RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 127]

Air Quality Fee Schedule Amendments

The Environmental Quality Board (Board) amends Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees) as set forth in Annex A. This final-form rulemaking amends existing requirements in Subchapter F and existing air quality plan approval and operating permit fee schedules in Subchapter I. It also establishes fees in Subchapter I to address the disparity between revenue and expenses for the Department of Environmental Protection's (Department) Air Quality Program. These increased fees and new fees will provide a sound fiscal basis for continued air quality assessments and planning that are fundamental to protecting the public health and welfare and the environment. Increased funding for the Air Quality Program will also continue to allow for timely and complete review of plan approval and operating permit applications that provides the certainty businesses need to expand or locate in this Commonwealth.

This final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to the Commonwealth's State Implementation Plan (SIP) or as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs), as appropriate, following promulgation.

This final-form rulemaking was adopted by the Board at its meeting of July 21, 2020.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Viren Trivedi, Chief, Division of Permits, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Jennie Demjanick, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department's web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board").

C. *Statutory Authority*

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

This final-form rulemaking is further authorized under section 6.3 of the APCA (35 P.S. § 4006.3), which grants to the Board the authority to adopt regulations to establish fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process; operating permit program required by Title V of the CAA (42 U.S.C.A. §§ 7661—7661f); other requirements of the CAA; and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the Board by regulation to establish fees to support the air pollution control program authorized by the APCA and not covered by fees required by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)).

D. *Background and Purpose*

This final-form rulemaking amends Chapters 121 and 127, Subchapters F and I. This final-form rulemaking amends existing requirements in Subchapter F and existing air quality plan approval and operating permit fee schedules in Subchapter I. It also establishes fees in Subchapter I to address the disparity between revenue and expenses for the Department's Air Quality Program. These amendments ensure that fees are sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the CAA and section 6.3 of the APCA.

The Department proposed new fees for applications for the following: plantwide applicability limits (PAL); ambient air impact modeling of certain plan approval applications; risk assessments; asbestos abatement or demolition or renovation project notifications (asbestos notifications); and requests for determination (RFD). This final-form rulemaking also includes a provision stating that the Department may establish fees for the use of general plan approvals (GPA) and general operating permits (GP) for stationary or portable sources and the fees will be established when the GPA or GP is issued or modified by the Department. The Department also adjusted the name of the annual operating permit "administration" fee to an annual operating permit "maintenance" fee that will be due on or before December 31 of each year.

The fee structure will ensure the continued protection of public health and welfare of the approximately 12.8 million residents of this Commonwealth and the environment and allow the Commonwealth to meet the obligations required by the CAA. This financial support is also necessary to ensure the timely issuance of air quality permits for the regulated community, which could help retain and attract businesses to this Commonwealth. As a result, residents of this Commonwealth and industries benefit from this final-form rulemaking.

The plan approval application and operating permit fee schedules in this final-form rulemaking are designed to

bring the Department's Air Quality Program's permitting fee revenue in line with expenditures so that the Air Quality Program is self-sustaining as required under the CAA. The new and increased fees in this final-form rulemaking are needed to cover the Department's costs related to implementing the air pollution control plan approval and operating permit process required under the CAA and APCA to attain and maintain the National Ambient Air Quality Standards (NAAQS) for air pollutants including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide and sulfur dioxide, as well as other requirements of the CAA, APCA and regulations promulgated thereunder. Controlling air pollutant emissions is essential to protecting public health and welfare and the environment.

The Department's Air Quality Program issues plan approval and operating permits for two types of sources—major and nonmajor. See 24 Pa.B. 5899 (November 26, 1994). This permitting program was subsequently reviewed and approved by the EPA. See 61 FR 39597 (July 30, 1996). Major sources are those that emit air pollution above designated thresholds under the CAA, and nonmajor sources are those that emit air pollution below the thresholds. See 42 U.S.C.A. § 7661. Major sources are subject to the statutory requirements under Title V of the CAA and are referred to as Title V sources. Conversely, nonmajor sources are subject to the APCA, but not Title V of the CAA, and are referred to as Non-Title V sources.

In recent years, the Department, like many State and local agencies, has experienced shortfalls in fee revenue due to emissions reductions at major facilities. This shortfall has led many agencies to re-evaluate their fee structures. A number of State and local agencies are currently in the process of adjusting their fee schedules to address the decline in program funding.

The Department currently regulates approximately 500 Title V and 2,100 Non-Title V facilities in this Commonwealth. Establishing the fee schedules in this final-form rulemaking will provide the necessary financial support to continue the Department's air quality plan approval application and operating permit process and initiatives to protect the public health and welfare of the approximately 12.8 million residents of this Commonwealth and the environment. This financial support will also help ensure the timely issuance of air quality permits for the regulated community, which will help retain and attract businesses to this Commonwealth.

In accordance with 40 CFR 70.10(b) and (c) (relating to Federal oversight and sanctions), the EPA may withdraw approval of a Title V Operating Permit Program, in whole or in part, if the EPA finds that a State or local agency has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a notice of deficiency (NOD). The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Operating Permit Program in this Commonwealth that would be administered and enforced by the EPA. In this instance, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA (42 U.S.C.A. § 7509) if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds ($1.73 billion in 2018) if not obligated for projects approved by the Federal Highway Administration. The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA (42 U.S.C.A. §§ 7403 and 7405). Implementation of the increased fees and new fees in Subchapter I would avoid the issuance of a Federal Title V Operating Permit Program NOD and Federal oversight and mandatory CAA sanctions.

Section 9.2(a) of the APCA (35 P.S. § 4009.2(a)) provides for the establishment of the Clean Air Fund and separate accounts, if necessary, to comply with the requirements of the CAA. The CAA and its implementing regulations specifically provide that any fees collected under the Title V Operating Permit Program have to be used solely for the costs of that program. See 42 U.S.C.A. § 7661a(b)(3)(C)(iii) and 40 CFR 70.9(a) (relating to fee determination and certification). As a result, in this Commonwealth, the Clean Air Fund consists of two "special fund" appropriations: the Title V Account and the Non-Title V Account. The Title V Account collects the revenue received from the Title V air quality permitting and emission fees. The Non-Title V Account collects the revenue received from the Non-Title V air quality permitting fees and the fines and penalties from both Title V and Non-Title V facilities.

Projected revenue and expenditures

In the early years of the Title V operating permitting program when there were more facilities and emissions of regulated pollutants were significantly greater than today, the Clean Air Fund balance was large. After many years of drawing down this accumulated balance to cover Air Quality Program costs and expenditures that exceeded annual revenue, the Clean Air Fund balance is now approaching zero. The fee amendments in this final-form rulemaking halt this decline in the Clean Air Fund balance and bring annual program revenue in line with annual program expenditures.

To maintain solvency in the Clean Air Fund and match revenue to expenditures, the Department needs to generate additional revenue of approximately $5.0 million for the Title V Account and $7.7 million for the Non-Title V Account beginning by fiscal year (FY) 2020-2021 to balance the projected expenditures of $19.2 million for the Title V Account and $9.4 million for the Non-Title V Account (a combined total expenditure of approximately $28.6 million).

The Title V Account expenditures exceeded revenue in FY 2018-2019 and are projected to exceed revenues by $4 million and rising to over $5.0 million in each fiscal year going forward. The Title V Account is currently projected to have a decreasing ending balance, from $20.744 million in FY 2018-2019 to negative $9.977 million in FY 2024-2025, or a decrease of over $30 million, as shown in Table 1.

Table 1

Title V Account without Fee Amendments

(in thousands of dollars)

	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
	ACTUAL	BUDGET	PLAN YR 1	PLAN YR 2	PLAN YR 3	PLAN YR 4	PLAN YR 5
Beginning Balance	$ 22,684	$ 20,744	$ 15,117	$ 11,322	$ 6,435	$ 1,113	$ (4,355)
Total Revenue	$ 15,938	$ 12,912	$ 14,930	$ 14,213	$ 14,160	$ 14,404	$ 14,647
Total Expenditures	$ 17,878	$ 18,539	$ 18,725	$ 19,100	$ 19,482	$ 19,872	$ 20,269
Ending Balance	**$ 20,744**	**$ 15,117**	**$ 11,322**	**$ 6,435**	**$ 1,113**	**$ (4,355)**	**$ (9,977)**

The Non-Title V Account expenditures exceeded revenue in FY 2018-2019 and are projected to exceed revenue by approximately $6 million and rising to over $6.5 million in each fiscal year going forward. The Non-Title V Account balance is projected to reach zero in FY 2020-2021 and to have a deficit of around $28 million by FY 2024-2025, as expenditures outpace revenue, as shown in Table 2.

