the continuous pressure monitor. Under proposed subsection (j), a second alarm would require the owner or operator to reset the continuous pressure monitor and determine the cause of vapor leak rate failure and take corrective action within 7 calendar days of the alarm. The owner or operator would be required to record the relevant information pertaining to indication of vapor leak rate failure and corrective action taken. Proposed subparagraph (2)(ii)(A) and (B) would specify the qualification requirements for persons to make repairs or corrections.

Proposed subsection (k) would apply to an owner or operator of a GDF who does not have a Stage II vapor recovery system. Proposed paragraph (1) would specify when a GDF owner or operator must replace conventional hoses with low permeation hoses. All GDF owners and operators must replace all conventional hoses with low permeation hoses within 2 years after the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking. For all new gasoline dispensers at GDFs and all new GDFs, the owner or operator must install low permeation hoses on the dispensers upon

installation of the dispensers. The low permeation hoses must be included on a specified component list in CARB Executive Order NVR-1-D or in an update or revision to the Executive Order.

Proposed subsection (k)(2) would specify when a GDF owner or operator must replace conventional nozzles with enhanced conventional nozzles. Proposed paragraph (2) would require that an owner or operator of an existing GDF replace conventional nozzles with enhanced conventional nozzles within 2 years after a *Pennsylvania Bulletin* notice is published indicating that the CARB Executive Officer issued an Executive Order to a second manufacturer for an enhanced conventional nozzle. For all new gasoline dispensers and GDFs that begin operation after the *Pennsylvania Bulletin* notice is published, the owner or operator must install enhanced conventional nozzles. The enhanced conventional nozzles must be included by the CARB Executive Officer on a specified component list in CARB Executive Order NVR-1-D or in any updates and revisions to the Executive Order.

Proposed subsection (l) would specify additional requirements for GDF owners and operators. These requirements are best practices for maintenance of Stage I and Stage II vapor recovery systems. Although these additional requirements are currently codified only under § 129.82 for GDFs that have Stage II vapor recovery systems, they provide significant protections against vapor leaks and accidental spills that are equally important and applicable to all GDFs. They are listed in proposed subsection (l) because most GDFs with Stage II vapor recovery systems covered under § 129.82 would be decommissioning their Stage II vapor recovery systems under proposed § 129.82a.

Proposed subsection (m) would require that a GDF owner or operator keep records for 2 years including measurements made, leak rate failures observed and corrective actions taken in the relevant paragraphs and subparagraphs listed, unless a longer period is required under Chapter 127 (relating to construction, modification, reactivation and operation of sources). The records must be made available to the Department upon Department request.

Proposed subsection (n) would require a GDF owner or operator who chooses to demonstrate compliance by using continuous vapor leak rate monitoring under subsection (c)(2) to maintain onsite at the GDF a copy of the valid CARB Executive Order for the enhanced Stage I vapor recovery system required under subsection (e)(1). Maintaining these documents onsite would facilitate the Department's inspections of the GDF.

Proposed subsection (o) would require that the GDF owner or operator maintain onsite at the GDF the CARB Executive Order required for low permeation hoses and enhanced conventional nozzles to facilitate the Department's inspections of the GDF.

Proposed subsection (p) would require that the GDF owner or operator maintain onsite at the GDF a record of the training schedule and written instructions required under subsection (l)(2) for the duration of the operation of the vapor recovery system.

Proposed subsection (q)(1) specifies that a person making corrections or repairs to a vapor recovery system must be appropriately certified under Chapter 245, Subchapters A and B (relating to general provisions; and certification program for installers and inspectors of storage tanks and storage tank facilities). This requirement was included to ensure that appropriately qualified individuals work on these potentially dangerous sources of emissions. Proposed paragraph (2) exempts from this requirement a person when only performing a test specified under subsection (b), as opposed to a person performing installation or modification work.

§ 129.82. Control of VOCs from gasoline dispensing facilities (Stage II)

Existing § 129.82 applies to GDFs in the Philadelphia and Pittsburgh areas that have a monthly throughput of at least 10,000 gallons or are independent small business marketers of gasoline with a monthly throughput at the GDF of at least 50,000 gallons per month.

The proposed § 129.82 amendments would remove requirements for a GDF owner or operator in the five-county Philadelphia area or seven-county Pittsburgh area to install Stage II vapor recovery systems. Removing requirements to install Stage II vapor recovery systems is consistent with allowing, and in some cases requiring, decommissioning of Stage II vapor recovery systems under proposed § 129.82(a). The ORVR systems on the vast majority of vehicles in this Commonwealth are making Stage II vapor recovery systems obsolete. Proposed § 129.82 would also address requirements for GDF owners and operators in the 12 counties who retain their Stage II vapor recovery systems.

Proposed subsection (a) specifies that § 129.82 would be applicable in the 12 counties of the five-county Philadelphia and seven-county Pittsburgh areas. The proposed amendments would remove Berks County from the list of covered counties under § 129.82 because Stage II was never implemented in Berks County (also referred to in this Preamble as the Reading moderate ozone nonattainment area). See Section D of this preamble, previously, for additional information on the EPA's 1994 ORVR rulemaking and its effect on moderate areas under section 202(a)(6) of the CAA and also for the explanation of the Department's decision not to implement Stage II vapor recovery requirements in Berks County.

Proposed subsection (b) would clarify and update the existing operating requirements that the GDF owner or operator must meet for an installed Stage II vapor recovery system until the system is decommissioned under proposed § 129.82a.

Proposed subsection (c) would amend § 129.82 to remove requirements for additional areas to become subject to § 129.82. This proposed subsection would also remove requirements in existing subsection (d) that specify that if an ORVR program is fully implemented by December 31, 2010, then the operation and maintenance of Stage II vapor recovery systems will no longer be required. The EPA's 2012 widespread use determination that allows states to allow decommissioning of Stage II vapor recovery systems renders this existing provision obsolete.

Proposed subsection (c) would also retain the requirement that GDF owners and operators comply with the functional testing and certification requirements in the EPA's Stage II enforcement and technical guidance documents. Proposed subsection (c) would designate the appropriate CARB functional and certification requirements for both a vapor balance system (paragraph (1)) and a vacuum assist system (paragraph (2)). Proposed paragraph (3) would specify the schedule, frequency and recordkeeping requirements for the test procedures listed in paragraphs (1) and (2) and any possible repairs or corrections needed.

Proposed subsection (d) would inform a GDF owner or operator subject to § 129.82 that the owner or operator

may also be subject to the vapor leak monitoring and other requirements for small gasoline storage tank emission controls under proposed § 129.61a and the Stage II vapor recovery system decommissioning requirements under § 129.82a.

§ 129.82a. Requirements to decommission a Stage II vapor recovery system

Proposed § 129.82a would specify the correct way to decommission a Stage II vapor recovery system, who must decommission, decommissioning deadlines and recordkeeping requirements.

Proposed subsection (a) would establish that this section would apply to an owner and operator of a GDF that uses, has decommissioned or is decommissioning a Stage II vapor recovery system, including those who own or operate outside the 12 counties that are subject to § 129.82.

Proposed subsection (b)(1) would set a deadline of December 31, 2022, for owners or operators of Stage II vacuum assist vapor recovery systems in the 12 counties to decommission their systems. This date was chosen because of the incompatibility between Stage II vacuum assist vapor recovery systems and ORVR systems. Using the EPA's Decommissioning Guidance methodology to estimate emissions that would result from this incompatibility, the Department concluded that emissions will begin to increase in 2022 in all 12 counties. Paragraph (2) would specify that a GDF owner and operator operating a Stage II vapor balance vapor recovery system decommission under this section. This requirement was included to ensure that all decommissionings for both types of vapor recovery systems are completed correctly according to industry recommended practices.

Proposed subparagraph (c) would specify the recommended practices for decommissioning. Paragraph (1) would identify the industry association's recommended practices, found in PEI/RP300-09—The Petroleum Equipment Institute's "Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites," Chapter 14, Decommissioning Stage II Vapor-Recovery Piping, sections 14.1 through 14.6.13, including applicable updates and revisions. The CARB test procedures in paragraphs (2) and (3) are included in the PEI guidance. The PEI's recommended practices for decommissioning are widely followed by the industry. In the EPA's Decommissioning Guidance, the EPA notes that the PEI guidance "is especially instructive as it was developed by industry experts with a focus on regulatory compliance and safety. It contains the steps involved in dismantling Stage II hardware and applies to both balance and vacuum assist type systems." Decommissioning Guidance, page 23.

Proposed subsection (d) would specify the best practices and test procedures that need to be accomplished to decommission a Stage II vapor recovery system properly. In addition, a Department-approved form, 27-FM-BAQ1029, would need to be completed and sent to the Department to indicate that decommissioning was completed properly. The form must be kept onsite for 2 years unless other requirements require a longer duration of time.

Proposed subsection (e) would require that a person performing work under this section be appropriately certified to a level specified in the Department's Storage Tank program regulations under Chapter 245 (relating to administration of the Storage Tank and Spill Prevention Program) to help ensure that the work is performed correctly.

Proposed subsection (f) would remove the requirements for a GDF owner and operator to comply with § 129.82 after the Stage II vapor recovery system is decommissioned.

Proposed subsection (g) would inform GDF owners or operators Statewide who have decommissioned a Stage II vapor recovery system under this section that they must also comply with the Stage I vapor recovery requirements under § 129.61.

Proposed subsection (h) would inform GDF owners or operators in the 12 counties who have decommissioned a Stage II vapor recovery system under this section that they must also comply with the vapor leak monitoring procedures and other requirements for small gasoline storage tank emission control under proposed § 129.61a.

F. *Benefits, Costs and Compliance*

Benefits

The amendments in this proposed rulemaking would apply predominantly in the five-county Philadelphia and seven-county Pittsburgh areas, and therefore most of the benefits of this proposed rulemaking would be experienced in those areas. Benefits would also be experienced in downwind areas.

The Department estimates that the owners and operators of as many as 1,981 locations in the five-county Philadelphia and seven-county Pittsburgh areas, combined, would be required to comply with this proposed rulemaking—the Philadelphia area is home to 1,118 locations and the Pittsburgh area is home to 863 locations. Although approximately 2,906 GDFs are in the Philadelphia and Pittsburgh areas, only facilities that have a throughput over 120,000 gallons of gasoline per year (10,000 gallons a month) would be subject to the vapor leak monitoring procedures and other requirements for small gasoline storage tank emission control proposed under new § 129.61a and would be subject to the clarified requirements for Stage II vapor recovery systems in the event they retain their vapor recovery systems (an option under this proposal only for Stage II vapor balance vapor recovery systems).

Approximately 538 and 368 businesses in the five-county Philadelphia and seven-county Pittsburgh areas, respectively, would be subject to this proposed rulemaking. Some double-counting between the two areas will result when estimating total businesses, primarily due to large National companies operating in both areas. The number of double-counted businesses should not exceed more than 10 companies. The Department determined that approximately 642 of GDFs are small businesses that would be affected by this proposed rulemaking. This was determined by subtracting the 278 GDFs with throughputs below the level that would require compliance with this proposed rulemaking from the total of 920 GDFs supplied by the Pennsylvania Small Business Development Center.

This proposed rulemaking would hold fugitive VOC emissions at nearly the same level as is credited in the Department's SIP. The Department has determined that the amount of gasoline throughput controlled by Stage I and Stage II vapor recovery equipment now stands at over 98.4% versus 96% claimed in the SIP. In-use control of fugitive emissions for Stage I and Stage II vapor recovery systems, which is control of fugitive emissions during filling of USTs and during vehicle refueling, would be held to nearly the same level under this proposed rulemaking as it has been held to under the existing regulations. Breathing emissions, which are emissions

that occur when air is ingested and expelled from the UST, are controlled by Stage II vapor recovery equipment. Stage II vapor recovery system testing requirements also reduce emissions of the Stage I vapor recovery system that may occur when the UST is filled, from tank breathing emissions that occur throughout the day and from emissions that occur from spills. The control efficiency that limits breathing emissions losses would range from a level of 86% to 92% (widespread use determination, 77 FR 28774) under this proposed rulemaking. The Department claimed 90% in its SIP. With the increase in the amount of gasoline throughput controlled by vapor recovery systems increasing from 96% to 98%, the in-use control would remain approximately the same as it has been, based on a conservative estimate using 86% in-use control (86% * 98.4% = 85% total control versus 90% * 96% = 86%).

Under proposed § 129.61a, this proposed rulemaking would keep fugitive emissions at a lower level than could be achieved under the NESHAP. By Department estimates, emissions of VOC in 2021 would be lower by between 548 and 1,300 tons, and 375 tons and 880 tons, in the five-county Philadelphia and seven-county Pittsburgh areas, respectively. When low permeation hoses would become required under proposed § 129.61a(k), their use would reduce evaporative emissions in the five-county Philadelphia and seven-county Pittsburgh areas by 200 tons per year. Similarly, according to the Department's estimates, the use of ECO nozzles under proposed § 129.61a(k) would reduce annual evaporative emissions by 108 tons and 73 tons in the five-county Philadelphia and seven-county Pittsburgh areas, respectively, by reducing spills more than conventional nozzles do. The use of ECO nozzles would also prevent an equal amount of gasoline from nozzles spills from reaching sources of surface and ground water.

Consumers would benefit from the reduced gasoline evaporation from hoses and the reduced gasoline evaporation and small spills from ECO nozzles. Although requiring low permeation hoses and ECO nozzles would be the most expensive element of this proposed rulemaking to owners and operators of GDFs, consumers would save approximately $450,000 a year from reduced gasoline evaporation when using low permeation hoses and ECO nozzles (estimated reduced evaporation from low permeation hoses and ECO nozzles of 120,719 and 66,737 gallons, respectively, at $2.40 a gallon).

This proposed rulemaking would lower emissions of ozone-contributing VOCs and air toxic pollution. The reduced emissions of VOCs in heavily populated urban areas would be especially beneficial for reducing formation of ground-level ozone. Typically, urban areas are VOC-limited, meaning that VOC emissions are more likely to be converted directly into ground-level ozone concentrations when VOCs are emitted into the atmosphere. Reduced air toxic pollution resulting from this proposed rulemaking would lower cancer risk among urban dwellers, and especially for people who work at or live near GDFs. Controlling VOC emissions from GDFs is a cost-effective control measure. For a GDF owner or operator, the cost of control equipment would be partially-to-totally offset, depending on the gasoline throughput of the GDF, by gasoline savings that would be achieved by reducing evaporation and venting of gasoline into the atmosphere.

The reduction in spills and evaporation resulting from the use of low permeation hoses and ECO nozzles, alone, would reduce contamination of surface water and ground water, protecting the ecology of this Commonwealth's streams and their surrounding ecosystems. Fewer spills would also mean less gasoline that could contact the skin of motorists refueling their vehicles. Chemical components of gasoline can, upon contact, penetrate human skin and underlying tissue. Given that some of gasoline's components have carcinogenic and mutagenic properties, this is undesirable.