Table 2

Non-Title V Account without Fee Amendments

(in thousands of dollars)

	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
	ACTUAL	BUDGET	PLAN YR 1	PLAN YR 2	PLAN YR 3	PLAN YR 4	PLAN YR 5
Beginning Balance	$ 10,940	$ 8,746	$ 2,855	$ (2,817)	$ (8,842)	$ (15,057)	$ (21,468)
Total Revenue	$ 7,175	$ 3,644	$ 3,740	$ 3,575	$ 3,577	$ 3,577	$ 3,577
Total Expenditures	$ 9,369	$ 9,535	$ 9,412	$ 9,600	$ 9,792	$ 9,988	$ 10,188
Ending Balance	**$ 8,746**	**$ 2,855**	**$ (2,817)**	**$ (8,842)**	**$ (15,057)**	**$ (21,468)**	**$ (28,079)**

Clean Air Fund ending balances

Table 3 shows the Title V and Non-Title V Accounts combined projected negative balance in the Clean Air Fund during FY 2022-2023 and later based on the existing fee schedules.

Table 3

Clean Air Fund Ending Balances without Fee Amendments

(in thousands of dollars)

	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
	ACTUAL	BUDGET	PLAN YR 1	PLAN YR 2	PLAN YR 3	PLAN YR 4	PLAN YR 5
Title V Ending Balance	$ 20,744	$ 15,117	$ 11,322	$ 6,435	$ 1,113	$ (4,355)	$ (9,977)
Non-Title V Ending Balance	$ 8,746	$ 2,855	$ (2,817)	$ (8,842)	$ (15,057)	$ (21,468)	$ (28,079)
Clean Air Fund Ending Balance	**$ 29,490**	**$ 17,972**	**$ 8,505**	**$ (2,407)**	**$ (13,944)**	**$ (25,823)**	**$ (38,056)**

If this final-form rulemaking is promulgated in early 2021, the anticipated increased revenue is projected to keep the Clean Air Fund solvent (see Table 6). For instance, the Clean Air Fund ending balances without the fee amendments are projected to be $8.5 million in FY 2020-2021; a deficit of $2.4 million in FY 2021-2022; and a deficit of $13.9 million in FY 2022-2023. Conversely, the Clean Air Fund ending balances with the fee amendments are projected to be $18.6 million in FY 2020-2021; $19.5 million in FY 2021-2022; and $19.4 million in FY 2022-2023. The increased revenue will come in time for the Non-Title V Account to avoid a deficit. Tables 4 and 5 show the overall projected balances for the Title V and Non-Title V Accounts.

Table 4
Title V Account with Fee Amendments
(in thousands of dollars)

	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
	ACTUAL	BUDGET	PLAN YR 1	PLAN YR 2	PLAN YR 3	PLAN YR 4	PLAN YR 5
Beginning Balance	$ 22,684	$ 20,744	$ 15,117	$ 13,122	$ 12,166	$ 10,382	$ 8,419
Total Revenue	$ 15,938	$ 12,912	$ 17,229	$ 19,149	$ 19,102	$ 19,340	$ 19,583
Total Expenditures	$ 17,878	$ 18,539	$ 19,224	$ 20,105	$ 20,886	$ 21,303	$ 21,729
Ending Balance	**$ 20,744**	**$ 15,117**	**$ 13,122**	**$ 12,166**	**$ 10,382**	**$ 8,419**	**$ 6,273**

Table 5
Non-Title V Account with Fee Amendments
(in thousands of dollars)

	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
	ACTUAL	BUDGET	PLAN YR 1	PLAN YR 2	PLAN YR 3	PLAN YR 4	PLAN YR 5
Beginning Balance	$ 10,940	$ 8,746	$ 6,955	$ 5,494	$ 7,390	$ 9,096	$ 10,606
Total Revenue	$ 7,175	$ 7,744	$ 7,951	$ 11,496	$ 11,498	$ 11,498	$ 11,498
Total Expenditures	$ 9,369	$ 9,535	$ 9,412	$ 9,600	$ 9,792	$ 9,988	$ 10,188
Ending Balance	**$ 8,746**	**$ 6,955**	**$ 5,494**	**$ 7,390**	**$ 9,096**	**$ 10,606**	**$ 11,916**

Table 6
Clean Air Fund Ending Balances with Fee Amendments
(in thousands of dollars)

	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
	ACTUAL	BUDGET	PLAN YR 1	PLAN YR 2	PLAN YR 3	PLAN YR 4	PLAN YR 5
Title V Ending Balance	$ 20,744	$ 15,117	$ 13,122	$ 12,166	$ 10,382	$ 8,419	$ 6,273
Non-Title V Ending Balance	$ 8,746	$ 6,955	$ 5,494	$ 7,390	$ 9,096	$ 10,606	$ 11,916
Clean Air Fund Ending Balance	$ 29,490	$ 22,072	$ 18,616	$ 19,556	$ 19,478	$ 19,025	$ 18,189

Essential program functions and cost-saving measures

The Department has sought to maintain parity between its revenue and expenditures over the last several years by reducing costs associated with administering the Air Quality Program. These cost reductions include streamlining the air permitting program through implementing the Permit Decision Guarantee policy, creating the online RFD form, issuing general plan approvals and general operating permits for 19 source categories and not filling open staff positions. The remaining reasonable costs that cannot be readily reduced include the cost to perform certain activities related to major facility operations, including the review and processing of plan approvals and operating permits; emissions and ambient air monitoring; compliance inspections; developing regulations and guidance; modeling, analyses and demonstrations; and preparing emission inventories and tracking emissions. Direct and indirect program costs include personnel costs; office space leases; operating expenses such as telecommunications, electricity, travel, auto supplies and fuel; and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers.

The Department has taken steps to improve the quality, efficiency and responsiveness of the Air Quality Program, including by increasing its efforts to communicate with applicants for plan approvals and operating permits. These efforts include making greater use of preapplication conferences to help applicants with questions or concerns regarding plan approval and operating permit applications; corresponding with applicants at critical points in the plan approval and operating permit review process; and creating a series of guides about plan approvals and operating permits to provide information to applicants and the public.

A key provision of Title V is the requirement to establish a financially adequate permit fee schedule. Both section 6.3 of the APCA and the EPA's 40 CFR Part 70 (relating to state operating permit programs) regulations require permitting authorities to charge Title V sources annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover the entirety of Title V operating permit program costs. See 40 CFR 70.9. Title V permit fees are used to implement and enforce the permitting program, including review of new permit applications and revisions or renewals of existing permits; monitoring facility compliance; taking enforcement actions for noncompliance; performing monitoring, modeling and analysis; tracking facility emissions; and preparing emission inventories.

Prior fee rulemakings

Regulations related to the fee schedules for plan approval and operating permit activities were last revised in November 1994, with staged increases occurring over the ensuing 10 years. See 24 Pa.B. 5899. The last of the staged plan approval and operating permit fee increases occurred in January 2005. As a result, these fees have not increased in 15 years, while expenses have continued to increase.

The Board revised the Title V annual emission fee under § 127.705 (relating to emission fees) in 2013. At that time, the Department projected that the increased annual emission fee would not be sufficient to maintain the Title V fund and noted that a revised annual emission fee or other revised permitting fees would be needed within 3 years. See 43 Pa.B. 7268 (December 14, 2013). This is due, in part, because emissions subject to the Title V annual emission fee have decreased by 47% since 2000 and continue to decrease as more emissions reductions are required to attain and maintain the revised applicable NAAQS established by the EPA. Installation of air pollution control technology over the past 2 decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants and the conversion at many major facilities from burning coal or oil to burning natural gas has resulted in the decreased emission of regulated pollutants that are subject to the Title V annual emission fee, and revenues collected have been decreasing as a consequence. This is resulting in reduced fee revenue for the Air Quality Program, even with the revised Title V annual emission fee adopted in 2013.