As mentioned previously, the implementation of the VOC emission control measures in this proposed rulemaking would predominantly benefit the health and welfare of the inhabitants of the five-county Philadelphia and the seven-county Pittsburgh areas as well as any inhabitants that experience the deleterious effects of pollutants transported from these areas. Numerous animals, crops, ecosystems and natural areas of this Commonwealth should also be positively affected. Exposure to high concentrations of ground-level ozone is a serious human and animal health and welfare threat, causing respiratory illnesses and decreased lung function as well as other adverse health effects leading to a lower quality of life. Reduced ambient concentrations of ground-level ozone would reduce the incidences of hospital admissions for respiratory ailments, including asthma, and would improve the quality of life for citizens overall. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ground-level ozone while engaged in activities that involve physical exertion. High levels of ground-level ozone affect animals, including pets, livestock and wildlife, in ways similar to humans.

In addition to causing adverse human and animal health effects, the EPA has concluded that high levels of ground-level ozone affect vegetation and ecosystems leading to the following: reductions in agricultural crop and commercial forest yields by destroying chlorophyll; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests and other environmental stresses, including harsh weather. In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of parks and recreation areas. Through deposition, ground-level ozone also contributes to pollution in the Chesapeake Bay. These effects can have adverse impacts including loss of species diversity and changes to habitat quality and water and nutrient cycles. High levels of ground-level ozone can also cause damage to buildings and synthetic fibers, including nylon, and reduced visibility on roadways and in natural areas.

The implementation of the control measures in this proposed rulemaking would assist the Department in preventing increases in the level of VOC emissions from GDF activities locally and reduce the resultant local formation of ground-level ozone and the transport of VOC emissions and ground-level ozone to downwind areas, including other states. This proposed rulemaking is reasonably necessary to attain and maintain the health-based and welfare-based 8-hour ozone NAAQS and to satisfy related CAA requirements in this Commonwealth.

The monetized health benefits to residents in this Commonwealth and the economic benefits to agricultural,

hardwoods and tourism industries in this Commonwealth as a result of attaining and maintaining the ground-level 8-hour ozone NAAQS, achieved in part through maintaining the reduced emissions of ozone precursors at GDFs, are considerable in comparison to the costs that would be incurred by the owners and operators of GDFs to comply with this proposed rulemaking. The EPA has estimated the monetized health benefits of attaining the 2008 and 2015 ozone NAAQS. The EPA estimated that the monetized health benefits of attaining the 2008 8-hour ozone NAAQS of 0.075 ppm range from $2 billion to $17 billion on a National basis by 2020. See "Fact Sheet, Final Revisions to the National Ambient Air Quality Standards for Ozone," available at https://www.epa.gov/sites/production/files/2015-08/documents/ozone_fact_sheet.pdf. Approximately 140 million Americans live in areas affected by unhealthy levels of ozone pollution and approximately 8 million Pennsylvanians live in areas with unhealthy ozone pollution. Prorating that benefit to this Commonwealth, based on population, results in a public health benefit of $113 million to $965 million. Similarly, the EPA estimated that the monetized health benefits of attaining the 2015 8-hour ozone NAAQS of 0.070 ppm range from $1.5 billion to $4.5 billion on a National basis by 2025. See "Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone," September 2015. Prorating that benefit to this Commonwealth, based on these population estimates, results in a public health benefit of $86 million to $257 million. These estimated monetized health benefits would not all be the result of implementing this proposed rulemaking, but the EPA estimates are indicative of the benefits to residents in this Commonwealth of attaining and maintaining the 2008 and 2015 8-hour ozone NAAQS through the implementation of a suite of measures to control VOC emissions in the aggregate from different source categories.

Compliance costs

This proposed rulemaking would require GDF owners and operators to decommission Stage II vacuum assist vapor recovery systems and would authorize GDF owners and operators to decommission Stage II vapor balance vapor recovery systems. The costs for decommissioning under proposed § 129.82a include costs for: dispenser decommissioning, low permeation hose kits with ECO nozzles, conventional adaptors, vapor leak tests, tie tank tests, static torque tests if the GDFs are equipped with a rotatable adaptor and administrative fees. The total decommissioning cost was reduced by an estimated amount that the business owner would receive for a tax deduction for performing the work. It was assumed that the business owner would receive at least 30% of the total costs of testing and repair due to deductions from Federal, State and local taxes. Based on this methodology, the cost of decommissioning, as stated by industry sources, would be approximately $4,000 to $6,000 per GDF, depending mostly on the number of dispensers (assuming approximately 6—10 dispensers at a GDF). After decommissioning gasoline dispensers equipped with Stage II vapor recovery equipment, the reduced costs of repairs associated with non-Stage II dispensers should pay for the cost of decommissioning in approximately 2 years.

The annual amount of costs savings due to reduced repairs for Stage II vapor recovery systems after decommissioning would range from $2,100 to $3,400 per GDF. Total savings that would result from the reduced need to repair Stage II vapor recovery equipment would amount to approximately $5.1 million a year (12,316 gasoline dispensers * $600 and adjusted for a 30% tax deduction).

Repairs under this proposed rulemaking are estimated to cost the owners and operators $1.5 million more than the repairs under the NESHAP. Most of the increase in repair costs would be attributed to increased replacement costs of low permeation hoses and ECO nozzles, under proposed § 129.61a(k). These costs would be offset by gasoline savings from reduced evaporation in the range of $1.0 million to $1.7 million per year. (Benefits of low permeation hoses and ECO nozzles to consumers are previously described under Benefits.)

The Department expects that annual vapor leak testing under proposed § 129.61a would cost approximately $600 for each facility each year or approximately $1 million for all GDFs subject to this proposed rulemaking (($750 a year testing costs * 1,981 GDFs subject to proposed rulemaking) - ($165 a year for testing costs * 817 GDFs subject to NESHAP) = $1.35 million) * 0.7 (to factor in a 30% tax deduction for the increased costs = approximately $1.0 million). Increased annual repair costs would likely average $500 or less per GDF ($1.0 million/1,981 GDFs). These repairs would include replacing the pressure/vacuum vent valves, broken hoses and nozzles and other repairs to underground piping. It was assumed that the vapor leak testing and repair costs would increase approximately 2% per year. The total annual repair costs for hose kits under proposed § 129.61a are estimated to be $1.1 million more than for compliance with the NESHAP, which does not require low permeation hoses and ECO nozzles. Replacing low permeation hoses and ECO nozzles under this proposed rulemaking would cost approximately $2.8 million annually and replacing conventional hoses and nozzles under the NESHAP would cost approximately $1.2 million. The difference of $1.6 million minus a 30% tax deduction for businesses results in the $1.1 million extra cost. These costs would be offset by cost savings to GDF owners and operators. By Department estimates, vapor leak testing and performing necessary repairs would reduce gasoline evaporation and limit evaporation losses from USTs between $400 and $6,000 per year. The regulated community would save from $1.0 million to $1.7 million through reducing gasoline evaporation by reducing leaks. The estimated annual financial impact on potentially affected GDF owners and operators, including small businesses, when accounting for reduced Stage II vapor recovery equipment repair costs that would occur after decommissioning, could range from an average annual savings of $1,450 to $7,950 per GDF, excluding the one-time cost of decommissioning, which would average approximately between $4,000 and $6,000 per GDF.

Under the proposed amendments, individuals who perform UST system inspection, installation or repair would need to be appropriately certified as either a UMI or UMX storage tank installer. Certification training and testing requires costs approximately $800 and takes 2 days to complete. There are 358 individuals certified as UMX and 12 individuals certified as UMI UST installers.

The projected changes in reporting, recordkeeping and other administrative costs would be de minimis under this proposed rulemaking. The vapor leak rate inspections that would be required to be performed at the GDF under proposed § 129.61a(d) would differ only slightly from the vapor leak rate inspections required under existing § 129.82 and the NESHAP. Under existing § 129.82(e), GDF staff must visually inspect Stage I and Stage II vapor recovery equipment as a best maintenance practice. A periodic inspection under proposed § 129.61a(g)(2)

would take one person less than 15 minutes to complete. Another requirement under proposed § 129.61a(g)(1) would require GDF staff to visually inspect components that often either break or remain open after a gasoline delivery is made. This visual inspection would require approximately 5 minutes of GDF staff time for each gasoline delivery. Deliveries may occur each day or once every several days. An inspection report of basic information would need to be completed under proposed § 129.61a(g)(3). This would not take more than 5 minutes and could possibly be completed during the visual inspections. Training of staff at the GDF could be accomplished on-the-job.

The owner of the GDF would need to determine whether purchasing a continuous pressure monitor would be less of a financial burden than performing annual vapor leak testing. The benefits of purchasing, installing and operating a continuous pressure monitoring system are dependent on several factors, such as the GDF gasoline throughput and the equipment already installed at the GDF. For example, GDFs with larger throughputs and a higher propensity to lose gasoline to evaporation could benefit from the continuous pressure monitor's ability to identify leaks as they occur. The continuous pressure monitoring system is an add-on feature of the automatic tank gauging system. Most, if not all, GDFs have installed automatic tank gauging systems. The continuous pressure monitor system would likely cost between $5,000 and $8,000 to install. Potential benefits for a GDF owner or operator to install a continuous pressure monitoring system would be to not have gasoline sales restricted once or twice a year because the UST is being leak tested and to forego the expense of leak testing itself. A GDF owner or operator would need to take many factors into account to determine whether installing a continuous pressure monitoring system is a more cost-effective solution than conducting periodic vapor leak testing at the GDF.

Compliance assistance plan

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

Paperwork requirements

Owners or operators of GDFs who decommission Stage II vapor recovery equipment would have minimal new recordkeeping and reporting requirements under this proposed rulemaking. Upon decommissioning under proposed § 129.82a, the owner or operator would be responsible to inform the Department by sending a completed form 2700-FM-BAQ0129, Stage II Vapor Recovery Decommissioning Notification Form. This form would require a certified installer to declare that decommissioning was carried out properly. This form would need to be sent to the appropriate Department Regional Office, the Philadelphia Air Management Services or the Allegheny County Health Department. Sections of this proposed rulemaking specify in greater detail what records need to be kept. The paperwork requirements would require information that is needed for an inspection report that properly informs Department personnel that a vapor leak occurred, when it occurred, the nature of the leak, any associated repair or corrective action taken, and who performed the repair or correction.

G. *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.

This proposed rulemaking would allow owners and operators of GDFs to decommission Stage II vapor recovery systems under proposed § 129.82a. This would reduce overall excess VOC emissions resulting from incompatible Stage II vacuum assist vapor recovery systems and ORVR systems. Without proposed § 129.61a, owners and operators of GDFs with a gasoline throughput between 10,000 gallons and 100,000 gallons a month would no longer be required to vapor leak test or repair their equipment because the NESHAP does not require this of them, and owners and operators of large GDFs (those with a gasoline throughput equal to or greater than 100,000 gallons a month) would be required under the NESHAP to perform vapor leak testing and repair only once every 3 years. Implementation of the VOC emission control measures in the five-county Philadelphia and seven-county Pittsburgh areas under proposed § 129.61a would require annual leak testing and repair and would keep VOC emissions at a level comparable to that achieved currently by Stage II vapor recovery system control. This proposed rulemaking would keep emissions lower than levels that could be achieved under the NESHAP. Emissions of VOCs in 2021 would be lower by between 548 and 1,300 tons, and 375 tons and 880 tons, in the five-county Philadelphia and seven-county Pittsburgh areas, respectively. Implementing this proposed rulemaking would also achieve approximately an 86% control efficiency of hazardous air pollutants emitted from GDFs. These estimated reductions in VOC emissions and the subsequent reduced formation of ozone would help ensure that citizens and the environment of this Commonwealth experience the benefits of improved air quality. Commonwealth residents would also potentially benefit from improved surface water and groundwater quality through reduced gasoline spills and toxic chemical releases.

The implementation of this proposed rulemaking would limit the evaporation of gasoline from USTs. This proposed rulemaking would be a cost-effective way to limit the emissions of VOC into the atmosphere.

H. *Sunset Review*

The Board is not establishing a sunset date for this proposed rulemaking, if approved as a final-form regulation, because the regulation would be needed for the Department to carry out its statutory duty and authority. If this proposed rulemaking is approved as a final-form regulation, the Department will closely monitor it for its effectiveness after publication as a final-form rulemaking in the *Pennsylvania Bulletin* and will recommend updates to the Board, as necessary.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 1, 2020, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources

and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. *Public Comments*

Interested persons are invited to submit written comments, suggestions, support or objections regarding this proposed rulemaking to the Board. Comments, suggestions, support or objections must be received by the Board by November 30, 2020.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing eComment at https://www.ahs.dep.pa.gov/eComment.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. *Public Hearings*

In accordance with Governor Tom Wolf's emergency disaster declaration and based on advice from the Department of Health regarding the mitigation of the spread of the novel coronavirus (COVID-19), the Board will hold three virtual public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held on the following dates:

October 27, 2020, at 2:30 p.m.
October 28, 2020, at 6 p.m.
October 29, 2020, at 2 p.m.

Persons wishing to present testimony at a hearing must contact Jennifer Swan for the Department and the Board at (717) 783-8727 or RA-EPEQB@pa.gov at least 24 hours in advance of the hearing to reserve a time to present testimony.

Organizations are limited to designating one witness to present testimony on their behalf at only one hearing. Verbal testimony is limited to 5 minutes for each witness. Video demonstrations and screen sharing by witnesses will not be permitted.

Witnesses are requested to submit written copy of their verbal testimony by e-mail to RegComments@pa.gov after providing testimony at the hearing.

Information on how to access the hearings will be available on the Board's webpage found through the Public Participation tab on the Department's web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board"). Prior to each hearing, individuals are encouraged to visit the Board's webpage for the most current information for accessing each hearing.

Any members of the public wishing to observe the public hearing without providing testimony are also directed to access the Board's webpage. Those who have not registered with Jennifer Swan in advance as described previously will remain muted for the duration of the public hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 783-8727 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

PATRICK McDONNELL,
Chairperson

Fiscal Note: 7-525. Minimal loss of motor tax revenue and an increase in program costs to the commonwealth or its political subdivisions, which own gas-dispensing facilities. These costs will be absorbed by some savings as a result of this regulatory action; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

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

* * * * *

CARB Executive Order—A document issued by CARB certifying **[that a specified engine]** **one of the following, unless otherwise specified:**

(i) That a specified engine family or model year vehicle has met applicable Title 13 CCR requirements for certification and sale in California.

(ii) That a specified Phase I vapor recovery system or component of a Phase I vapor recovery system meets applicable requirements for certification and sale in California.

(iii) That a specified type of non-vapor recovery equipment, such as a low permeation hose, is certified for use at a gasoline dispensing facility that does not have a Stage II vapor recovery system.