As revenue for the program has decreased over the past several years, one area of cost cutting has been reducing the staffing complement. Failure to adjust the Air Quality Program fee schedules to adequately cover program costs will cause additional staff reductions. Reduced staff will cause delays in processing plan approval and operating permit applications and issuing approved plan approvals and operating permits. Delays in the issuance of the plan approvals and operating permits can cause economic disruptions because the owner or operator of a regulated facility may not operate without an operating permit. The owner or operator may not install a new source or modify an existing source without a plan approval. This may result in delays for industry to implement expanded, new or improved processes, with associated loss of revenue to industry, loss of jobs for the community and loss of tax revenue for the Commonwealth. Delays in receiving plan approvals can have a major impact on an owner or operator's decision to operate or expand operations in this Commonwealth.

Further, fewer Department staff to conduct inspections, respond to complaints and pursue enforcement actions will result in less oversight of regulated industry compliance or noncompliance. This, in turn, will result in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth.

Decreasing program revenues also impacts the operation and maintenance of the Commonwealth's ambient air monitoring network, which provides the data to measure the Commonwealth's progress in attaining and maintaining the NAAQS established by the EPA. Decreased program revenues could also impact the Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of services available to small businesses. This could potentially lead to fewer viable small businesses and reduce the economic vitality of this Commonwealth by reducing the number of available jobs and tax revenue generated by these small businesses.

By addressing the Clean Air Fund deficits, the Department will be able to continue to serve the regulated community and protect the quality of air in this Commonwealth. Furthermore, a failure to attain and maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could precipitate punitive actions by the EPA, including implementation of a Federal Implementation Plan (FIP) and collection of all fees and revenue by the EPA.

Annual operating permit administration fee

The revenue generated from the annual operating permit administration fees does not adequately cover the costs of Department services provided to facility owners and operators for this fee. In particular, the current annual operating permit administration fee of $750 for the owners and operators of Title V facilities is limited to those that are identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), which is a total of 30 Title V facilities. The current annual operating permit administration fee for the 30 affected Title V owners and operators generates revenue of only $22,500. To remedy this, the current annual operating permit administration fee under §§ 127.703(c) and 127.704(c) (relating to operating permit fees under Subchapter F; and Title V operating permit fees under Subchapter G) is amended with the annual operating permit maintenance fee under §§ 127.703(d) and 127.704(d). The annual operating permit maintenance fees are designed to recover costs to the Department for providing services to facility owners and operators that are otherwise absorbed in the revenue generated from the emission fees paid by the owners and operators of Title V facilities, permitting fee revenue from the owners and operators of both Title V and Non-Title V facilities, and General Fund money. These services include facility inspections and review of facility records and operating permit conditions to ensure that the facility is in compliance with its operating permit. The annual operating permit maintenance fees in this final-form rulemaking apply to the owners and operators of affected Non-Title V and Title V facilities.

Amended, new and deleted fees

In addition, in this final-form rulemaking, the Board is addressing the potential Clean Air Fund deficits by amending existing fees in Subchapter I related to plan approval and operating permit applications for the owners and operators of both Non-Title V and Title V facilities. The Board is also establishing fees related to applications for PALs, modifications of existing plan approvals and analyses of ambient impacts of a source. Fees for RFDs and for submission of notifications for asbestos abatement or regulated demolition or renovation projects are also established. The fee for claims of confidential information in § 127.711 (relating to fees for claims of confidential information) is deleted in this final-form rulemaking because the Department determined that it is unneeded at this time.

In this final-form rulemaking, the Board moved the fees for risk assessment analyses from its own section under § 127.708, previously related to risk assessment in the proposed rulemaking, to the newly established subsection (k) under § 127.702 (relating to plan approval fees). The Board made this revision to clarify that the fee for a risk

assessment is part of the fees for a plan approval application, in response to comments received. A risk assessment analysis report is prepared by the Department in response to a plan approval application that identifies the presence of hazardous air pollutants, which include carcinogenic and teratogenic compounds. The Department conducts a risk assessment analysis to assess the potential adverse public health and welfare effects under both current and planned future conditions caused by the presence of hazardous air pollutants after the source is controlled. Implementation of plan approval application fees for risk assessment analyses will support program resources to address this important area of public health and social well-being. The cost of this analysis is currently borne by the owners and operators of all permitted facilities through the plan approval application and permitting fees that they pay. Since risk assessment analyses are not required for all plan approval applications, the Board established the plan approval application fee for a risk assessment to allocate these costs to owners and operators that are required to have the analysis rather than burdening all owners and operators of permitted sources with costs for services that they do not use or need.

Asbestos abatement fee

The Board renumbered proposed § 127.709 to § 127.708 (relating to asbestos abatement or regulated demolition or renovation project notification) in this final-from rulemaking. The Board also revised this section to clarify that this final-form rulemaking fee applies only to the initial notification by an owner or operator of an asbestos abatement or regulated demolition or renovation project that is subject to 40 CFR Part 61, Subpart M (relating to National emission standard for asbestos) or the Asbestos Occupations Accreditation and Certification Act (Act 1990-194) (63 P.S. §§ 2101—2112) and which is not located in Philadelphia County or Allegheny County. Section 127.708(b) in this final-form rulemaking specifies that the Department will waive the fee for a subsequent notification form submitted for the asbestos abatement or regulated demolition or renovation project. The Department receives upwards of 5,000 initial asbestos abatement notifications and a total of about 7,000 asbestos abatement notifications each year, which require staff review and site inspections.

The Department's costs for performing these asbestos abatement notification-related services are currently absorbed by the owners and operators of all permitted facilities through the plan approval application and permitting fees that they pay. The Department currently inspects around 200 asbestos abatement projects per year due to staffing constraints. The fee for asbestos abatement notifications is designed to recover the Department's costs for these services and will provide the support to maintain and increase the number of staff assigned to inspect asbestos abatement projects and the number of asbestos abatement project inspections performed. The Philadelphia Department of Health, Air Management Services (AMS) and the Allegheny County Health Department (ACHD) have established fee schedules for notifications of asbestos abatement projects. For comparison, Philadelphia AMS receives about 1,800 asbestos abatement notifications per year and revenue of approximately $300,000 annually from asbestos abatement notification fees. The ACHD receives about 1,200 notifications per year and received revenue of approximately $520,000 in calendar year 2019 from asbestos abatement notification fees.

Requests for determination

The Board renumbered proposed § 127.710 to § 127.709 (relating to fees for requests for determination) in this final-form rulemaking. Section 127.709 establishes fees for the owner or operator of a source that submits an RFD under § 127.14 (relating to exemptions) for a plan approval, an operating permit or for both a plan approval and an operating permit. The RFD process allows an owner or operator to obtain a written case-by-case exemption from the requirement to apply for a plan approval or operating permit, if the Department determines the requestor meets the exemption criteria. The RFDs are reviewed by Department staff in much the same way as other applications and this final-form rulemaking establishes a fee to recover the costs to the Department.

General plan approval and general operating permit fees

The Board also renumbered proposed § 127.712 to § 127.710 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H) in this final-form rulemaking. Section 127.710 is established to address fees for the use of general plan approvals or general operating permits issued by the Department for stationary or portable sources. The Department develops a proposed general plan approval or general operating permit along with the proposed application fees and provides notice in the *Pennsylvania Bulletin* and the opportunity to comment as provided in §§ 127.612 and 127.632 (relating to public notice and review period). The Department may also revise the application fee for an existing general plan approval or general operating permit and provide notice in the *Pennsylvania Bulletin* and an opportunity to comment on the revised application fee as provided in §§ 127.612 and 127.632. The Department has developed and issued general plan approvals and general operating permits for 19 source categories since 1996.

Annual operating permit maintenance fee

The Board is changing the name of the annual operating permit administration fee under § 127.703(c) to the annual operating permit maintenance fee under § 127.703(d) for the owners or operators of affected Non-Title V facilities. The annual operating permit maintenance fee for the owners or operators of all affected synthetic minor facilities for calendar years 2021—2025 is $4,000. This is increased from the proposed amount of $2,500 in response to comments from members of the Air Quality Technical Advisory Committee (AQTAC) that the proposed fees were too low for these facilities. The annual operating permit maintenance fee for the owners or operators of all affected facilities that are not synthetic minors for calendar years 2021—2025 is $2,000. The annual operating permit maintenance fees collected under § 127.703(d) are projected to generate revenue of approximately $5.5 million for the Non-Title V Account.

The Board is also changing the name of the annual operating permit administration fee under § 127.704(c) to the annual operating permit maintenance fee under § 127.704(d) for the owners or operators of affected Title V facilities. The annual operating permit maintenance fee for the owners or operators of all affected Title V facilities for calendar years 2021—2025 is $8,000. This is decreased from the proposed amount of $10,000 in response to comments from members of AQTAC that the proposed fee was too high for these facilities relative to the proposed annual operating permit maintenance fee for synthetic minor facilities under § 127.703(d)(1). This reduction in the Title V annual operating permit mainte-

nance fee offsets the increase in the annual operating permit maintenance fee for synthetic minor facilities. These revisions result in no net change in the revenue collected by the Department in this final-form rulemaking. The annual operating permit maintenance fees collected under § 127.704(d) are projected to generate revenue of approximately $4 million for the Title V Account.

No increase to the Title V emission fee

The Board considered three options for revising the Title V emission fee under § 127.705 and implementing an annual operating permit maintenance fee for the owners and operators of affected Title V facilities. The first option would not increase the current emission fee under § 127.705 and would collect an annual operating permit maintenance fee of $8,000 from the owners or operators of affected Title V facilities. The second option would have increased the Title V emission fee to $110 per ton up to the 4,000-ton cap per regulated air pollutant and collected an annual operating permit maintenance fee of $5,000 from the owners or operators of all affected Title V facilities. The third option would have increased the Title V emission fee to $118 per ton up to the 4,000-ton cap, established an emission fee floor of $5,000 per facility and not collected an annual operating permit maintenance fee from the owners or operators of affected Title V facilities. The Department anticipated that the amount of revenue to be generated was approximately equal between the three options. Each of the options would have generated annual revenue of approximately $19-$20 million or an increase of approximately $6 million over current Title V facility revenue. The three options varied in the number of owners and operators of Title V facilities that would pay 90% of the combined Title V emission fee and annual operating permit maintenance fee revenue.

This final-form rulemaking implements the first option, leaving the Title V emission fee established in § 127.705 unchanged and collecting an annual operating permit maintenance fee of $8,000 from the owners and operators of all affected Title V facilities. The Board chose this approach based on the equities involved among the number of impacted Title V facility owners and operators. This option spreads the cost obligation for supporting the Title V Operating Permit Program across 289 Title V facility owners and operators versus 206 Title V facility owners and operators for the second option and 129 Title V facility owners and operators for the third option. For additional comparison, the current fee schedule spreads the cost obligations of supporting the Title V Operating Permit Program across 102 Title V facility owners and operators. Thus, the option in this final-form rulemaking spreads the financial burden of supporting the Title V Operating Permit Program across almost three times as many Title V facility owners and operators as the current fee schedule.

The revenue generated by these final-form fees will be used to support the Department's Air Quality Program as authorized by the APCA. The fee schedule amendments will allow the Department to maintain staffing levels in the Air Quality Program as well as cover operating expenses such as telecommunications, electricity, travel, auto supplies and fuel along with the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers. The Department established the final-form fees by identifying the number of staff required and the approximate time necessary to complete each review or action, including the amount of salaries and benefits. The Department also compared the final-form fees to those of this Commonwealth's approved local air pollution control agencies (Philadelphia County and Allegheny County) and to those of surrounding states.

The Board notes that this final-form rulemaking will be published in January 2021, after the calendar year 2021 has begun. Application fee provisions in Annex A that apply to applications filed in the calendar year 2021 will take effect upon publication of this this final-form rulemaking in the *Pennsylvania Bulletin* on January 16, 2021.

Public outreach

The Department consulted with AQTAC and the Small Business Compliance Advisory Committee (SBCAC) in the development of this final-form rulemaking. On December 12, 2019, AQTAC concurred with the Department's recommendation to move this final-form rulemaking forward to the Board for consideration. On January 22, 2020, SBCAC concurred with the Department's recommendation to move this final-form rulemaking forward to the Board for consideration.

The Department also conferred with the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee concerning this final-form rulemaking on January 6, 2020. On January 21, 2020, the CAC concurred with the Department's recommendation to advance this final-form rulemaking to the Board for consideration.

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

§ 121.1. Definitions

This section contains definitions relating to the air quality regulations. This final-form rulemaking adds the definition of "synthetic minor facility" to clarify that it is an air contamination source subject to Federally enforceable conditions that limit the facility's potential to emit to less than the major facility thresholds specified in the definition of "Title V facility."

No change is made to this definition from the proposed to this final-form rulemaking.

§ 127.424. Public notice

This section contains procedures the Department follows to prepare a notice of action to be taken on an application for an operating permit. An incorrect cross reference is amended in subsections (b) and (e)(3). The current cross references are to § 127.44(a)(1)—(4) (relating to public notice) and to § 127.44(a). The final-form cross references are to § 127.44(b)(1)—(5) and to § 127.44(b).

No change is made to this section from the proposed to this final-form rulemaking.

§ 127.465. Significant operating permit modification procedures

This section establishes the procedures the owner or operator of a stationary air contamination source or facility shall follow to make a significant modification to an applicable operating permit.

Subsection (a) establishes that the owner or operator of a stationary air contamination source or facility may make a significant modification to an applicable operating permit under this section.

Subsection (b) establishes that the significant operating permit modifications must meet the requirements of Chapter 127, including §§ 127.424 and 127.425 (relating to public notice; and contents of notice).

Subsection (c) establishes that the owner or operator of the facility shall submit to the Department, on a form provided by or approved by the Department, a brief description of the change, the date on which the change is to occur and the proposed language for revising the operating permit conditions proposed to be changed.

Subsection (d) establishes that unless precluded by the CAA or regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to an operational flexibility change authorized by this section.

No changes are made to subsections (a)—(d) from the proposed to this final-form rulemaking.

Subsection (e) establishes that the Department will take final action on the proposed change for the significant modification of the applicable operating permit and, after taking final action, will publish notice of the action in the *Pennsylvania Bulletin*. Subsection (e) is amended in this final-form rulemaking in response to comments received to specify that the Department will take final action on the proposed change within 180 days of receipt of the complete application for the significant operating permit modification of the applicable operating permit.

§ 127.702. Plan approval fees

Section 127.702 establishes, among other things, the following fee provisions:

Subsection (a) establishes that the applicable fees required under subsections (b)—(h) are cumulative.

Under subsection (b), the owner or operator of a source requiring approval under Chapter 127, Subchapter B (relating to plan approval requirements) shall pay a fee equal to $1,000 for applications filed during calendar years 2005—2020; $2,500 for applications filed during calendar years 2021—2025; $3,100 for applications filed during calendar years 2026—2030; and $3,900 for applications filed for the calendar years beginning with 2031.

Under subsection (c), the owner or operator of a source requiring approval under Chapter 127, Subchapter E (relating to new source review) shall pay a fee equal to $5,300 for applications filed during calendar years 2005—2020; $7,500 for applications filed during calendar years 2021—2025; $9,400 for applications filed during calendar years 2026—2030; and $11,800 for applications filed for the calendar years beginning with 2031.

Under subsection (d), the owner or operator of a source subject to and requiring approval under Chapter 122, Chapter 124 or § 127.35(b) (relating to National standards of performance for new stationary sources; national emission standards for hazardous air pollutants; and maximum achievable control technology standards for hazardous air pollutants) shall pay the specified fee for each applicable standard up to and including three applicable standards, which is equal to $1,700 for applications filed through calendar year 2020; $2,500 for applications filed during calendar years 2021—2025; $3,100 for applications filed during calendar years 2026—2030; and $3,900 for applications filed for the calendar years beginning with 2031. An owner or operator that has more than three applicable standards will pay the fee for a maximum of three standards, but the Department's permitting review will include all applicable standards.