* * * * *

Dealer—A person who is engaged in the sale or distribution of new motor vehicles or new motor vehicles to the ultimate purchaser as defined in section 216(4) of the Clean Air Act (42 U.S.C.A. § 7550(4)).

***Decommission*—To permanently disconnect a Stage II vapor recovery system that is in active service by following procedures under § 129.82a (relating to requirements to decommission a Stage II vapor recovery system).**

Decorative interior panel—Interior wall paneling that is usually grooved, frequently embossed and sometimes

grain printed to resemble various wood species. Interior panels are typically manufactured at the same facilities as tileboard, although in much smaller quantities. The substrate can be hardboard, plywood, MDF or particleboard.

* * * * *

Gasoline dispensing facility—A **stationary** facility **with an underground storage tank** from which gasoline is transferred to motor vehicle fuel tanks.

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Monongahela Valley air basin—The following political subdivisions in Fayette County: Belle Vernon Borough, Brownsville Borough, Brownsville Township, Fayette City Borough, Jefferson Township, Newell Borough and Washington Township; the following political subdivisions in Washington County: Allenport Borough, California Borough, Carroll Township, Charleroi Borough, Coal Center Borough, Donora Borough, Dunlevy Borough, Elco Borough, Fallowfield Township, Finleyville Borough, Long Branch Borough, Monongahela City, New Eagle Borough, North Charleroi Borough, Roscoe Borough, Speers Borough, Stockdale Borough, Twilight Borough, Union Township and West Brownsville Borough; and the following political subdivisions in Westmoreland County: Monessen City, North Belle Vernon Borough, Rostraver Township and West Newton Borough.

***Monthly throughput*—The total volume of gasoline loaded into, or dispensed from, gasoline storage tanks located at a gasoline dispensing facility. The term is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at a gasoline dispensing facility during a single day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at a gasoline dispensing facility during the previous 364 days, and then dividing that sum by 12.**

Motor vehicle—A self-propelled vehicle designed for transporting persons or property on a street or highway.

* * * * *

Petroleum refinery—A facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products, through distillation of petroleum or through redistillation, cracking, rearrangement or reforming of unfinished petroleum derivatives.

***Phase I vapor recovery system*—**

(i) Equipment and components that control the emission of gasoline vapors during the transfer of gasoline from a gasoline tank truck to a gasoline storage tank at a gasoline dispensing facility by returning the vapors to the gasoline tank truck.

(ii) Equipment and components that control the emission of gasoline vapors during the storage of gasoline at a gasoline dispensing facility.

(iii) The term includes a Stage I vapor recovery system.

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

***Phase II vapor recovery system*—**

(i) Equipment and components that control the emission of gasoline vapors during the transfer of gasoline from a gasoline storage tank at a gasoline dispensing facility to a motor vehicle fuel tank by returning the vapors to the storage tank.

(ii) The term includes a Stage II vapor recovery system.

Pittsburgh-Beaver Valley Area—The seven-county area comprised of the following Pennsylvania counties: Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland.

* * * * *

Pressed glass—Glassware formed by placing a blob of molten glass in a metal mold, then pressing it with a metal plunger or "follower" to form the inside shape. The resultant piece, termed "mold-pressed," has an interior form independent of the exterior, in contrast to mold-blown glass, whose interior corresponds to the outer form.

***Pressure/vacuum vent valve*—A relief valve installed on the vent stack of a gasoline storage tank system that is designed to open within a specific pressure range to protect the storage tank system from excessive pressure or vacuum.**

Pretreatment coating—An organic coating that contains at least 0.5% acids by weight and is applied directly to metal surfaces of aerospace vehicles and components to provide surface etching, corrosion resistance, adhesion and ease of stripping.

* * * * *

Spray gun—A device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

***Stage I enhanced vapor recovery system*—A Phase I vapor recovery system for which a CARB Executive Order has been issued certifying that it meets the enhanced vapor recovery system standards specified in the CARB CP-201, "Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities."**

***Stage I vapor recovery system*—**

(i) Equipment and components that control the emission of gasoline vapors during the transfer of gasoline from a gasoline tank truck to a gasoline storage tank at a gasoline dispensing facility by returning the vapors to the gasoline tank truck.

(ii) Equipment and components that control the emission of gasoline vapors during the storage of gasoline at a gasoline dispensing facility.

(iii) The term includes a Phase I vapor recovery system and a Stage I enhanced vapor recovery system.

***Stage II vacuum assist vapor recovery system*—A Stage II vapor recovery system that creates a vacuum to assist the movement of vapors back into the gasoline storage tank for storage or processing.**

***Stage II vapor balance vapor recovery system*—A Stage II vapor recovery system that uses direct displacement to collect or process vapors at a gasoline dispensing facility.**

***Stage II vapor recovery system*—**

(i) Equipment and components that control vapors during the transfer of gasoline from a gasoline

storage tank at a gasoline dispensing facility to a motor vehicle fuel tank and during the storage of gasoline at a gasoline dispensing facility.

(ii) The term includes a Phase II vapor recovery system.

Stain—For purposes of wood furniture manufacturing operations under §§ 129.101—129.107, a color coat having a solids content by weight of no more than 8.0% that is applied in single or multiple coats directly to the substrate. The term includes nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains and toners.

* * * * *

Stockpiling—The act of placing, storing and removing materials on piles exposed to the outdoor atmosphere. Placing refers to the deposition of material onto the pile. Removing refers to disturbing the pile either for loading of material into or onto vehicles for transportation purposes or for material handling. Material that is not to be utilized in the production of a product or is not itself a useful product is excluded from the definition of stockpile material. Operations which consist entirely of transferring material between different transportation conveyances are also excluded from this definition.

***Storage tank system*—The term has the meaning as defined in § 245.1 (relating to definitions).**

Strippable spray booth coating—A coating that meets the following requirements:

(i) Is applied to a spray booth wall to provide a protective film to receive overspray during a surface coating process including wood furniture manufacturing operations.

(ii) Is subsequently peeled off and disposed.

(iii) Reduces or eliminates the need to use solvents to clean spray booth walls by meeting the conditions of subparagraphs (i) and (ii).

* * * * *

Type II chemical milling maskant—A coating that is applied directly to aluminum aerospace vehicles and components to protect surface areas when chemically milling the aerospace vehicle or component with a Type II etchant.

***UMI*—The term has the meaning as defined under the term "certification categories" in § 245.1.**

***UMX*—The term has the meaning as defined under the term "certification categories" in § 245.1.**

***Ullage*—The empty volume of a gasoline storage tank system that contains liquid gasoline, expressed as accumulated gallons of empty volume for all gasoline storage tanks in the manifold system.**

Ultimate consumer—With respect to a commercial fuel oil transfer or purchase, the last person, facility owner or operator or entity who in good faith receives the commercial fuel oil for the purpose of using it in a combustion unit or for purposes other than resale.

Ultimate purchaser—With respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

Ultra low emission vehicle—A vehicle certified as an ultra low emission vehicle under the Clean Air Act.

***Underground storage tank*—The term has the meaning as defined in § 245.1.**

Undersea-based weapons systems components—The fabrication of parts, parts assembly or completed units of a portion of a missile launching system used on undersea ships.

* * * * *

CHAPTER 129. STANDARDS FOR SOURCES

SOURCES OF VOCs

§ 129.61. Small gasoline storage tank control (Stage I control).

(a) ***Applicability.*** This section applies Statewide to **[stationary]** **the owner and operator of a** gasoline storage **[tanks]** **tank** with a capacity of greater than 2,000 gallons.

(b) ***Transfer requirements.*** A person may not transfer gasoline from a **[delivery vessel]** **gasoline tank truck** into a **[stationary]** gasoline storage tank **at a gasoline dispensing facility** unless the displaced vapors from the storage tank are transferred to the dispensing **[delivery]** tank **of the gasoline tank truck** through a vapor **[right]** **tight** return line and unless the **[receiving]** **gasoline dispensing facility storage** tank is equipped with a submerged fill pipe which extends from the filling orifice to within 6 inches of the bottom of the **storage** tank. **[The vapors collected in the dispensing tank shall be disposed of in accordance with § 129.59 or § 129.60(c) (relating to bulk gasoline terminals; and bulk gasoline plants).]**

(c) ***Gasoline tank truck dispensing tank requirements.*** The dispensing **[delivery tank shall]** **tank of a gasoline tank truck must** remain vapor tight at all times**[. The delivery], except that the dispensing** tank may be opened after the vapors are disposed of **[in accordance with]** **under** § 129.59 or § 129.60(c).

(d) *Additional requirements.* An owner and operator of a gasoline storage tank subject to this section may also be subject to § 129.61a (relating to vapor leak monitoring procedures and other requirements for small gasoline storage tank emission control).

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

§ 129.61a. Vapor leak monitoring procedures and other requirements for small gasoline storage tank emission control.

(a) *Applicability.* Beginning _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking.), this section applies to the owner and operator of a gasoline storage tank subject to § 129.61 (relating to small gasoline storage tank control (Stage I control)) if the gasoline storage tank is located in Allegheny, Armstrong, Beaver, Bucks, Butler, Chester, Delaware, Fayette, Montgomery, Philadelphia, Washington or Westmoreland County and if one of the following is met:

(1) Except as specified in paragraph (2), the gasoline dispensing facility has had a monthly throughput greater than 10,000 gallons (37,850 liters) of gasoline assessed on December 31 annually, beginning with the _____

(*Editor's Note*: The blank refers to the year preceding the year this final-form rulemaking becomes effective) calendar year.

(2) The owner or operator of the gasoline dispensing facility is an independent small business marketer of gasoline as defined under section 324(c) of the Clean Air Act (42 U.S.C.A. § 7625(c)) and the gasoline dispensing facility has had a monthly throughput equal to or greater than 50,000 gallons (189,250 liters), assessed on December 31 annually beginning with the _____ (*Editor's Note*: The blank refers to the year preceding the year this final-form rulemaking becomes effective) calendar year.

(3) The monthly throughput of the gasoline dispensing facility exceeds the applicable monthly throughput threshold of paragraph (1) or paragraph (2) at any time after _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking.) but later falls below the applicable monthly throughput threshold of paragraph (1) or paragraph (2). The owner and operator of the gasoline dispensing facility remain subject to the applicable requirements of this section for the gasoline dispensing facility, even after the monthly throughput falls below the applicable monthly throughput threshold of paragraph (1) or paragraph (2).

(b) *CARB vapor recovery test procedures.* The following are the CARB vapor recovery test procedures specified in this section:

(1) CARB TP-201.1E—"Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves," adopted October 8, 2003, including updates and revisions.

(2) CARB TP-201.3—"Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities," adopted April 12, 1996, and amended March 17, 1999, and July 26, 2012, including updates and revisions.

(3) CARB TP-201.3C—"Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test)," adopted March 17, 1999, including updates and revisions.

(4) CARB TP-201.1B—"Static Torque of Rotatable Phase I Adaptors," adopted July 3, 2002, and amended October 8, 2003, including updates and revisions.

(c) *Vapor leak rate monitoring procedures.* The owner or operator of a gasoline dispensing facility subject to this section shall monitor the gasoline dispensing facility Stage I vapor recovery system piping for vapor leaks in one of the following ways:

(1) Perform specified test procedures under subsection (d).

(2) Perform continuous monitoring under subsections (e), (h), (i) and (j).

(d) *Vapor leak rate monitoring using specified test procedures.* The owner or operator of a gasoline dispensing facility monitoring the gasoline dispensing facility Stage I vapor recovery system piping for vapor leaks under subsection (c)(1) shall do all of the following:

(1) Conduct each of the CARB TP-201.1E, CARB TP-201.3 and CARB TP-201.3C test procedures at least once in every 12-month period. Also, if the Stage I vapor recovery system is equipped with a rotatable adaptor, conduct a CARB TP-201.1B test procedure once in every 12-month period.

(i) These four test procedures may be conducted simultaneously, consecutively or separately at different times during the 12-month period.

(ii) Repair to a component on, or correction to, the Stage I vapor recovery system may not be made on the day of the CARB TP-201.3 or CARB TP-201.3C test procedure prior to completion of the test procedure.

(iii) Repair to a component on, or correction to, the Stage I vapor recovery system must be made within 10 days following a failed CARB TP-201.1E, CARB TP-201.3, CARB TP-201.1B or CARB TP-201.3C test procedure.

(iv) If a repair to a component on, or correction to, the Stage I vapor recovery system is made to pass the CARB TP-201.3 test procedure, then the CARB TP-201.3 test procedure must be conducted once in every 6-month period. The first test procedure conducted under this subparagraph must be conducted in the month that the repair to a component on, or correction to, the Stage I system is made under subparagraph (iii). The once-in-every-12-month period CARB TP-201.3 test procedure may resume when two consecutive once-in-every-6-month period CARB TP-201.3 test procedures do not reveal a failure requiring repair or correction.

(2) Record all of the following information, as applicable, for each test procedure performed under paragraph (1):

(i) The name of the test procedure.

(ii) The name of the person performing the test procedure.

(iii) The date the test procedure was performed.

(iv) The result of the test procedure.

(v) The date, time, type and duration of the vapor leak rate failure.

(vi) The name of the person correcting the vapor leak rate failure.

(vii) The date the vapor leak rate failure was corrected.

(viii) The action taken to correct the vapor leak rate failure.

(e) *Continuous vapor leak rate monitoring.* The owner or operator of a gasoline dispensing facility that is continuously monitoring the gasoline dispensing facility Stage I vapor recovery system piping for vapor leaks under subsection (c)(2) shall design, install, operate and maintain both of the following:

(1) A Stage I enhanced vapor recovery system for which a CARB Executive Order is issued, is valid at the time of installation and remains valid during the operation of the Stage I enhanced vapor recovery system.

(2) A continuous pressure monitoring system as identified in Exhibit 1 Section II, Exhibit 2 Section II and Exhibit 3 Section II of CARB Executive Order VR-202-R, "Relating to Certification of Vapor Recovery Systems Assist Phase II Enhanced Vapor Recovery (EVR) System including In-Station Diagnostics (ISD)," dated December 8, 2014, including updates and revisions. The continuous pressure monitoring system must meet all of the following:

(i) Include a console, a vapor pressure sensor, an automatic gasoline storage tank system pressure gauge and vapor leak rate detection software.

(ii) Operate at least 95% of the time on a calendar-month basis.

(iii) Calculate and record the percentage of continuous pressure monitoring system operational time.

(iv) Measure once every 7 days the vapor leak rate from the gasoline storage tank system at any working ullage pressure, both positive and negative.

(v) Measure the gasoline storage tank system pressure once every 7 days.

(vi) Record once every 7 days, with not more than 7 days between recordings, the calculated percentage of time that the gasoline storage tank system pressure is at least 0.5 inches of water column below the positive cracking pressure of the pressure/vacuum vent valve.