Under subsection (e), the owner or operator of a source subject to and requiring approval under § 127.35(c), (d) or (h) shall pay a fee equal to $8,000 for applications filed during calendar years 2005—2020; $9,500 for applications filed during calendar years 2021—2025; $11,900 for applications filed during calendar years 2026—2030; and $14,900 for applications filed for the calendar years beginning with 2031.

Under subsection (f), the owner or operator of a source requiring approval under Chapter 127, Subchapter D (relating to prevention of significant deterioration of air quality) shall pay a fee equal to $22,700 for applications filed during calendar years 2005—2020; $32,500 for applications filed during calendar years 2021—2025; $40,600 for applications filed during calendar years 2026—2030; and $50,800 for applications filed for the calendar years beginning with 2031.

No changes are made to subsections (a)—(f) from the proposed to this final-form rulemaking.

Subsection (g) addresses the fees payable by the owner or operator of a source that is proposing a minor modification of a plan approval, an extension of a plan approval or a transfer of a plan approval due to a change of ownership. Subsection (g) was proposed to be amended to delete the requirements for the minor modifications and add requirements to establish that the owner or operator of a source that submits a plan approval application for a PAL permit under § 127.218(b) (relating to PALs), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to $7,500 for applications filed during calendar years 2020—2025; $9,400 for applications filed during calendar years 2026—2030; and $11,800 for applications filed for the calendar years beginning with 2031. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (h) specifies that the modification of a plan approval that includes the reassessment of a control technology determination or of the ambient impacts of the source will not be considered a minor modification of the plan approval. Subsection (h) was proposed to be amended to delete the requirement that the modification of the plan approval is not a minor modification and add requirements to establish that the owner or operator of a source proposing a PAL under Subchapter D that is not included in an application submitted under subsections (f) or (g) shall pay a fee equal to $7,500 for applications filed during calendar years 2020—2025; $9,400 for applications filed during calendar years 2026—2030; and $11,800 for applications filed for the calendar years beginning with 2031. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (i) was deleted in the proposed rulemaking where it specifies that the Department may establish application fees for general plan approvals and plan approvals for sources operating at multiple temporary locations which will not be greater than the fees established by subsection (b). These fees shall be established at the time the plan approval is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632. Subsection (i) was proposed to be amended to add requirements to establish that the owner or operator of a source proposing a minor modification of a plan approval, an extension of a plan approval or a transfer of a plan approval due to a change of ownership shall pay the fee in paragraph (1) or paragraph (2) as applicable. In this final-form rulemak-

ing, subsection (i) deletes the words "due to a change of ownership" to not limit the transfer of the plan approval to a change of ownership.

Subsection (i)(1) was proposed to be added to establish that an applicant for a minor modification of a plan approval may not include an increase in emissions, an analysis of the ambient impacts of the source or a reassessment of a control technology determination. The applicant shall meet the applicable requirements of § 127.44 and pay a fee equal to $300 for applications filed during calendar years 2005—2020; $1,500 for applications filed during calendar years 2021—2025; $1,900 for applications filed during calendar years 2026—2030; and $2,400 for applications filed for the calendar years beginning with 2031. Subsection (i)(1) was not revised from the proposed to this final-form rulemaking.

Subsection (i)(2) was proposed to be added to establish that an applicant for an extension of a plan approval or a transfer of a plan approval due to a change of ownership shall pay a fee equal to $300 for applications filed during calendar years 2005—2020; $750 for applications filed during calendar years 2021—2025; $900 for applications filed during calendar years 2026—2030; and $1,100 for applications filed for the calendar years beginning with 2031. In this final-form rulemaking, subsection (i)(2) deletes the words "due to a change of ownership" to not limit the transfer of the plan approval to a change of ownership.

Subsection (i) adds paragraph (3) to specify that the fee for an extension of a plan approval will not apply if, through no fault of the applicant, an extension is required.

Under subsection (j), the owner or operator of a source proposing a revision to a plan approval application submitted by the applicant that includes one or more of the changes identified in paragraph (1) or paragraph (2) after the Department has completed its technical review shall pay the fee in paragraph (1) or paragraph (2) as applicable.

Subsection (j)(1) establishes that for an analysis of the ambient impacts of the source, the owner or operator shall pay a fee equal to $9,000 for applications filed during calendar years 2020—2025; $11,300 for applications filed during calendar years 2026—2030; and $14,100 for applications filed for the calendar years beginning with 2031. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (j)(2) establishes that for a reassessment of a control technology determination, the owner or operator shall pay the applicable fee under subsection (b).

Subsection (k) is added in this final-form rulemaking to specify that the owner or operator of a source applying for a risk assessment shall, as part of the plan approval application, pay the fee in paragraph (1) or paragraph (2), as applicable.

Subsection (k)(1) establishes that the owner or operator of a source applying for a risk assessment that is inhalation only for all modeling shall pay a fee equal to $10,000 for applications filed during calendar years 2020—2025; $12,500 for applications filed during calendar years 2026—2030; and $15,600 for applications filed for the calendar years beginning with 2031. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (k)(2) establishes that the owner or operator of a source applying for a multi-pathway risk assessment shall pay a fee equal to $25,000 for applications filed during calendar years 2020—2025; $31,300 for applications filed during calendar years 2026—2030; and $39,100 for applications filed for the calendar years beginning with 2031. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (k) was proposed as § 127.708. The reason for this change in this final-form rulemaking is discussed in Section D, Background and Purpose, under the subheading Amended, new and deleted fees.

§ 127.703. Operating permit fees under Subchapter F

Section 127.703 establishes, among other things, the following fee provisions:

Subsection (a) specifies that each applicant for an operating permit, which is not for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department. These fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof. Subsection (a) was proposed to be amended to delete the statement that these fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof. The discussion in Section E of the preamble to the proposed rulemaking incorrectly included the words "or to a transfer of an operating permit due to a change of ownership" as part of the proposed deletion.

Subsection (b) specifies the fees for processing an application for an operating permit. Subsection (b) was proposed to be amended to delete the statement regarding the fee for processing an application for an operating permit and add the requirement that each applicant subject to subsection (a) shall pay a fee equal to the fee specified in paragraphs (1)—(5), as applicable. These fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof or to a transfer of an operating permit due to a change of ownership. In this final-form rulemaking, subsection (b) deletes the words "due to a change of ownership" to not limit the transfer of the plan approval to a change of ownership.

Under subsection (b)(1), the fee for a new operating permit is $375 for applications filed during calendar years 2005—2020; $2,500 for applications filed during calendar years 2021—2025; $3,100 for applications filed during calendar years 2026—2030; and $3,900 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(2), the fee for a renewal and reissuance of an operating permit or part thereof is $375 for applications filed during calendar years 2005—2020; $2,100 for applications filed during calendar years 2021—2025; $2,600 for applications filed during calendar years 2026—2030; and $3,300 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(3), the fee for a minor modification of an operating permit or part thereof is $375 for applications filed during calendar years 2005—2020; $1,500 for applications filed during calendar years 2021—2025; $1,900 for applications filed during calendar years 2026—2030; and $2,400 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(4), the fee for a significant modification of an operating permit or part thereof is $375 for applications filed during calendar years 2005—2020; $2,000 for applications filed during calendar years 2021—2025; $2,500 for applications filed during calendar years 2026—2030; and $3,100 for applications filed for the calendar years beginning with 2031.

No changes were made to subsection (b)(1)—(4) from the proposed to this final-form rulemaking.

Under subsection (b)(5), the fee for an administrative amendment of an operating permit or part thereof or a transfer of an operating permit is $375 for applications filed during calendar years 2005—2020; $1,500 for applications filed during calendar years 2021—2025; $1,900 for applications filed during calendar years 2026—2030; and $2,400 for applications filed for the calendar years beginning with 2031. In this final-form rulemaking, subsection (b)(5) deletes the words "due to a change of ownership" to not limit the transfer of the plan approval to a change of ownership.