(f) *Stage I vapor recovery system installation requirements.* The owner or operator of a gasoline dispensing facility subject to this section that installs a Stage I vapor recovery system shall do all of the following:

(1) Perform, and ensure that the Stage I vapor recovery system passes, all of the following CARB vapor leak rate monitoring test procedures within 10 days of installation of the Stage I vapor recovery system:

(i) CARB TP-201.1B if the Stage I vapor recovery system is equipped with a rotatable adaptor.

(ii) CARB TP-201.1E.

(iii) CARB TP-201.3.

(iv) CARB TP-201.3C.

(2) Record all of the following information, as applicable, for each test procedure performed under paragraph (1):

(i) The completion date of installation of the Stage I vapor recovery system.

(ii) The name of the test procedure.

(iii) The name of the person performing the test procedure.

(iv) The date the test procedure was performed.

(v) The result of the test procedure.

(vi) The date, type and duration of a vapor leak rate failure.

(vii) The name of the person correcting the vapor leak rate failure.

(viii) The date the vapor leak rate failure was corrected.

(ix) The action taken to correct the vapor leak rate failure.

(3) Maintain onsite at the gasoline dispensing facility a copy of the CARB Executive Order specified in subsection (e)(1).

(4) Install and maintain a pressure/vacuum vent valve on each atmospheric vent of the underground storage tank.

(g) *Monitoring the condition of the Stage I vapor recovery system components and other gasoline dispensing components.* The owner or operator of a gasoline dispensing facility with a Stage I vapor recovery system shall monitor the condition of the Stage I vapor recovery system components and other gasoline dispensing components in accordance with all of the following, as applicable:

(1) Perform an inspection after each gasoline tank truck delivery to check all of the following:

(i) That each fill pipe adaptor and Stage I adaptor is tightly sealed.

(ii) That each Stage I dry break is tightly sealed.

(iii) That each automatic tank gauge cap is tightly sealed.

(2) Perform an inspection one time per month to check all of the following:

(i) That each automatic tank gauging electrical grommet and vent extractor cap is in good working order.

(ii) That the riser and pressure/vacuum vent valve and cap are installed and not damaged above ground level.

(iii) That there are no tears or holes in gasoline hoses.

(iv) That gasoline nozzles are functioning according to their design.

(v) That gasoline hoses are not touching the ground when the nozzle is resting on its holding bracket.

(vi) That each gasoline nozzle fits in its holding bracket.

(vii) If a Stage II vapor balance vapor recovery system is installed, that a face plate can make a positive seal.

(viii) If a Stage II vapor balance vapor recovery system is installed, that the bellows are free of tears and holes.

(3) Make the needed correction to the Stage I system under paragraph (1) or make the needed repair to a failed component under paragraphs (1) and (2) as soon as possible before the next scheduled monthly inspection.

(4) Record all of the following information, as applicable, for each monitoring inspection conducted under paragraphs (1) and (2) and for each correction to the Stage I system or repair to a failed component made under paragraph (3):

(i) The name of the person performing the inspection.

(ii) The component inspected under paragraphs (1) and (2).

(iii) The date the inspection was performed.

(iv) The result of each inspection of the components under paragraphs (1) and (2).

(v) The name of the person making the correction to the Stage I system or the repair to a failed component.

(vi) The date the correction was made to the Stage I system or the repair was made to the failed component.

(vii) The action taken to correct the Stage I system or to repair the failed component.

(h) *Vapor leak rate of the gasoline storage tank system.* The owner or operator of a gasoline dispensing facility that is monitoring the vapor leak rate of the gasoline storage tank system with a continuous pressure monitoring system under subsection (c)(2) shall do all of the following:

(1) Maintain the gasoline storage tank system at a vapor leak rate less than two times the allowed vapor leak rate.

(i) The allowed vapor leak rate must be determined under CARB TP-201.3.

(ii) Equation 9-2 with N=1-6 from CARB TP-201.3 must be used to determine the allowed vapor leak rate.

(2) Generate a report in electronic format once per day for the previous calendar day. The report must record the following:

(i) Continuous pressure monitoring system operational time as a percentage.

(ii) Percentage of time the tank system pressure is above atmospheric pressure.

(iii) Percentage of time the tank system pressure is at least 0.5 inches water column below the positive cracking pressure of the pressure/vacuum vent valve.

(3) Generate a report in electronic format by the 15th of the month for the previous calendar month which records the following:

(i) Continuous pressure monitoring system operational time as a percentage.

(ii) Percentage of time the tank system pressure is above atmospheric pressure.

(iii) Percentage of time the tank system pressure is at least 0.5 inches water column below the positive cracking pressure of the pressure/vacuum vent valve.

(iv) Warnings generated when the gasoline storage tank system vapor leak rate equals or exceeds two times the allowed vapor leak rate determined under subparagraph (1), including the date and time of each warning.

(4) Store the electronic records of the reports generated in paragraphs (2) and (3) in a manner to maintain the records despite loss of power to the continuous pressure monitoring system.

(5) Follow the applicable procedures of subsections (i) and (j) if the gasoline storage tank system vapor leak rate equals or exceeds two times the allowed vapor leak rate determined under paragraph (1).

(6) Perform, and ensure that the continuous pressure monitoring system passes, the continuous pressure monitoring system operability test as specified in Exhibit 9 or Exhibit 10, as applicable, of CARB Executive Order VR-202-R, one time every 3 years after the date the continuous pressure monitoring system is installed.

(7) Record all of the following information for the continuous pressure monitoring system operability test specified in paragraph (6):

(i) The name of the person performing the test.

(ii) The date the test was performed.

(iii) The result of the test.

(8) If the continuous pressure monitoring system fails the operability test required under paragraph (6), the owner or operator shall repair and retest the continuous pressure monitoring system under paragraph (6) within 10 days.

(9) If the continuous pressure monitoring system fails the operability test required under paragraph (6), record all of the following information:

(i) The name of the person recording the operability test failure.

(ii) The date and time the continuous pressure monitoring system failed the operability test.

(iii) The type and duration of the operability test failure.

(iv) The name of the person correcting the operability test failure.

(v) The date the repair was made to correct the operability test failure.

(vi) The action taken to correct the operability test failure.

(10) Maintain the records required under paragraphs (7) and (9), as applicable, onsite at the gasoline dispensing facility for 6 years.

(i) *First exceedance of the allowed vapor leak rate.* If the gasoline storage tank system vapor leak rate equals or exceeds two times the allowed vapor leak rate determined under subsection (h)(1), then all of the following must occur:

(1) The continuous pressure monitoring system must activate a warning alarm and record the event.

(2) The owner or operator shall do all of the following:

(i) Determine the cause of the failure and take corrective action within 7 calendar days of the alarm. If this correction does not require a repair or correction to the gasoline storage tank system, the person correcting the cause of the failure need not meet the certification requirements under subsection (q).

(ii) Reset the continuous pressure monitoring system when the correction under subparagraph (i) is made.

(iii) Record all of the following information, as applicable, for the exceedance:

(A) The name of the person recording the vapor leak rate failure.

(B) The date and time the continuous pressure monitoring system indicated a vapor leak rate failure.

(C) The type and duration of the vapor leak rate failure.

(D) The name of the person correcting the vapor leak rate failure.

(E) The date the vapor leak rate failure was corrected.

(F) The action taken to correct the vapor leak rate failure.

(iv) Record the date, time, duration and reason for a warning alarm that did not indicate a vapor leak rate failure.

(j) *Second exceedance of the allowed vapor leak rate.* Following the action taken to correct the cause of the failure under subsection (i)(2)(i), the continuous pressure monitoring system must recommence monitoring the gasoline storage tank system. If the gasoline storage tank system vapor leak rate equals or exceeds two times the allowed vapor leak rate within 7 calendar days following the correction made under subsection (i)(2)(i), then all of the following must occur:

(1) The continuous pressure monitoring system must activate a warning alarm and record the event.

(2) The owner or operator of the gasoline dispensing facility shall do all of the following:

(i) Reset the continuous pressure monitoring system as soon as the vapor leak rate failure is corrected.

(ii) Determine the cause of the failure and take corrective action within 7 calendar days of the alarm.

(A) The person correcting a failure to the gasoline storage tank system must meet the certification requirements under subsection (q).

(B) The person correcting a failure to the continuous pressure monitoring system must meet the certification requirements under subsection (q) or must be authorized to make repairs by the continuous pressure monitor manufacturer.

(iii) Record all of the following information, as applicable, for the exceedance:

(A) The name of the person recording the vapor leak rate failure.

(B) The date and time the continuous pressure monitoring system indicated a vapor leak rate failure.

(C) The type and duration of the vapor leak rate failure.

(D) The name of the person correcting the vapor leak rate failure.

(E) The date the vapor leak rate failure was corrected.

(F) The action taken to correct the vapor leak rate failure.

(k) *Low permeation hoses and enhanced conventional nozzles.* An owner or operator of a gasoline dispensing facility that is subject to this section and does not have a Stage II vapor recovery system shall do all of the following:

(1) Install and maintain low permeation hoses on each gasoline dispenser at the gasoline dispensing facility as follows:

(i) For a gasoline dispensing facility in operation on or before _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking.), install low permeation hoses by _____ (*Editor's Note*: The blank refers to the date 2 years after the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking.) on each gasoline dispenser that is located at the gasoline dispensing facility as of _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking.).

(ii) For a gasoline dispenser installed after _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking.), install low permeation hoses described in subparagraph (iv) upon installation of the gasoline dispenser.

(iii) For a gasoline dispensing facility that begins operation after _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking.), install low permeation hoses described in subparagraph (iv) upon installation of each gasoline dispenser.

(iv) For subparagraphs (i) through (iii), the owner or operator may only install low permeation hoses that are included by the CARB Executive Officer on the Exhibit 1 "Component List" in CARB Executive Order NVR-1-D, "Relating to Certification of Non-Vapor Recovery Hoses and Enhanced Conventional Nozzles, For Use at Gasoline Dispensing Facilities with No Phase II Vapor Recovery Systems," executed March 1, 2019, including updates and revisions.

(2) Install and maintain enhanced conventional nozzles on each gasoline dispenser as follows:

(i) The owner or operator shall replace each conventional nozzle with an enhanced conventional nozzle within 2 years after the Department publishes notice in the *Pennsylvania Bulletin* of the CARB Executive Officer having issued an Executive Order of Certification to a second manufacturer for an enhanced conventional nozzle.

(ii) For a gasoline dispenser installed at the gasoline dispensing facility after the Department publishes the *Pennsylvania Bulletin* notice referenced in subparagraph (i), the owner or operator of the gasoline dispensing facility shall install enhanced conventional nozzles.

(iii) For a gasoline dispensing facility that begins operating after the Department publishes the notice in the *Pennsylvania Bulletin* referenced in subparagraph (i), the owner or operator of the gasoline dispensing facility shall install enhanced conventional nozzles on each gasoline dispenser.

(iv) For subparagraphs (i) through (iii), the owner or operator may only install enhanced conventional nozzles that are included by the CARB Executive Officer on the Exhibit 1 "Component List" in CARB Executive Order NVR-1-D, "Relating to Certification of Non-Vapor Recovery Hoses and Enhanced Conventional Nozzles, For Use at Gasoline Dispensing Facilities with No Phase II Vapor Recovery Systems," executed March 1, 2019, including updates and revisions.

(l) *Additional requirements for gasoline dispensing facilities.* The owner or operator of a gasoline dispensing facility subject to this section shall do all of the following:

(1) Provide necessary maintenance and make modifications to the vapor control system of the gasoline dispensing facility necessary to comply with the applicable requirements of this section.

(2) Provide adequate training and written instructions to the operator of the gasoline dispensing facility to ensure proper operation of the vapor control system.

(3) Maintain onsite at the gasoline dispensing facility a copy of the training schedule and written instructions required under paragraph (2).

(4) Immediately remove from service and tag a defective nozzle or other component of the gasoline dispensing system until the defective component is replaced or repaired.

(i) A component removed from service may not be returned to service until the defect is corrected.

(ii) If the Department finds during an inspection that a defective nozzle or other component of the gasoline dispensing system is not properly tagged, the component may not be returned to service until the defect is corrected and the Department approves its return to service.

(5) Conspicuously post the operating instructions for the gasoline dispensing system in the gasoline dispensing area. The operating instructions must include, at a minimum, all of the following information:

(i) A clear description of how to correctly dispense gasoline with the nozzles used at the site.

(ii) A warning that continued attempts to dispense gasoline after the gasoline dispensing system indicates that the motor vehicle fuel tank is full may result in spillage and contamination of the air or water or recirculation of the gasoline into the vapor recovery system.

(iii) A telephone number, email address or social media account established by the Department for the public to use to report problems experienced with the gasoline dispensing system.

(m) *Recordkeeping and reporting requirements.* The owner or operator of a gasoline dispensing facility subject

to this section that creates a record under subsection (d)(2), (f)(2), (g)(4), (h)(4), (h)(10), (i)(2)(iii) or (j)(2)(ii) shall do both of the following:

(1) Maintain the required records onsite at the gasoline dispensing facility for 2 years, unless specified otherwise in this section or unless a longer period is required under Chapter 127 (relating to construction, modification, reactivation and operation of sources) or a plan approval, operating permit, consent decree or order issued by the Department.

(2) Submit the records to the Department in an acceptable format upon receipt of a request from the Department.

(n) *Record certifying the Stage I enhanced vapor recovery system.* An owner or operator proceeding under subsection (c)(2) shall maintain onsite at the gasoline dispensing facility a copy of the valid CARB Executive Order required under subsection (e)(1) for the duration of the operation of the Stage I enhanced vapor recovery system. The copy must be made available to the Department upon receipt of a request.

(o) *Record certifying the low permeation hoses and enhanced conventional nozzles.* The owner or operator shall maintain onsite at the gasoline dispensing facility a copy of the CARB Executive Order required under subsection (k)(1) and (2) for the duration of the use of the low permeation hoses and enhanced conventional nozzles, respectively. The copy must be made available to the Department upon receipt of a request.

(p) *Record of training schedule and written instructions.* The owner or operator shall maintain onsite at the gasoline dispensing facility a copy of the training schedule and written instructions required under subsection (l)(2) for the duration of the operation of the vapor control system. The copy must be made available to the Department upon receipt of a request.

(q) *Certification requirements for a person who performs underground storage tank system installation or modification work*.

(1) The owner and operator of a gasoline dispensing facility subject to this section shall ensure that a person who performs underground storage tank system installation or modification work under this section is appropriately certified for the work they perform, as follows:

(i) The person must be a certified UMI or UMX storage tank installer under Chapter 245, Subchapter A (relating to general provisions).

(ii) The person must comply with the applicable requirements of Chapter 245, Subchapter B (relating to certification program for installers and inspectors of storage tanks and storage tank facilities).

(2) A person only performing a test specified under subsection (b) is not required to be certified under this subsection.