Subsection (c) specifies the annual operating permit administration fee is $375 for applications filed during the years beginning in 2005. Subsection (c) was proposed to be amended to specify that for applications filed through the effective date of this final-form rulemaking, each applicant subject to subsection (a) shall pay the annual operating permit administration fee of $375. Subsection (c) specifies that each applicant subject to subsection (a) shall pay the annual operating permit administration fee of $375 through December 31, 2020, instead of the effective date of this final-form rulemaking. The Board originally anticipated that the proposed rulemaking would be promulgated as a final-form regulation prior to calendar year 2020. The Board now anticipates that this final-form rulemaking will be promulgated prior to the end of calendar year 2020; hence the revision to the date certain of December 31, 2020.

Subsection (d) was proposed to be amended to delete the language that the Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations which will not be greater than the fees established by this section, and that these fees shall be established at the time the operating permit is issued and published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632. Subsection (d) was proposed to be amended with an Editor's Note to specify that beginning on the effective date of the final-form rulemaking, each applicant subject to subsection (a) shall pay the annual operating permit maintenance fee in paragraph (1) or paragraph (2) on or before December 31 of each year for the next calendar year. The Editor's Note in subsection (d) reflects that the publication date of this final-form rulemaking is the effective date. Subsection (d) notes that an exception was added in the newly revised subsection (d)(1).

Subsection (d)(1) provides that the annual operating permit maintenance fee for calendar year 2021 is due on or before 60 days after the effective date of this final-form rulemaking. The Board made this revision from the proposed rulemaking to this final-form rulemaking because the Board now anticipates this final-form rulemaking to be promulgated relatively close to the original payment due date of December 31, 2020. This revision will alleviate the concern that applicants will not have sufficient notice to submit the annual operating permit maintenance fee by December 31, 2020. Under this final-form rulemaking, applicants will have 60 days' notice to submit the annual operating permit maintenance fee for calendar year 2021.

Proposed subsection (d)(1) was moved to subsection (d)(2) in this final-form rulemaking. Subsection (d)(2) establishes that for a synthetic minor facility, the applicant shall pay a fee equal to $4,000 for calendar years 2021—2025; $5,000 for calendar years 2026—2030; and $6,300 for the calendar years beginning with 2031. The final-form fees of $4,000, $5,000 and $6,300 are revised upward from the proposed fees of $2,500, $3,100 and $3,900 in response to comments from members of AQTAC that the proposed fees were too low for these sources. Synthetic minor facilities are facilities which would otherwise be Title V facilities, if not for the owners and operators accepting Federally enforceable permit conditions to limit the potential emissions below major facility thresholds. These facilities require significant and time-consuming Departmental permitting review and inspection activities to monitor compliance with the permit limits.

Proposed subsection (d)(2) was moved to subsection (d)(3) in this final-form rulemaking. Subsection (d)(3) establishes that for a facility that is not a synthetic minor, the applicant shall pay a fee equal to $2,000 for calendar years 2021—2025; $2,500 for calendar years 2026—2030; and $3,100 for the calendar years beginning with 2031. A facility that is neither a major source nor a synthetic minor is a natural minor.

No changes were made to this subsection from the proposed to this final-form rulemaking.

§ 127.704. Title V operating permit fees under Subchapter G

Section 127.704 establishes, among other things, the following fee provisions:

Subsection (a) specifies that each applicant for an operating permit, which is for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department. Subsection (a) was proposed to be amended to delete the statement that these fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof. A slightly revised version of the deleted language in subsection (a) was moved to subsection (b) in the proposed rulemaking.

No changes were made to subsection (a) from the proposed to this final-form rulemaking.

Subsection (b) specifies the fee for processing an application for an operating permit. Subsection (b) was proposed to be amended to delete the statement regarding the fee for processing an application for an operating permit and add the requirement that each applicant subject to subsection (a) shall pay a fee equal to the fee specified in paragraphs (1)—(5), as applicable. The proposed amendment to subsection (b) further specified that these fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof or a transfer of an operating permit due to a change of ownership. In this final-form rulemaking, subsection (b) deletes the words "due to a change of ownership" to not limit the transfer of the plan approval to a change of ownership. The discussion in Section E of the preamble to the proposed rulemaking did not include the words "or to a transfer of an operating permit due to a change of ownership" as part of the proposed amendment.

Under subsection (b)(1), the fee for a new operating permit is $750 for applications filed during calendar years 2005—2020; $5,000 for applications filed during calendar years 2021—2025; $6,300 for applications filed during calendar years 2026—2030; and $7,900 for applications filed for the calendar years beginning with 2031. The fee of $750 for applications filed beginning with 2005 was established at 24 Pa.B. 5938 (November 26, 1994).

No change was made to this subsection from the proposed to this final-form rulemaking.

Under subsection (b)(2), the fee for a renewal and reissuance of an operating permit or part thereof is $750 for applications filed during calendar years 2005—2020; $4,000 for applications filed during calendar years 2021—2025; $5,000 for applications filed during calendar years 2026—2030; and $6,300 for applications filed for the calendar years beginning with 2031. Paragraph (2)(i) in the proposed rulemaking incorrectly specified that the fee for a renewal and reissuance of an operating permit would be $375 due to a drafting error. Paragraph (2)(i) specifies that the fee since 2005 is $750, as established at 24 Pa.B. 5938, and will be $750 through the end of calendar year 2020. Prior to this final-form rulemaking, the fees specified in this section for processing an application for the extension, modification, revision, renewal and reissuance of each operating permit or part thereof were the same for all of these actions; that is, $750 for applications filed beginning in 2005. This final-form rulemaking establishes different amounts of fees for each of these permitting actions commensurate with the Department's costs for performing the required reviews.

Under subsection (b)(3), the fee for a minor modification of an operating permit or part thereof is $750 for applications filed during calendar years 2005—2020; $1,500 for applications filed during calendar years 2021—2025; $1,900 for applications filed during calendar years 2026—2030; and $2,400 for applications filed for the calendar years beginning with 2031. Paragraph (3)(i) in the proposed rulemaking incorrectly specified that the fee for a minor modification of an operating permit or part thereof would be $375 due to a drafting error. Paragraph (3)(i) specifies that the fee is $750, for the reasons described in the previous paragraph regarding subsection (b)(2) in this final-form rulemaking.

Under subsection (b)(4), the fee for a significant modification of an operating permit or part thereof is $750 for applications filed during calendar years 2005—2020; $4,000 for applications filed during calendar years 2021—2025; $5,000 for applications filed during calendar years 2026—2030; and $6,300 for applications filed for the calendar years beginning with 2031. Paragraph (4)(i) in the proposed rulemaking incorrectly specified that the fee for a significant modification of an operating permit or part thereof would be $375 due to a drafting error. Paragraph (4)(i) specifies that the fee is $750, for the reasons described regarding subsection (b)(2) in this final-form rulemaking.

Under subsection (b)(5), the fee for an administrative amendment of an operating permit or part thereof or a transfer of an operating permit is $750 for applications filed during calendar years 2005—2020; $1,500 for applications filed during calendar years 2021—2025; $1,900 for applications filed during calendar years 2026—2030; and $2,400 for applications filed for the calendar years beginning with 2031. Paragraph (5)(i) in the proposed rulemaking incorrectly specified that the fee for an administrative amendment of an operating permit or part thereof would be $375 due to a drafting error. Paragraph (5)(i) specifies that the fee is $750 for the reasons described regarding subsection (b)(2) in this final-form rulemaking. Subsection (b)(5) deletes the words "due to a change of ownership" to not limit the transfer of an operating permit to a change of ownership. The discussion in Section E of the preamble to the proposed rulemaking did not include the words "or to a transfer of an operating permit due to a change of ownership" as part of the proposed amendment.

Prior to this final-form rulemaking, subsection (c) specified that the annual operating permit administration fee that is payable each year by a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 is $750 for applications filed during the years beginning in 2005. Subsection (c) was proposed to be amended to delete the phrase "The annual operating permit administration fee to be paid by a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 is:" and added the requirement for each applicant subject to subsection (a) that is the owner or operator of a facility identified in subparagraph (iv) of the definition of Title V facility in § 121.1 to pay the annual operating permit administration fee of $750 through the effective date of this final-form rulemaking. The effective date of this final-form rulemaking was replaced with the date December 31, 2020.

Subsection (d) was proposed to be amended to delete the language stating that the Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations which will not be greater than the fees established by this section. Subsection (d) clarifies the Editor's Note. Subsection (d) was proposed to be amended to require each applicant subject to subsection (a) to pay the annual operating permit maintenance fee on or before December 31 of each year for the next calendar year. This fee is equal to $8,000 for calendar years 2021—2025; $10,000 for calendar years 2026—2030; and $12,500 for the calendar years beginning with 2031. The final-form fees of $8,000, $10,000 and $12,500 are revised downward from the proposed fees of $10,000, $12,500 and $15,600 in response to comments from members of AQTAC that the proposed fees were too high for these facilities relative to the proposed maintenance fee for the facilities subject to § 127.703(a), that is, synthetic minor facilities. This reduction in the Title V annual operating permit maintenance fee offsets the increase in the annual operating permit maintenance fee for synthetic minor facilities. Thus, these revisions result in no net change in the revenue collected by the Department. Subsection (d) notes that an exception was added in the newly revised subsection (d)(1).

Subsection (d)(1) provides that the annual operating permit maintenance fee for calendar year 2021 is due on or before 60 days after the effective date of this final-form rulemaking. The Board made this revision from the proposed rulemaking to this final-form rulemaking because the Board now anticipates this final-form rulemaking to be promulgated relatively close to the original payment due date of December 31, 2020. This revision will alleviate the concern that applicants will not have sufficient notice to submit the annual operating permit maintenance fee by December 31, 2020. Under this final-form rulemaking, applicants will have 60 days' notice to submit the annual operating permit maintenance fee for calendar year 2021.

Subsection (e) establishes that the owner or operator of a source that submits an application for a PAL permit

under § 127.218(b), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to $10,000 for applications filed during calendar years 2020—2025; $12,500 for applications filed during calendar years 2026—2030; and $15,600 for applications filed for the calendar years beginning with 2031. This was a new subsection added in the proposed rulemaking. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (f) establishes that the owner or operator of a source proposing a PAL under Subchapter D that is not included in an application submitted under subsection (e) shall pay a fee equal to $10,000 for applications filed during calendar years 2020—2025; $12,500 for applications filed during calendar years 2026—2030; and $15,600 for applications filed for the calendar years beginning with 2031. This was a new subsection added in the proposed rulemaking. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking. In the proposed rulemaking Annex A incorrectly referenced subsection (d), as did the discussion in Section E of the preamble to the proposed rulemaking. Annex A in this final-form rulemaking corrects the reference from subsection (d) to subsection (e).

§ 127.705. Emission fees

This section is existing regulatory language that specifies the requirement for the owner or operator of a Title V facility including a Title V facility located in Philadelphia County or Allegheny County, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1, to pay an annual Title V emission fee.

Subsection (d) specifies that the emission fee imposed under subsection (a) shall be increased in each calendar year after December 14, 2013, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. For purposes of this subsection, paragraph (1) specifies that the Consumer Price Index for All-Urban Consumers shall be used for the adjustment required by this subsection and paragraph (2) specifies which revision of the Consumer Price Index for All-Urban Consumers shall be used. For clarity, subsection (d) was proposed to be amended to move the requirements of paragraphs (1) and (2) for the Consumer Price Index for All-Urban Consumers to new subsection (e).

No changes to this provision were made from the proposed to this final-form rulemaking.

§ 127.708. Asbestos abatement or regulated demolition or renovation project notification

The proposed language in § 127.708 has been moved in this final-form rulemaking to new subsection (k) under § 127.702. The Board makes this revision to clarify that the fee for a risk assessment is part of the fees for a plan approval application, in response to comments received. Proposed § 127.709 regarding the requirements for the owner or operator of an asbestos abatement or regulated demolition or renovation project has been renumbered in this final-form rulemaking as § 127.708.

Section 127.708(a) establishes that an owner or operator of an asbestos abatement or regulated demolition or renovation project that is subject to 40 CFR Part 61, Subpart M or Act 1990-194 and which is not located in Philadelphia County or Allegheny County shall submit to the Department with the required notification form a fee equal to $300 for forms filed during calendar years 2020—2025; $400 for forms filed during calendar years 2026—2030; and $500 for forms filed for the calendar years beginning with 2031. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking. This provision was labeled subsection (a) to accommodate a new subsection (b) that is added in this final-form rulemaking. In this final-form rulemaking, subsection (b) is added to establish that the Department will waive the fee for a subsequent notification form submitted for the same asbestos abatement or regulated demolition or renovation project. This final-form amendment is made in response to comments received on the proposed rulemaking requesting that this fee apply only to the initial notification for the project.

§ 127.709. Fees for requests for determination

Section 127.710 is renumbered from the proposed rulemaking to § 127.709 in this final-form rulemaking. Section 127.709 establishes fees for RFDs for whether a plan approval, an operating permit, or both, are needed for the change to the facility. The RFD process allows an owner or operator to avoid the full cost associated with submitting a comprehensive plan approval application by receiving a written determination from the Department. Under this section, the owner or operator of a source subject to Chapter 127 (relating to construction, modification, reactivation and operation of sources) that submits an RFD under § 127.14 for a plan approval, an operating permit, or for both a plan approval and an operating permit shall pay the applicable fee specified in paragraphs (1) or (2). Paragraph (1) establishes that the owner or operator of a source that meets the definition of small business stationary source set forth in section 3 of the APCA (35 P.S. § 4003) shall pay a fee equal to $400 for RFDs filed during calendar years 2020—2025; $500 for RFDs filed during calendar years 2026—2030; and $600 for RFDs filed for the calendar years beginning with 2031. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Paragraph (2) establishes that the owner or operator of a source that does not meet the criterion in paragraph (1) shall pay a fee equal to $600 for RFDs filed during calendar years 2020—2025; $800 for RFDs filed during calendar years 2026—2030; and $1,000 for RFDs filed for the calendar years beginning with 2031. In this final-form rulemaking, calendar years 2020—2025 are updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

§ 127.710. Fees for the use of general plan approvals and general operating permits under Subchapter H

Section 127.712 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H) in the proposed rulemaking is renumbered to § 127.710 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H) in this final-form rulemaking. Under § 127.710, the Department may establish application fees for the use of general plan approvals and general operating permits under Subchapter H (relating to general plan approvals and operating permits) for stationary or portable sources. These application fees will be established when the general plan approval or general operating permit is issued or modified by the Department. These application fees will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and

127.632. Apart from renumbering the section number, no changes are made to this section from the proposed rulemaking to this final-form rulemaking.

§ 127.711. Fees for claims of confidential information

The Department determined that the fee for claims of confidentiality in proposed § 127.711 is unneeded at this time and deleted it from this final-form rulemaking.

F. *Summary of Comments and Responses on the Proposed Rulemaking*

The Board adopted the proposed rulemaking at its meeting on December 18, 2018. On April 13, 2019, the proposed rulemaking was published for a 66-day comment period at 49 Pa.B. 1777 (April 13, 2019). Three public hearings were held on May 13, 15 and 16, 2019, in Pittsburgh, Norristown and Harrisburg, respectively. The comment period closed on June 17, 2019. The Board received comments from 1,427 commenters including the House of Representatives Environmental Resources and Energy Committee (Committee), the House of Representatives, and the Independent Regulatory Review Commission (IRRC). The majority of the commenters expressed their support of the amended and new fee schedules and stated the necessity for the Air Quality Program to have a sustainable source of funding. The comments received on the proposed rulemaking are summarized in this section and are addressed in a comment and response document which is available on the Department's web site.

IRRC commented to ask the Board to work with all interested parties, particularly the Committee and members of the Legislature to address the issues raised in their comment letters with the goal of devising a funding structure that is authorized by statute, meets the intent of the General Assembly and ensures adequate revenue to fund the Air Quality Program. As discussed as follows, in response to other comments, this final-form rulemaking is authorized by the Board's statutory authority provided by the General Assembly, the APCA and ensures adequate funding of the Air Quality Program. In particular, the Committee approved the current fee structure in 1994. Additionally, the Committee and members of the Legislature have extensive involvement in the development of the Department's rulemakings, including appointed members on the Department's advisory committees and four seats on this Board, in addition to the review outlined under the Regulatory Review Act (RRA). Lastly, the Board and the Department consistently seek opportunities to engage productively with interested parties, including the Legislature. The Department's Legislative Office works to address issues and ensure that the Legislature is informed of actions by the Department and the Board.