MOBILE SOURCES

§ 129.82. Control of VOCs from gasoline dispensing facilities (Stage II).

(a) **[After the date specified in paragraph (1), (2) or (3), an owner or operator of a gasoline dispensing facility subject to this section may not transfer or allow the transfer of gasoline into a motor vehicle fuel tank unless the dispensing facility is equipped with a Department approved and properly operating Stage II vapor recovery or vapor collection system. Unless a higher percent reduction is required by the EPA under section 182 of the Clean Air Act (42 U.S.C.A. § 7511a), approval by the Department of a Stage II vapor collection system will be based on a determination that the system will collect at least 90% by weight of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling and the captured vapors are returned to a vapor tight holding system or vapor control system.**

(1) This paragraph applies to gasoline dispensing facilities located in areas classified as moderate, serious or severe ozone nonattainment areas under section 181 of the Clean Air Act (42 U.S.C.A. § 7511) including the counties of Berks, Bucks, Chester, Delaware, Montgomery, Philadelphia with monthly throughputs greater than 10,000 gallons (37,850 liters). In the case of independent small business marketers of gasoline as defined in section 325 of the Clean Air Act (42 U.S.C.A. § 7625a), this section shall not apply if the monthly throughput is less than 50,000 gallons (189,250 liters).

(i) Facilities for which construction was commenced after November 15, 1990, shall achieve compliance by May 15, 1993.

(ii) Facilities which dispense greater than 100,000 gallons (378,500 liters) of gasoline per month, based on average monthly sales for the 2-year period immediately preceding November 15, 1992, shall achieve compliance by November 15, 1993.

(iii) Other affected facilities shall achieve compliance by November 15, 1994.

(2) Gasoline dispensing facilities with annual throughputs greater than 10,000 gallons (37,850 liters) in the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia shall be subject to this section immediately upon the addition or replacement of one or more underground gasoline storage tanks for which construction was commenced after November 15, 1992.

(3) This paragraph applies to gasoline dispensing facilities located in the counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland with monthly throughputs greater than 10,000 gallons (37,850 liters). In the case of independent small business marketers of gasoline as defined in section 325 of the Clean Air Act (42 U.S.C.A. § 7625a), this section does not apply if the monthly throughput is less than 50,000 gallons (189,250 liters).

(i) Facilities for which construction was commenced after April 1, 1997, shall achieve compliance at the time of opening of the gasoline dispensing facility.

(ii) Facilities which dispense greater than or equal to 120,000 gallons (454,200 liters) of gasoline per month, based on average monthly sales during calendar years 1995 and 1996, shall achieve compliance by July 1, 1999.

(iii) Facilities which dispense greater than 90,000 gallons (340,650 liters) per month but less than 120,000 gallons (454,200 liters) per month based on average monthly sales during calendar years 1995 and 1996 shall achieve compliance by December 31, 2000.

(4) For purposes of this section, the term "construction" includes, but is not limited to, the addition or replacement of one or more underground gasoline storage tanks.]

Applicability. **This section applies to the owner and operator of a gasoline dispensing facility equipped with a Stage II vapor recovery system and located in Allegheny, Armstrong, Beaver, Bucks, Butler, Chester, Delaware, Fayette, Montgomery, Philadelphia, Washington or Westmoreland County.**

(b) **[Owners or operators]** ***Operating requirements.*** **The owner or operator,** or both, of **a** gasoline dispensing **[facilities] facility** subject to this section shall **meet the following requirements until the Stage II vapor recovery system at the gasoline dispensing facility is decommissioned under § 129.82a (relating to requirements to decommission a Stage II vapor recovery system)**:

(1) **[Install necessary Stage II vapor collection and control systems, provide] Maintain a Department-approved and properly operating Stage II vapor recovery system. The Department will not approve a Stage II vapor recovery system unless the Stage II vapor recovery system collects at least 90% by weight of the gasoline vapors that are displaced from a vehicle fuel tank during refueling and returns the captured vapors to a vapor tight system.**

(2) Provide necessary maintenance and make modifications necessary to comply with **[the requirements] this section**.

[(2)] (3) Provide adequate training and written instructions to the operator of the **[affected]** gasoline dispensing facility to assure proper operation of the **Stage II vapor recovery** system.

[(3)] (4) Immediately remove from service and tag **[any] a** defective **vapor recovery hose,** nozzle or **[dispensing] other component of the Stage II vapor recovery** system until the defective component is replaced or repaired.

(i) A component removed from service may not be returned to service until the defect is corrected.

(ii) If the Department finds **during an inspection** that a defective **vapor recovery hose,** nozzle or **[dispensing] other component of the Stage II vapor recovery** system is not properly tagged **[during an inspection]**, the component may not be returned to service until the defect is corrected **[,]** and the Department approves its return to service.

[(4)] (5) Conspicuously **[post-operating] post the operating** instructions for the **gasoline dispensing** system in the gasoline dispensing area which, at a minimum, include:

(i) A clear description of how to correctly dispense gasoline with the vapor recovery nozzles **[utilized] used** at the site.

(ii) A warning that continued attempts to dispense gasoline after the system indicates that the **motor** vehicle fuel tank is full may result in spillage **and contamination of the air or water** or recirculation of the gasoline into the vapor **[collection] recovery** system.

(iii) A telephone number**, email address or social media account** established by the Department for the public to **use to** report problems experienced with the **gasoline dispensing** system.

[(5)] (6) Maintain records of **the gasoline dispensing** system test **procedure** results, monthly throughput, type and duration of any **[failures] failure** of the system and maintenance and repair records **[on the premises of the affected] onsite at the** gasoline dispensing facility. The records **[shall] must** be **[kept]:**

(i) Maintained for **[at least]** 2 years **[and shall be made], unless a longer period is required under Chapter 127 (relating to construction, modification, reactivation and operation of sources) or a plan approval, operating permit, consent decree or order issued by the Department.**

(ii) Made available for inspection, upon request, by the Department.

(c) **[If an area is reclassified from attainment or marginal nonattainment to serious, nonattainment under section 181 of the Clean Air Act, gasoline dispensing facilities located in the reclassified area will be subject to subsection (a)(1). For purposes of establishing an effecting date for the reclassified area, the date of the *Federal Register* final notice of the reclassification shall serve as the date of publication of this subsection as final in the *Pennsylvania Bulletin*.**

(d) If an onboard canister refueling emissions control program has been fully implemented by the EPA by December 31, 2010, the operation and maintenance of Department-approved Stage II systems will no longer be required in the counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland.

(e)] ***Functional testing and certification requirements.*** The **[owners or operators] owner and operator** of **a** gasoline dispensing **[facilities] facility subject to this section** shall comply with the functional testing and certification requirements specified in **the** EPA's Stage II Enforcement and Technical Guidance Documents developed under section 182 of the Clean Air Act **[to meet the Clean Air Act requirements]**.

(1) The owner or operator of a gasoline dispensing facility that uses a Stage II vapor balance vapor recovery system shall conduct the following test procedures:

(i) A liquid blockage test procedure under CARB TP-201.6, "Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities," adopted April 28, 2000, including updates and revisions, upon major modification of the system and every 5 years thereafter.

(ii) A dynamic backpressure test procedure under CARB TP-201.4, "Dynamic Back Pressure," amended July 3, 2002, including updates and revisions, upon major modification of the system and every 5 years thereafter.

(2) The owner or operator of a gasoline dispensing facility that uses a Stage II vacuum assist vapor recovery system shall quantify the air to liquid volumetric ratio conducted under CARB TP-201.5

"Air to Liquid Volume Ratio," amended February 1, 2001, including updates and revisions, once in every 12-month period.

(3) The owner or operator of a gasoline dispensing facility that conducts a test procedure under paragraph (1) or (2) shall do all of the following:

(i) Conduct the test procedures in paragraph (1) simultaneously, consecutively or separately at different times of the 5-year period.

(ii) Conduct the test procedure in paragraph (2) simultaneously with, consecutively with or separately from the test procedures in § 129.61a(d)(1) (relating to vapor leak monitoring procedures and other requirements for small gasoline storage tank emission control) during the 12-month period.

(iii) Repair to a component on, or correction to, the Stage II vapor recovery system must be made within 10 days following a failed test procedure.

(iv) Record all of the following information, as applicable, for each test procedure performed under paragraph (1) or (2):

(A) The name of the test procedure.

(B) The name of the person performing the test procedure.

(C) The date the test procedure was performed.

(D) The result of the test procedure.

(E) The date, time, type and duration of a test procedure failure.

(F) The name of the person correcting the test procedure failure.

(G) The date the test procedure failure was corrected.

(H) The action taken to correct the test procedure failure.

(d) *Additional requirements.* An owner and operator of a gasoline storage tank subject to this section may also be subject to § 129.61a and § 129.82a.

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

§ 129.82a. Requirements to decommission a Stage II vapor recovery system.

(a) *Applicability*. Beginning _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking.), this section applies to the owner and operator of a gasoline dispensing facility that uses, has decommissioned or is decommissioning a Stage II vapor recovery system.

(b) *Compliance deadline.*

(1) *Stage II vacuum assist vapor recovery system.* The owner or operator of a gasoline dispensing facility located in Allegheny, Armstrong, Beaver, Bucks, Butler, Chester, Delaware, Fayette, Montgomery, Philadelphia, Washington or Westmoreland County that uses a Stage II vacuum assist vapor recovery system shall decommission the Stage II vacuum assist vapor recovery system on or before December 31, 2022.

(2) *Stage II vapor balance vapor recovery system.* The owner and operator of a gasoline dispensing facility in this Commonwealth that uses a Stage II vapor balance vapor recovery system shall comply with this section when the owner or operator decommissions the Stage II vapor balance vapor recovery system.

(c) *Test procedure documents.* The following are the full names of the vapor recovery test procedure documents specified in this section:

(1) PEI/RP300-09—The Petroleum Equipment Institute's "Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites," Chapter 14, Decommissioning Stage II Vapor-Recovery Piping, sections 14.1 through 14.6.13, including applicable updates and revisions.

(2) CARB TP-201.3—"Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities," amended July 26, 2012, including updates and revisions.

(3) CARB TP-201.3C—"Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test)," adopted March 17, 1999, including updates and revisions.

(d) *Process to decommission a Stage II vapor recovery system.* The owner or operator of a gasoline dispensing facility that decommissions a Stage II vapor recovery system shall decommission the Stage II vapor recovery system by meeting all of the following:

(1) Successfully completing all of the steps in PEI/RP300-09, Chapter 14. The owner or operator shall cap off the vapor tight return line of the Stage II vapor recovery system at the gasoline storage tank top if accessible at the time of decommissioning. If the vapor tight return line is not accessible at the time of decommissioning, the vapor tight return line must be capped when either of the following circumstances occurs:

(i) The storage tank system or an associated piping component is under concrete, and a replacement or repair of the underground storage tank system or associated piping component involves breaking concrete on top of the tank where the vapor tight return line terminates.

(ii) The CARB TP-201.3 procedure performed under paragraph (2) indicates a problem with the vapor tight return line.

(2) Successfully completing all of the steps in CARB TP-201.3.

(3) Successfully completing all of the steps in CARB TP-201.3C.

(4) Completing Form 2700-FM-BAQ0129, including updates and revisions to the form, after decommissioning is complete, regardless of whether the vapor tight return line is accessible at the time of decommissioning and has been capped under paragraph (1). The owner or operator shall send the completed form within 10 business days of completion of the decommissioning to the Department Regional Air Program Manager or to the appropriate approved local air pollution control agency responsible for the county in which the decommissioning occurred.

(5) Maintaining onsite at the gasoline dispensing facility a copy of the completed form that was submitted under paragraph (4). The owner or operator shall maintain the form onsite for 2 years unless a longer period is required under Chapter 127 (relating to construction, modification, reactivation and operation of sources) or a plan approval, operating permit, consent decree or order issued by the Department.

(e) *Certification requirements for installers and industry inspectors.* The owner and operator of a gasoline dispensing facility subject to this section shall ensure that

a person who performs underground storage tank system installation or modification work under this section is appropriately certified for the work they perform, as follows:

(1) The person must be a certified UMI or UMX storage tank installer under Chapter 245, Subchapter A (relating to general provisions).

(2) The person must comply with the applicable requirements of Chapter 245, Subchapter B (relating to certification program for installers and inspectors of storage tanks and storage tank facilities).

(f) *Removal of responsibilities under § 129.82*. The owner and operator of a gasoline dispensing facility that decommissions a Stage II vapor recovery system under subsections (d) and (e) are no longer subject to § 129.82 (relating to control of VOCs from gasoline dispensing facilities (Stage II)) at the gasoline dispensing facility.

(g) *Retention of responsibilities under § 129.61*. The owner and operator of a gasoline dispensing facility remains subject to § 129.61 (relating to small gasoline storage tank control (Stage I control)) after decommissioning a Stage II vapor recovery system.

(h) *Retention of responsibilities under § 129.61a* . The owner and operator of a gasoline dispensing facility located in Allegheny, Armstrong, Beaver, Bucks, Butler, Chester, Delaware, Fayette, Montgomery, Philadelphia, Washington or Westmoreland County that decommissions a Stage II vapor recovery system remains subject to § 129.61a (relating to vapor leak monitoring procedures and other requirements for small gasoline storage tank emission control).

[Pa.B. Doc. No. 20-1306. Filed for public inspection September 26, 2020, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 84a]

Minimum Reserve Standards for Individual and Group Health and Accident Insurance Contracts

The Insurance Department (Department) proposes to amend Chapter 84a (relating to minimum reserve standards for individual and group health and accident insurance contracts) to read as set forth in Annex A. This proposed rulemaking is proposed under the Department's general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and the Insurance Commissioner's (Commissioner) authority to set forth minimum valuation and reserve standards in paragraphs (c)(1) and (2) of section 7124 of the act of June 30, 2016 (P.L. 399, No. 59) known as the Standard Valuation Law (40 Pa.C.S. § 7124(c)(1) and (2)).

Purpose

Chapter 84a governs the minimum reserve standards to which insurers issuing individual and group health and accident insurance contracts must adhere. Among other standards, the regulation establishes standards for claim reserves, contract reserves and premium reserves. These standards are in place to ensure that insurers maintain sufficient financial wherewithal to support long-term solvency. Chapter 84a, originally adopted in 1993, is based on the National Association of Insurance Commissioners (NAIC) Health Insurance Reserves Model Regulation (# 10).

The purpose of this proposed rulemaking is to update the Commonwealth's standards to align with the most recent updates to the NAIC Health Insurance Reserves Model Regulation, which were incorporated in 2017. These proposed amendments clarify that the minimum reserve standards contained in Chapter 84a apply to individual and group health and accident insurance coverages, including single premium credit health and accident insurance, issued prior to January 1, 2017. The amendments specify the use of new valuation tables for certain individual disability and group disability policies and claims. By incorporating these standards for coverages issued prior to January 1, 2017, the Department is seeking to promote the continuity of applicable reserving standards for those older coverages issued prior to the operative date of the NAIC Valuation Manual. Moreover, the proposed amendments would indicate that the claim reserve requirements for all claims incurred on or after January 1, 2017, are as described in the NAIC Valuation Manual. As indicated in Department Notice 2016-10 entitled "Principle-Based Reserving Operative Date" published at 46 Pa.B. 5867 (September 10, 2016), the operative date of the NAIC Valuation Manual was January 1, 2017.

Explanation of Regulatory Requirements

The following sets forth the proposed amendments that would be incorporated in Chapter 84a by this proposed rulemaking. The noted substantive proposed amendments are based on the updates to the NAIC Model; the remaining text in the following Annex is intended to match the current text of Chapter 84a with amendments made for clarity and improved organization. While the organization may differ, the content of Chapter 84a as amended by this proposed rulemaking remains substantially similar to the updated NAIC Model.

Section 84a.1 (relating to purpose) is proposed to be amended to remove the existing statutory authority sections, which were repealed in 2016, and replace them with the updated citations to the Standard Valuation Law, which authorizes the Commissioner to promulgate regulations specifying appropriate reserve standards.

Section 84a.2 (relating to applicability and scope) is proposed to be amended in accordance with changes to the NAIC Model. Specifically, subsection (b) would provide that the minimum reserve standards in the chapter would apply to individual and group health and accident insurance coverages, including single premium credit health and accident insurance, issued prior to January 1, 2017.

Section 84a.3 (relating to definitions) is proposed to be amended in accordance with changes to the NAIC Model. Specifically, definitions for "Group long-term disability income contract" and "Worksite disability policies" would be added to clarify the applicability of the reserve standards set forth in the chapter.

Section 84a.4 (relating to claim reserves) is proposed to be amended in accordance with changes to the NAIC Model. For clarity, section 84a.4 in the following Annex appears as entirely new text. It incorporates some of the text of Chapter 84a as it is currently constituted and includes the following amendments in accordance with the NAIC Model:

- The amendments to subsection (a) would provide additional general requirements for claim reserves.

- The amendments to subsection (b) would provide updated minimum morbidity standards for claim reserves of individual disability income benefits.

• The amendments to subsection (c) would provide updated minimum morbidity standards for claim reserves of group disability income benefits.

• Subsection (d) sets forth minimum morbidity standards for health insurance claim reserves for health insurance other than set forth in subsections (a)—(c), including single premium credit health and accident insurance.

• Subsection (e) is substantively the same as subsection (d) in Chapter 84a as it is currently constituted but has been rearranged for improved clarity. Despite the NAIC Model, Chapter 84a as it is currently does not contain a provision providing for a public hearing on claim reserve methods and that remains the case in this proposed rulemaking.

Section 84a.5 (relating to premium reserves) is proposed to be amended in accordance with changes to the NAIC Model and sets forth that unearned premium reserves are required for all contracts, except single premium credit health and accident insurance contracts.

Appendix A (relating to specific standards for morbidity, interest and mortality) is proposed to be amended in accordance with changes to the NAIC Model. Specifically, it incorporates standards for individual and group disability income contracts issued on or after January 1, 2020, a restated maximum interest rate standard for claim reserves, and clarification regarding the mortality standard for single premium credit insurance. It also includes editorial changes for increased clarity. The restated maximum interest rate standard for claim reserves appears in the updated Appendix A in subsection II(b)(2). The updated subsection includes the applicable restated formula.

External Comments

The Department circulated an exposure draft substantially similar to this proposed rulemaking to several industry participants including the Insurance Federation of Pennsylvania, the American Council of Life Insurers, America's Health Insurance Plans and Life Insurance Company of North America. Comments received were carefully considered in developing this proposed rulemaking.

Affected Parties

This proposed rulemaking applies to all entities with the authority to issue individual and group health and accident insurance coverages, including single premium credit health and accident insurance, including licensed insurers as defined in section 201-A of The Insurance Department Act of 1921 (40 P.S. § 65.1-A) and entities doing the business of insurance under The Insurance Company Law of 1921 (40 P.S. §§ 341—991.2707).

Fiscal Impact

State government

There will not be any fiscal impact to the Department as a result of this proposed rulemaking.

General public

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

Political subdivisions

This proposed rulemaking will have no fiscal impact upon political subdivisions.

Private sector

This proposed rulemaking will have no fiscal impact upon the private sector, except for a possible minimal impact to the regulated entities affected.

Paperwork

This proposed rulemaking would not impose additional paperwork on the Department because no additional filing is required to be made by insurers that must comply with this proposed rulemaking.

Effectiveness/Sunset Date

This proposed rulemaking will become effective immediately upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding this proposed rulemaking may be addressed in writing to Richard L Hendrickson, Department Counsel, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, within 30 days following publication in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to rihendrick@pa.gov or faxed to (717) 772-1969.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 10, 2020, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final delivery of the rulemaking, by the Department, the General Assembly and the Governor.

JESSICA K. ALTMAN,
Insurance Commissioner

Fiscal Note: 11-259. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 84A. MINIMUM RESERVE STANDARDS FOR INDIVIDUAL AND GROUP HEALTH AND ACCIDENT INSURANCE CONTRACTS

§ 84a.1. Purpose.

[This chapter implements sections 301.1 and 311.1 of The Insurance Department Act of 1921 (40 P.S. §§ 71.1 and 93) which authorizes the Commissioner to promulgate regulations specifying appropriate reserve standards.] The purpose of this chapter is to set forth the minimum standards of valuation required by 40 Pa.C.S. § 7124(c)(1) and (2) (relating to minimum standard for accident and health insurance contracts).

§ 84a.2. Applicability and scope.

(a) This chapter shall take effect for annual statements for the year 1993.

(b) The minimum reserve standards of this chapter apply to individual and group health and accident insurance coverages, including single premium credit health and accident insurance, **[written]** **issued prior to January 1, 2017,** by life insurance companies **[and], property insurance companies,** casualty insurance companies **and fraternal benefit societies**. Monthly premium credit health and accident insurance is not subject to this chapter, but instead is subject to the reserve standards in Chapter 73 (relating to credit life and credit accident and health insurance).

(c) When an insurer determines that adequacy of its health and accident insurance reserves requires reserves in excess of the minimum standards specified in this chapter, the increased reserves shall be held and shall be considered the minimum reserves for that insurer.

(d) With respect to a block of contracts, or with respect to an insurer's health and accident business as a whole, a prospective gross premium valuation is the ultimate test of reserve adequacy as of a given valuation date. The gross premium valuation will take into account, for contracts in force, in a claims status, or in a continuation of benefits status on the valuation date, the present value as of the valuation date of expected benefits unpaid, expected expenses unpaid and unearned or expected premiums, adjusted for future premium increases reasonably expected to be put into effect.

(e) The gross premium valuation is to be performed whenever a significant doubt exists as to reserve adequacy with respect to a major block of contracts, or with respect to the insurer's health and accident business as a whole. If inadequacy is found to exist, immediate loss recognition shall be made and the reserves restored to adequacy. Adequate reserves, inclusive of claim, premium and contract reserves, if any, shall be held with respect to all contracts, regardless of whether contract reserves are required for the contracts under this chapter.

(f) Whenever minimum reserves, as defined in this chapter, exceed reserve requirements as determined by a prospective gross premium valuation, the minimum reserves remain the minimum requirement under this chapter.

(g) Minimum standards for three categories of health and accident insurance reserves are established. These categories are claim reserves, premium reserves and contract reserves.

(h) Adequacy of an insurer's health and accident insurance reserves is to be determined on the basis of the three categories of subsection (g) combined. These minimum standards emphasize the importance of determining appropriate reserves for each of the three categories separately.

§ 84a.3. Definitions.

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

Annual-claim cost—The net annual cost per unit of benefit before the addition of expenses, including claim settlement expenses, and a margin for profit or contingencies. For example, the annual claim cost for a $100 monthly disability benefit, for a maximum disability benefit period of 1 year, with an elimination period of 1 week, with respect to a male at age 35, in a certain occupation might be $12, while the gross premium for this benefit might be $18. The additional $6 would cover expenses and profit or contingencies.

Claims accrued—The portion of claims incurred on or prior to the valuation date which result in liability of the insurer for the payment of benefits for medical services which have been rendered on or prior to the valuation date, and for the payment of benefits for days of hospitalization and days of disability which have occurred on or prior to the valuation date, which the insurer has not paid as of the valuation date, but for which it is liable, and will have to pay after the valuation date. This liability is sometimes referred to as a liability for "accrued" benefits. A claim reserve, which represents an estimate of this accrued claim liability, shall be established.

Claims reported—A claim that has been incurred on or prior to the valuation date is considered as a reported claim for annual statement purposes if the date the claim is reported to the insurer is on or prior to the valuation date.

Claims unaccrued—The portion of claims incurred on or prior to the valuation date which result in liability of the insurer for the payment of benefits for medical services expected to be rendered after the valuation date, and for benefits expected to be payable for days of hospitalization and days of disability occurring after the valuation date. This liability is sometimes referred to as a liability for unaccrued benefits. A claim reserve, which represents an estimate of the unaccrued claim payments expected to be made, which may or may not be discounted with interest, shall be established.

Claims unreported—A claim incurred on or prior to the valuation date is considered as an unreported claim for annual statement purposes if the insurer has not been informed of the claim on or before the valuation date.

Commissioner—The Insurance Commissioner of the Commonwealth.

Credit insurance—Insurance which falls within the regulatory scope of the Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance (40 P.S. §§ 1007.1—1007.15).

Date of disablement—The earliest date the insured is considered as being disabled under the definition of disability in the contract, based on a doctor's evaluation or other evidence. Normally this date will coincide with the start of an elimination period.

Department—The Insurance Department of the Commonwealth.

Elimination period—A specified number of days, weeks or months starting at the beginning of each period of loss, during which no benefits are payable.

Gross premium—The amount of premium charged by the insurer, which includes the net premium based on claim-cost for the risk, together with loading for expenses, profit or contingencies.

Group insurance—The term includes blanket insurance and other forms of group insurance.

Group long-term care insurance—A long-term care insurance policy that is delivered or issued for delivery in this Commonwealth and issued to one or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or

former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations.

***Group long-term disability income contract*—A group contract providing group disability income coverage with a maximum benefit duration longer than 2 years that is based on a group pricing structure. The term does not include any of the following:**

(i) Group short-term disability (coverage with benefit periods of 2 years or less in maximum duration).

(ii) Voluntary group disability income coverage that is priced on an individual risk structure and generally sold in the workplace.

Level premium—A premium calculated to remain unchanged throughout either the lifetime of the policy, or for some shorter projected period of years. The premium need not be guaranteed; in which case, although it is calculated to remain level, it may be changed if any of the assumptions on which it was based are revised at a later time. The annual claim costs are expected to increase each year and the insurer, instead of charging premiums that correspondingly increase each year, charges a premium calculated to remain level for a period of years or for the lifetime of the contract. In this case the benefit portion of the premium is more than needed to provide for the cost of benefits during the earlier years of the policy and less than the actual cost in the later years. The building of a prospective contract reserve is a natural result of level premiums.

Long-term care insurance—An insurance contract advertised, marketed, offered or designed to provide coverage for at least 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis; for functionally necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital:

(i) The term includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.

(ii) The term does not include an insurance contract which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income coverage, accident only coverage, specified disease coverage or specified accident coverage.

Modal premium—The premium paid on a contract based on a premium term that could be annual, semiannual, quarterly, monthly or weekly. For example, if the annual premium is $100 and if, instead, monthly premiums of $9 are paid the modal premium is $9.

Negative reserve—A terminal reserve which is a negative value.

Operative date—The effective date of the approval by the Commissioner for an insurer to use the 1980 CSO Mortality Table to calculate nonforfeiture values and reserves for life insurance contracts.

Preliminary term reserve method—A reserve method under which the valuation net premium for each year falling within the preliminary term period is exactly sufficient to cover the expected incurred claims of that year, so that the terminal reserves will be zero at the end of the year. As of the end of the preliminary term period, a new constant valuation net premium, or stream of changing valuation premiums, becomes applicable so that the present value of the net premiums is equal to the present value of the claims expected to be incurred following the end of the preliminary term period.

Present value of amounts not yet due on claims—The reserve for claims unaccrued, which may be discounted at interest.

Rating block—A grouping of contracts based on common characteristics, such as a policy form or forms having similar benefit designs.

Reserve—The term used to include all items of benefit liability, whether in the nature of incurred claim liability or in the nature of contract liability relating to future periods of coverage, and whether the liability is accrued or unaccrued. An insurer under its contract promises benefits which result in claims which have been incurred, that is, for which the insurer has become obligated to make payment, on or prior to the valuation date and in claims which are expected to be incurred after the valuation date. For the incurred claims, payments expected to be made after the valuation date for accrued and unaccrued benefits are liabilities of the insurer which should be provided for by establishing claim reserves. For the expected claims, present liability of the insurer for these future claims should be provided for by the establishment of contract reserves and unearned premium reserves.

Terminal reserve—The reserve at the end of a contract year. It is the present value of benefits expected to be incurred after that contract year minus the present value of future valuation net premiums.

Unearned premium reserve—The reserve that values that portion of the premium paid or due to the insurer which is applicable to the period of coverage extending beyond the valuation date. Thus if an annual premium of $120 was paid on November 1, $20 would be earned as of December 31 and the remaining $100 would be unearned. The unearned premium reserve could be on a gross basis as in this example, or on a valuation net premium basis.

Valuation net modal premium—The modal fraction of the valuation net annual premium that corresponds to the gross modal premium in effect on a contract to which contract reserves apply. For example, if the mode of payment in effect is quarterly, the valuation net modal premium is the quarterly equivalent of the valuation net annual premium.

***Worksite disability policies*—Individual short-term disability policies that are sold at the worksite through employer-sponsored enrollment, that cover normal pregnancy, and that have benefit periods up to 24 months. The term does not include any of the following:**

(i) Personal disability policies sold to an individual and not associated with employer-sponsored enrollment.

(ii) Business overhead expense, disability buyout, or key person policies, in whatever manner those policies are sold.

§ 84a.4. Claim reserves.

[(a) *General requirements.*

(1) Claim reserves are required for incurred but unpaid claims on health and accident insurance contracts.

(2) Appropriate claim expense reserves are required with respect to the estimated expense of settlement of incurred but unpaid claims.

(3) The reserves for prior valuation years are to be tested for adequacy and reasonableness along the lines of claim runoff schedules in accordance with the statutory financial statement including consideration of residual unpaid liability.

(b) *Minimum standards for claim reserves of disability income benefits, excluding single premium credit health and accident insurance.*

(1) The maximum interest rate for claim reserves is specified in Appendix A (relating to specific standards for morbidity, interest and mortality).

(2) Minimum standards with respect to morbidity are those specified in Appendix A; except that, at the option of the insurer:

(i) For claims incurred on or after January 1, 2007, assumptions regarding claim termination rates for the period less than 2 years from the date of disablement may be based on the insurer's experience, if the experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(ii) For group disability income claims incurred on or after January 1, 2007, assumptions regarding claim termination rates for the period of 2 or more years but less than 5 years from the date of disablement may, with the approval of the Commissioner, be based upon the insurer's experience for which the insurer maintains underwriting and claim administration control if the experience is considered credible. For an insurer's experience to be considered credible, the insurer shall be able to provide claim termination patterns over no more than 6 years reflecting at least 5,000 claim terminations during the third through fifth claim durations on reasonably similar applicable policy forms. Reserve tables based on credible experience shall be adjusted regularly to maintain reasonable margins. Demonstrations may be required by the Commissioner based on published literature. The request for approval of a plan of modification to the reserve basis must include the following:

(A) An analysis of the credibility of the experience.

(B) A description of how the insurer's experience is proposed to be used in setting reserves.

(C) A description and quantification of the margins to be included.

(D) A summary of the financial impact that the proposed plan of modification would have had on the insurer's last filed annual statement.

(E) A copy of the approval of the proposed plan of modification by the Commissioner of the state of domicile.

(F) Other information deemed necessary by the Commissioner.

(iii) For claims incurred prior to January 1, 2007, each insurer may elect one of the following as the minimum standard.

(A) For claims with a duration from the date of disablement of less than 2 years, reserves may be based on the insurer's experience, if the experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities. For group disability income claims with a duration from the date of disablement of more than 2 years but less than 5 years, reserves may, with the approval of the Commissioner, be based upon the insurer's experience for which the insurer maintains underwriting and claim administration control if the experience is considered credible. For an insurer's experience to be considered credible, the insurer shall be able to provide claim termination patterns over no more than 6 years reflecting at least 5,000 claim terminations during the third through fifth claim durations on reasonably similar applicable policy forms. Reserve tables based on credible experience shall be adjusted regularly to maintain reasonable margins. Demonstrations may be required by the Commissioner based on published literature. The request for approval of a plan of modification to the reserve basis must include the following:

(I) An analysis of the credibility of the experience.

(II) A description of how the insurer's experience is proposed to be used in setting reserves.

(III) A description and quantification of the margins to be included.

(IV) A summary of the financial impact that the proposed plan of modification would have had on the insurer's last filed annual statement.

(V) A copy of the approval of the proposed plan of modification by the Commissioner of the state of domicile.

(VI) Other information deemed necessary by the Commissioner.

(B) The standards as defined in subparagraph (i) and (ii) applied to all open claims. If reserves are calculated on the standards defined in subparagraph (i) and (ii), future calculations must be on that basis.

(3) For contracts with an elimination period, the duration of disablement shall be measured, as dating from the time that benefits would have begun to accrue had there been no elimination period.

(c) *Minimum standards for claim reserves of other benefits, including single premium credit health and accident insurance.*

(1) The maximum interest rate for claim reserves is specified in Appendix A.

(2) Minimum standards with respect to morbidity and other contingencies shall be based on the insurer's experience, if the experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(d) *Claim reserve methods*. A reasonable actuarial method or combination of methods may be used to estimate claim liabilities. The methods used for estimating liabilities generally may be aggregate methods, or various reserve items may be separately valued. Approximations based on groupings and averages may also be employed. Adequacy of the claim reserves shall be determined in the aggregate.]

(a) *General requirements.*

(1) Claim reserves are required for incurred but unpaid claims on health and accident insurance contracts. When reserving for contracts with an elimination period, the duration of disablement commences on the date that benefits would have begun to accrue had there been no elimination period.

(2) Appropriate claim expense reserves are required with respect to the estimated expense of settlement of incurred but unpaid claims.

(3) The reserves for prior valuation years are to be tested for adequacy and reasonableness along the lines of claim runoff schedules in accordance with the statutory financial statement including consideration of residual unpaid liability.

(4) For claim reserves on policies that require contract reserves, the claim incurral date constitutes the "issue date" for determining the table and interest rate for claim reserves.

(5) The maximum interest rate for claim reserves is specified in Appendix A (relating to specific standards for morbidity, interest and mortality).

(6) The requirements for claims reserves on all claims incurred on or after January 1, 2017 will be as described in the Valuation Manual based on the incurred date of the claim.

(b) *Minimum morbidity standards for claim reserves of individual disability income benefits, excluding single premium credit health and accident insurance.*

(1) For claims incurred prior to January 1, 2007, each insurer may elect any of the following standards to use as the minimum morbidity standard for claim reserves:

(i) The minimum morbidity standard in effect for claim reserves as of the date the claim was incurred.

(ii) The standards as defined in paragraphs (2) or (3) applied to all open claims. Once an insurer elects to calculate reserves for all open claims on the standard defined in either paragraph (2) or (3), all future valuations must be on that basis.

(2) For claims incurred on or after January 1, 2007, and prior to the effective date for the company as determined in paragraph (5), the minimum standards with respect to morbidity are those specified in Appendix A, except that, at the option of the insurer, assumptions regarding claim termination rates for the period less than 2 years from the date of disablement may be based on the insurer's experience, if such experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(3) For claims incurred on or after January 1, 2020, the minimum standards with respect to morbidity are those specified in Appendix A, including all of the following (as derived in accordance with Actuarial Guideline L):

(i) The use of the insurer's own experience.

(ii) An adjustment to include an own experience measurement margin.

(iii) The application of a credibility factor.

(4) In determining the minimum reserves in accordance with paragraph (3), the provisions in subparagraphs (i), (ii) and (iii) of paragraph (3) are not applicable to any of the following circumstances:

(i) Where the insurer meets the Own Experience Measurement Exemption provided in Actuarial Guideline L.

(ii) Where, for worksite disability policies with benefit periods of up to 2 years, the insurer chooses to base its disabled life reserves on the insurer's experience, if such experience is considered credible, or on other assumptions and methods designed to place a sound value on the liabilities.

(5) An insurer may begin to use the minimum reserve standards in paragraph (3) at a date earlier than January 1, 2020, but not prior to January 1, 2017.

(6) An insurer may, within 3 years of January 1, 2020, or an earlier date the insurer elects under paragraph (5), apply the new standards in paragraph (3) to all open claims incurred prior to the effective date for paragraph (3) for the insurer. Once an insurer elects to calculate reserves for all open claims based on paragraph (3), all future valuations must be on that basis.

(c) *Minimum morbidity standards for claim reserves of group disability income benefits, excluding single premium credit health and accident insurance.*

(1) For claims incurred prior to January 1, 2007, each insurer may elect any of the following standards to use as the minimum morbidity standard for claim reserves:

(i) The minimum morbidity standard in effect for claim reserves as of the date the claim was incurred.

(ii) After the effective date selected by the company in paragraph (2), the standards as defined in paragraph (2), applied to all open group long term disability income claims. Once an insurer elects to calculate reserves for all open claims on a more recent standard, all future valuations must be based on that more recent standard.

(iii) The standards as defined in paragraph (3), applied to all open group disability income claims. Once an insurer elects to calculate reserves for all open claims on a more recent standard, all future valuations must be based on that more recent standard.

(2) For group long-term disability income claims incurred on or after January 1, 2007, but before the effective date selected by the company in paragraph (4), and group disability income claims incurred on or after January 1, 2007, that are not group long-term disability income, the minimum standards with respect to morbidity are those specified in Appendix A except that, at the option of the insurer:

(i) Assumptions regarding claim termination rates for the period less than 2 years from the date of disablement may be based on the insurer's experience, if the experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(ii) Assumptions regarding claim termination rates for the period 2 or more years but less than 5 years from the date of disablement may, with the approval of the Commissioner, be based on the insurer's experience for which the insurer maintains underwriting and claim administration control. The request for such approval of a plan of modification to the reserve basis must include:

(A) An analysis of the credibility of experience.

(B) A description of how all of the insurer's experience is proposed to be used in setting reserves.

(C) A description and quantification of the margins to be included.

(D) A summary of the financial impact that the proposed plan of modification would have had on the insurer's last filed annual statement.

(E) A copy of the approval of the proposed plan of modification by the commissioner of the state of domicile.

(F) Any other information the Commissioner deems necessary to review the plan of modification.

(iii) Each insurer may elect any of the following standards to use as the minimum morbidity standard for group long term disability income claim reserves:

(A) The minimum morbidity standard in effect for claim reserves as of the date the claim was incurred.

(B) The standards as defined in paragraph (3), applied to all open claims. Once an insurer elects to calculate reserves for all open claims on a more recent standard, all future valuations must be on that basis.

(3) For group long-term disability income claims incurred on or after January 1, 2017, the minimum standards with respect to morbidity must be based on the 2012 GLTD termination table or subsequent table with consideration of all of the following:

(i) The insurer's own experience computed in accordance with Actuarial Guideline XLVII, as included in the most current version of the NAIC *Accounting Practices and Procedures Manual*.

(ii) An adjustment to include an own experience measurement margin derived in accordance with Actuarial Guideline XLVII, as included in the most current version of the NAIC *Accounting Practices and Procedures Manual*.

(iii) A credibility factor derived in accordance with Actuarial Guideline XLVII, as included in the most current version of the NAIC *Accounting Practices and Procedures Manual*.

(4) An insurer may begin to use the minimum reserve standards in paragraph (3) for dates earlier than January 1, 2017, but not prior to October 1, 2014. The date the insurer selects between January 1, 2017, and October 1, 2014, to begin to use the minimum reserve standards in paragraph (3) will be considered the effective date.

(5) An insurer may apply the standards in paragraph (3) to all open claims incurred prior to the effective date of paragraph (3) for the insurer. Once an insurer elects to calculate reserves for all open claims based on paragraph (3), all future valuations must be on that basis.

(d) *Minimum morbidity standards for other health insurance claim reserves, including single premium credit health and accident insurance*. The minimum standards with respect to morbidity and other contingencies must be based on the insurer's experience, if the experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(e) *Claim reserve methods*. An insurer may use a generally accepted actuarial reserving method or combination of methods to estimate claim liabilities.

(1) Methods used for estimating liabilities generally may be aggregate methods or various reserve items may be separately valued.

(2) Approximations may be based on groupings and averages.

(3) Adequacy of the claim reserves shall be determined in the aggregate.

§ 84a.5. Premium reserves.

(a) *General requirements.*

(1) Unearned premium reserves are required for **all** contracts, except single premium credit health and accident insurance contracts, with respect to the period of coverage for which premiums, other than premiums paid in advance, have been paid beyond the date of valuation.

(2) If premiums due and unpaid are carried as an asset, the premiums shall be treated as premiums in force, subject to unearned premium reserve determination. The value of unpaid commissions, premium taxes and the cost of collection associated with due and unpaid premiums shall be carried as an offsetting liability.

(3) The gross premiums paid in advance for a period of coverage commencing after the next premium due date which follows the date of valuation may be appropriately discounted to the valuation date and shall be held either as a separate liability or as an addition to the unearned premium reserve which would otherwise be required as a minimum.

* * * * *

§ 84a.6. Contract reserves.

* * * * *

(b) *Minimum standards for contract reserves.*

(1) *Morbidity or other contingency.*

(i) Minimum standards with respect to morbidity are those in Appendix A (relating to specific standards for morbidity, interest and mortality). Valuation net premiums used under each contract shall have a structure consistent with the gross premium structure at issue of the contract as this relates to advancing age of the insured, contract duration and period for which gross premiums have been calculated.

(ii) Contracts for which tabular morbidity standards are not specified in Appendix A shall be valued using tables established for reserve purposes by a qualified actuary and acceptable to the Commissioner. The morbidity tables shall contain a pattern of incurred claim costs that reflect the underlying morbidity and may not be constructed for the primary purpose of minimizing reserves.

(iii) If a morbidity standard specified in Appendix A is on an aggregate basis, the morbidity standard may be adjusted to a select and ultimate basis to reflect the effect

of insurer underwriting by policy duration. The adjustments shall be appropriate to the underwriting and be acceptable to the Commissioner.

(iv) In determining the morbidity assumptions, the actuary shall use assumptions that represent the best estimate of anticipated future experience, but may not incorporate any expectation of future morbidity improvement for contracts issued on or after January 1, 2007. Morbidity improvement is a change in the combined effect of claim frequency and the present value of future expected claim payments given that a claim has occurred from the current morbidity tables or experience that will result in a reduction to reserves. The actuary can reflect the morbidity impact for a specific known event that has occurred and can be evaluated and quantified.

(2) *Maximum interest rate*. The maximum interest rate is specified in Appendix A.

(3) *Termination rates.*

(i) Termination rates used in the computation of reserves shall be on the basis of a mortality table as specified in Appendix A except as noted in subparagraphs (ii), (iii), (iv) and (v).

(ii) Total termination rates may be used at ages and durations when these exceed specified mortality table rates, but not in excess of the lesser of 80% of the total termination rate used in the calculation of the gross premiums or 8%.

(iii) For long-term care individual contracts and group certificates issued on and after January 1, 1999, termination rates in addition to the specified mortality table rates may be used. The termination rates other than mortality may not exceed the following:

(A) For policy years 1 through 4, the lesser of 80% of the voluntary lapse rate used in the calculation of gross premiums and 8%.

(B) For policy years 5 and later, the lesser of 100% of the voluntary lapse rate used in the calculation of gross premiums and 4%.

(iv) For long-term care individual contracts and group certificates issued on and after January 1, 2007, the following termination rates in addition to the mortality table rates specified in Appendix A may be used.

(A) For policy year 1, the lesser of 80% of the voluntary lapse rate used in the calculation of gross premiums and 6%.

(B) For policy years 2 through 4, the lesser of 80% of the voluntary lapse rate used in the calculation of gross premiums and 4%.

(C) For policy years 5 and later, the lesser of 100% of the voluntary lapse rate used in the calculation of gross premiums and 2%, except for group long-term care insurance where the 2% shall be 3%.

(v) For single premium credit disability insurance, termination rates may not be used.

(4) **[** ***Reserved*** **]** ***Reserve*** *methods.*

(i) For health and accident insurance except long-term care and return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated on the 2-year full preliminary term method; that is, under which the terminal reserve is zero at the first and also the second contract anniversary.

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Appendix A

SPECIFIC STANDARDS FOR MORBIDITY, INTEREST AND MORTALITY

I. MORBIDITY.

(a) Minimum morbidity standards for valuation of specified individual contract health and accident insurance benefits are as follows:

(1) Disability income benefits due to accident or sickness.

(i) *Contract reserves.*

(A) Contracts issued on or after January 1, 1965, and prior to January 1, 1986: The 1964 Commissioners Disability Table (64 CDT).

(B) Contracts issued on or after January 1, 1993**, and before January 1, 2020**: The 1985 Commissioners Individual Disability Tables A (85 CIDA) or The 1985 Commissioners Individual Disability Tables B (85 CIDB).

(C) Contracts issued on or after January 1, 1986, and prior to January 1, 1993: Optional use of either the 1964 Table or the 1985 Tables.

(D) Each insurer shall elect, with respect to all individual contracts issued in any one statement year, whether it will use Tables A or Tables B as the minimum standard. The insurer may elect to use the other tables with respect to a subsequent statement year.

(E) Contracts issued on or after January 1, 2020: The 2013 IDI Valuation Table with modifiers as described in Actuarial Guideline L.

(F) An insurer may begin to use the 2013 IDI Valuation Table with modifiers at a date earlier than January 1, 2020, but not prior to January 1, 2017.

(G) Within 3 years of 2020 or the earlier date an insurer begins to use the 2013 IDI Valuation Table, the insurer may elect to apply that morbidity standard for all policies issued subject to other valuation tables. This may be done if the following conditions are met:

(I) The insurer applies the morbidity standard to all inforce policies and incurred claims.

(II) The insurer elects or has elected to apply the 2013 IDI Valuation Table to all claims incurred regardless of incurral date.

(III) The insurer maintains adequate policy records on policies issued prior to 2020 that allow the insurer to apply the 2013 IDI Valuation Table appropriately.

(IV) Once an insurer elects to calculate reserves for all inforce policies based on the current morbidity standard, all future valuations must be on that basis.

(ii) *Claim reserves.*

(A) Claims incurred on or after January 1, 2007**, and prior to January 1, 2020**: The 1985 Commissioners Individual Disability Table A (85CIDA) with claim termination rates multiplied by the following adjustment factors:

Duration	*Adjustment Factor*
Week 1	0.366
2	0.366
3	0.366
4	0.366
5	0.365
6	0.365
7	0.365
8	0.365
9	0.370
10	0.370
11	0.370
12	0.370
13	0.370
Month 4	0.391
5	0.371
6	0.435
7	0.500
8	0.564
9	0.613
10	0.633
11	0.712
12	0.756
13	0.800
14	0.844
15	0.888
16	0.932
17	0.976
18	1.020
19	1.049
20	1.078
21	1.107
22	1.136
23	1.165
24	1.195
Year 3	1.369
4	1.204
5	1.199
6 and later	1.000

The 85 CIDA so adjusted for the computation of claim reserves shall be known as The 1985 Commissioners Individual Disability Table C (85 CIDC).

[(B) Claims incurred prior to January 1, 2007: Optional use of either the minimum morbidity standard in effect for contract reserves on contracts issued on the same date the claim is incurred, or 85 CIDC, applied to all claims.

(C) If reserves for all claims are calculated on 85 CIDC, future calculations must be on 85 CIDC.]

(B) For claims incurred on or after January 1, 2020, the 2013 IDI Valuation Table with modifiers and adjustments for company experience as prescribed in the Actuarial Guideline L, except for worksite disability policies with benefit periods of 24 months or less.

(C) For worksite disability policies, claim reserves may be calculated using claim run-out analysis or claim triangles or other methods that place a sound value on the reserves that are appropriate for the business and risks involved.

(D) For claims incurred prior to January 1, 2020, each insurer may elect any of the following standards to use as the minimum standard for claims incurred:

(I) The minimum morbidity standard in effect for contract reserves on currently issued contracts, as of the date the claim is incurred.

(II) The standard as defined in Clause (A) or (B) applied to all open non-worksite claims, if the insurer maintains adequate claim records to allow the insurer to apply the standard defined in Clause (A) or (B) appropriately. Once an insurer elects to calculate reserves for all open claims on the standard defined in Clause (A) or (B), all future valuations must be on that basis. This option, with respect to Clause (B), may be selected only if the insurer maintains adequate claims records for all claims incurred to use the 2013 IDI Valuation Table appropriately.

(2) Hospital benefits, surgical benefits and maternity benefits (scheduled benefits or fixed time period benefits only).

(i) *Contract reserves.*

* * * * *

(ii) *Claim reserves*. Claim reserves are to be determined as provided in **[§ 84a.4(c)(2)]** **§ 84a.4(d)** (relating to claim reserves).

(3) Cancer expense benefits (scheduled benefits or fixed time period benefits only).

(i) *Contract reserves*. Contracts issued on or after January 1, 1986: The 1985 NAIC Cancer Claim Cost Tables.

(ii) *Claim reserves*. Claim reserves are to be determined as provided in **[§ 84a.4(c)(2)]** **§ 84a.4(d)**.

(4) Accidental death benefits.

(i) *Contract reserves*. Contracts issued on or after January 1, 1965: The 1959 Accidental Death Benefits Table.

(ii) *Claim reserves*. Actual amount incurred.

(5) Single Premium Credit Health and Accident Insurance.

(i) Contract reserves:

* * * * *

(ii) Claim Reserves: Claim reserves are to be determined as defined in **[§ 84a.4(c)(2)]** **§ 84a.4(d)**.

(6) Other individual contract benefits.

(i) *Contract reserves*. For other individual contract benefits, morbidity assumptions are to be determined as provided in § 84a.6(b)(1)(ii) (relating to contract reserves).

(ii) *Claim reserves*. For benefits other than disability, claim reserves are to be determined as provided in **[§ 84a.4(c)(2)]** **§ 84a.4(d)**.

(b) Minimum morbidity standards for valuation of specified group contract health and accident insurance benefits are as follows:

(1) Disability income benefits due to accident or sickness.

(i) Where the regulation references this Appendix.

[(i)] (A) *Contract reserves.*

[(A)] (I) Certificates issued prior to January 1, 1993: The same basis, if any, as that employed by the insurer as of January 1, 1993.

[(B)] (II) Certificates issued on or after January 1, 1993: The 1987 Commissioners Group Disability Income Table (87CGDT).

[(ii)] (B) *Claim reserves.*

[(A)] (I) For claims incurred on or after January 1, 1993: The 1987 Commissioners Group Disability Income Table (87CGDT).

[(B)] (II) For claims incurred prior to January 1, 1993: Claim reserves are to be determined as provided in **[§ 84a.4(c)(2)] § 84a.4(d)** (relating to claim reserves).

(ii) Where the regulation does not reference this Appendix, the minimum morbidity standards are set forth in Actuarial Guideline XLVII.

(2) Single Premium Credit Health and Accident Insurance.

* * * * *

(ii) *Claim reserves*. Claim reserves are to be determined as defined in **[§ 84a.4(c)(2)] § 84a.4(d)**.

(3) Other group contract benefits.

(i) *Contract reserves*. For other group contract benefits, morbidity assumptions are to be determined as provided in § 84a.6(b)(1)(ii) (relating to contract reserves).

(ii) *Claim reserves*. For benefits other than disability, claim reserves are to be determined as provided in **[§ 84a.4(c)(2)] § 84a.4(d)**.

II. INTEREST

(a) Contract reserves.

(1) The maximum interest rate is the maximum rate permitted by **[section 301 of The Insurance Department Act of 1921 (40 P.S. § 71)] 40 Pa.C.S. §§ 7111—7127 (relating to valuation of reserves for contracts and policies)** in the valuation of whole life insurance issued on the same date as the health and accident insurance contract and with a guarantee duration of more than 20 years.

(b) Claim reserves.

(1) For claim reserves on policies that require contract reserves, the maximum interest rate is the maximum rate permitted by **[section 301 of The Insurance Department Act of 1921 (40 P.S. § 71)] 40 Pa.C.S. §§ 7111—7127** in the valuation of whole life insurance issued on the same date as the claim incurral date and with a guarantee duration equal to the maximum benefit period.

[(2) For claim reserves on policies not requiring contract reserves, the maximum interest rate is the maximum rate permitted by section 301 of The Insurance Department Act of 1921 in the valuation of single premium immediate annuities issued on the same date as the claim incurral date, reduced by 100 basis points.]

(2) For claim reserves on policies not requiring contract reserves, the maximum interest rate (*I*) shall be the calendar year statutory valuation interest rates as defined by:

$$I = .02 + .8 * (R - .03)$$

Where *R* is the average, over a period of 12 months, ending June 30 of the calendar year of the claim incurral date, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc. and the results rounded to the nearer 1/4 of 1%.

III. MORTALITY.

(a) For individual contracts and group certificates issued prior to the insurer's operative date, the mortality basis used shall be according to a table permitted by law for the valuation of whole life insurance issued on the same date as the health and accident insurance individual contract or group certificate.

* * * * *

(d) Other mortality tables adopted by the National Association of Insurance Commissioners (NAIC) and promulgated by the Commissioner may be used in the calculation of the minimum reserves if appropriate for the type of benefits and if approved by the Commissioner. The request for approval shall include the proposed mortality table and the reason that the standard specified in subsection (c) is inappropriate.

(e) For single premium credit insurance using the 85CIDA table, no separate mortality shall be assumed.

[Pa.B. Doc. No. 20-1307. Filed for public inspection September 25, 2020, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58. PA. CODE CH. 51]

General Provisions; Administrative Provisions

The Fish and Boat Commission (Commission) proposes to amend Chapter 51 (relating to administrative provisions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's regulations for display of permits.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. *Statutory Authority*

The proposed amendments to §§ 51.123 and 51.127 (relating to display of permits; and fishing license and

permits) are published under the statutory authority of section 2907.3 of the code (relating to fishing guide and charter boat permits).

D. *Purpose and Background*

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

As the Commission continues to modernize its business practices, several permit application procedures have been evaluated. An internal review of the Charter Boat/Fishing Guide permit application process revealed that the customer and the Commission would benefit greatly by handling the permitting process online.

Currently, to secure or purchase a permit, a written application, payment and numerous other supporting documents must be provided to the Commission for review, approval and processing. Once received by the Commission, it generally takes about 30 days to issue a permit, which is then mailed to the permittee.

The proposed plan moving forward is to allow application for and issuance of the permit online, exclusively through the Outdoor Shop. Waterways Conservations Officers would verify applicant provided information during standard field checks. As part of this transition, the requirement to display a guide sticker on the boat would be removed. Permits would be fulfilled at the point of purchase. The 30-day wait time for a permit and the time and expense associated with preparing a paper application would be eliminated. Through the automation process, the Commission would substantially lower the cost to review and issue a permit and would eliminate the cost of producing and mailing permits, identification decals, patches and other informational materials.

An additional change to § 51.127 would require an individual guiding on Commonwealth Waters to have Commission issued fishing license and permits. Under the current language a loophole was created that allows some nonresidents to guide on Commonwealth Waters utilizing their out-of-State license with a Pennsylvania Nonresident guide permit.

The Commission proposes that §§ 51.123 and 51.127 be amended as set forth in Annex A.

F. *Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-302. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter L. CHARTER BOAT/FISHING GUIDE OPERATIONS

§ 51.123. Display of permits.

(a) *Display of permit on outer garment*. While operating a charter boat or fishing guide operation, charter boat operators and fishing guides shall display their permits on a hat or an outer garment in plain view. The charter boat operator and fishing guide may carry and display the permit in the same holder containing a fishing license.

(b) *Officers designated to check permits*. Charter boat operators and fishing guides shall present their charter boat/fishing guide permits upon the request of an officer authorized to enforce the code.

[(c) *Display of decal on charter boats.* When a boat is used in the charter boat/fishing guide operation, the charter boat operator shall display a decal supplied by the Commission on both sides of the boat hull above the waterline and below the gunwale near the stern of the boat or on each side window of the cockpit of the boat. While onboard a boat displaying a decal, the charter boat operator is exempt from the permit display requirements of this section provided the permit is onboard the boat. When, due to exigent circumstances, a charter boat operator must use a boat that does not display a charter boat/fishing guide decal, the charter boat operator shall display the permit on a hat or outer garment as required by this section.]

§ 51.127. Fishing license and permits.

Charter boat operators and their crewmembers and fishing guides shall possess valid **Commission issued** fishing licenses and the stamps and permits required for the waters in which they fish. Charter boat operators and fishing guides are responsible for ensuring that their employees, passengers and customers possess a valid **Commission issued** fishing license and the appropriate stamps and permits.

[Pa.B. Doc. No. 20-1308. Filed for public inspection September 25, 2020, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to

Fish and Boat Code) (code). The proposed amendments update the Commission's regulations for the sale and purchase of fish.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. *Statutory Authority*

The proposed amendment to § 63.19(d) (relating to sale and purchase of fish) is published under the statutory authority of section 2102(c) of the code (relating to rules and regulations).

D. *Purpose and Background*

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

The Commission regulates both commercial and private fish cleaning stations under § 63.15a (relating to officially-recognized fish cleaning stations). This regulation allows anglers in certain circumstances to clean fish and dispose of the remains without transporting the intact catch to their home. This is important for many anglers, especially those on extended trips or visiting specific waters such as Lake Erie. Official cleaning stations also assist anglers in complying with regulations which prevent disposing of fish parts into Commonwealth waters. Fish processed at an official cleaning station allow anglers to be exempt from regulations requiring a fish to remain in-tact until reaching the place of consumption so it can be identified and measured for compliance with seasons, sizes and creel limits.

As technologies for cleaning stations change, various methods of carcass disposal are utilized. In several states, fish cleaning byproducts may be sold to other entities for further beneficial use such as fertilizer in agriculture. In this Commonwealth, cleaning stations are forced to grind the carcasses and place the byproduct into wastewater treatment or landfills.

To allow fish cleaning stations to provide a better service to Commonwealth anglers and facilitate better use of fish cleaning byproducts, the Commission proposes to amend § 63.19(d) of its regulations.

The Commission proposes that § 63.19(d) be amended to read as set forth in Annex A.

F. *Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-301. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.19. Sale and purchase of fish.

* * * * *

(d) This section does not prohibit the sale, purchase, offer for sale, trade or barter of any fish propagated by or from a propagator or dealer of live aquatic animals registered under 3 Pa.C.S. Chapter 42 (relating to aquacultural development), if the fish are lawfully propagated or acquired by means other than fishing from the waters of this Commonwealth in accordance with the requirements of applicable laws and regulations. This section does not prohibit the sale, purchase, offer for sale, trade or barter of any fish by or from the holder of a commercial fishing license issued under Chapter 29 of the code (relating to special licenses and permits), if the fish are lawfully caught or taken in accordance with the requirements of applicable laws and regulations. **This section does not prohibit the sale, purchase, offer for sale, trade or barter for the purpose of disposal of any non-flesh fish parts or roe that are the byproduct from any lawfully taken fish processed at a Pennsylvania Fish and Boat Commission recognized fish cleaning station under § 63.15a (relating to officially-recognized fish cleaning stations).** This section does not prohibit the sale of mounted fish.

[Pa.B. Doc. No. 20-1309. Filed for public inspection September 25, 2020, 9:00 a.m.]