IRRC also mentioned that the criteria in the RRA requires consideration of the economic impact of the regulation and protection of the public health, safety and welfare and that public comments raise valid concerns related to both criteria. In response, the revenue that will be generated by the fees in this final-form rulemaking would provide essential funding for the Air Quality Program to continue fulfilling its statutory obligation of protecting the public health and welfare from harmful air pollution. The Department's Fee Report and the Regulatory Analysis Form for this final-form rulemaking, both available on the Department's web site, as well as the responses as follow provide additional information to address the concerns raised in the comments.

Additionally, IRRC commented that the Department identifies section 6.3(a) of the APCA as the statutory authority to amend the air quality fee schedule. The legislators commented that the Department does not have the statutory authority to propose the expansive fee increases and that there are two other subsections in section 6.3 of the APCA that must be considered in the construct of any fee schedule revisions: subsection (c), which establishes the emission fee for Title V sources, and subsection (j), which authorizes certain categories of fees not related to Title V of the CAA. The legislators claim that, based upon their review of these subsections, the General Assembly clearly intended to prescribe specific and limited categories of fees for Title V and Non-Title V sources and that any other fees that go beyond the explicit authorization in these subsections goes beyond statutory authority.

In response, the Board explains that section 6.3(a) of the APCA provides the Board with broad authority to establish fees sufficient to cover the indirect and direct costs of administering the Air Quality Program, including the air pollution control plan approval process, operating permit program required by Title V of the CAA and other requirements of the CAA. The succeeding subsections, including subsections (c) and (j), authorize certain types of fees but do not limit the Board's authority under section 6.3(a) to establish other fees. Section 6.3(a) is clear and unambiguous in that and does not limit the Board's ability to raise fees so long they are used to support the air pollution control program authorized under the APCA. These fees are used to support a wide range of air pollution control activities like asbestos abatement activities, risk assessments and Requests for Determinations, to name a few. Similarly, the broad language of this section shows an over-all legislative policy to give the Board and the Department the regulatory flexibility to promulgate the necessary fee schedules to fund air pollution control activities. Finally, a narrow reading of this section would render it ineffective.

The current regulations which were last revised in 1994 with staged plan approval and operating permit application increases over an ensuing 10 years have a similar fee structure to the final-form regulations. See 24 Pa.B. 5899. As required under section 5(a) of the RRA (71 P.S. § 745.5(a)), the Department submitted a copy of the 1994 rulemaking to the Chairpersons of the House Conservation Committee and the Senate Environmental Resources and Energy Committee for review and comment, and those regulations were deemed approved by both Committees on October 11, 1994. See 24 Pa.B. 5910 (November 26, 1994). Consequently, it is difficult to see how this final-form rulemaking exceeds the APCA statutory authority.

Section 6.3(e) and (j) both reference interim fees. Section 6.3(e) specifies the interim fee amounts for Title V sources for processing operating permit applications and an annual operating permit administration fee. Section 6.3(j) specifies the interim fee amounts for non-Title V sources for processing plan approval applications, processing operating permit applications and an annual operating permit administration fee. Further section 6.3(j) must be read in conjunction with section 6.3(e). Section 6.3(e) does not specify the interim plan approval application fee for Title V sources. Instead, section 6.3(j) clarifies that Title V sources are only subject to the interim plan approval fees in subsection (j) because the Title V sources are already subject to the interim operating permit application and annual operating permit administration fees in section 6.3(e). It should also be noted that the interim fees in section 6.3(j) were only in place until the Board adopted regulations that established fees for non-

Title V sources and the interim fees in section 6.3(e) were no longer applicable once the Board established the alternative fees under section 6.3(c).

Additionally, under 40 CFR 70.9, the Department's Air Quality Program is required to establish fees that are sufficient to cover the permit program costs, including costs related to preparing regulations or guidance, reviewing permit applications, general administrative costs of running the program, implementing and enforcing the terms of a permit, emissions and ambient monitoring, modeling, analyses, or demonstrations, preparing inventories and tracking emissions, and providing small business assistance.

IRRC commented that the legislators object to the annual maintenance fee because it is not explicitly authorized by statute. The legislators assert that the statute only authorizes an annual operating permit "administration" fee, therefore; it cannot be replaced with an annual operating permit "maintenance" fee.

In response, section 6.3(j)(3) of the APCA provides for an annual operating permit administration fee, an undefined term in the act. It does not, however, limit the Board to using that exact name for the fee. The annual operating permit maintenance fee in this final-form rulemaking is the annual operating permit administration fee. The Board merely adjusted the name of the fee to better describe its purpose since these fees are used to cover the Department's costs for evaluating the facility to ensure that it is 'maintaining' compliance, including the costs of inspections, reviewing records and reviewing permits. This name change is also evident by the fact that the Department will stop assessing the currently titled annual operating permit administration fee after December 31, 2020.

A representative of the regulated community commented that the annual operating permit maintenance fee will spread out the cost obligations to all sources in an equitable manner.

The Board agrees. The annual operating permit maintenance fee is designed to recover costs to the Department for providing services to facility owners and operators that are otherwise absorbed in the revenue generated from emission fees paid by the owners and operators of the Title V facilities, permitting fee revenue from the owners and operators of both Title V and Non-Title V facilities, and General Fund money. This final-form rulemaking collects an annual operating permit maintenance fee of $8,000 from the owners and operators of all affected Title V facilities. The Board chose this approach based on the equities involved among the number of impacted Title V facility owners and operators. This option spreads the cost obligation for supporting the Title V Operating Permit Program across 289 Title V facility owners and operators. For comparison, the current fee schedule spreads the cost obligations of supporting the Title V Operating Permit Program across 102 Title V facility owners and operators.

IRRC asked the Board to explain why it believes that the proposed fees for PAL, ambient air impact modeling of certain plan approval applications, risk assessments, asbestos project notifications, RFDs and for claims of confidential information are authorized by statute and consistent with the intent of the General Assembly.

The fees identified by IRRC are authorized under section 6.3(a) of the APCA. As stated previously, section 6.3(a) provides the Board with broad authority to establish sufficient fees to cover the indirect and direct costs of administering the air pollution control plan approval process, operating permit program required by Title V of the CAA, other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the Board by regulation to establish fees to support the air pollution control program authorized by the APCA and not covered by fees required by section 502(b) of the CAA. The complexity of the Department's air quality permitting program has increased since its implementation in 1994 as new and more stringent requirements have been promulgated by the EPA. These revised fees are designed to recover the Department's costs for certain activities related to processing of applications for plan approvals and operating permits, including risk assessments and ambient air impact modeling of certain plan approval applications, without burdening all owners and operators of permitted sources with costs for services that they do not use or need. Without these separate fees, plan approval application fees applicable to all owners and operators of permitted sources would have to be adjusted higher. Establishing this fee structure will provide support for the continuation of the Department's Air Quality Program and ensure continued protection of the environment and the public health and welfare of the citizens of this Commonwealth as required by the APCA and the CAA.

IRRC asked the Board to explain why it believes it has the statutory authority to require these new fees to be assessed cumulatively. The legislators commented that the APCA does not authorize the Department to split apart the plan approval application into disparate parts only to then add them together for a higher cumulative fee.

On November 26, 1994, after significant public input, including several hearings and public meetings and an evaluation of the fee structure by an outside consultant, the Board's amendments to the Department's plan approval and operating permit program were established as required to be consistent with the 1992 APCA amendments. See 24 Pa.B. 5937, 5938. As a result of public comments opposing the proposed fee structure and recommendations that the Department establish fees based on the time necessary to process the plan approval application, the Department established the six categories of plan approval fees to better reflect the actual cost to the Commonwealth of evaluating plan approval applications. See 24 Pa.B. 5903. As required under section 5(a) of the RRA, the Department submitted a copy of the proposed rulemaking to the Chairpersons of the House Conservation Committee and the Senate Environmental Resources and Energy Committee for review and comment, and the final-form regulation was deemed approved by both Committees on October 11, 1994. See 24 Pa.B. 5910.

In the 1994 regulatory amendments, the Board stated that "the fees for plan approvals are still based on the complexity of the plan approval application" and that "the new fee structure is a better reflection of the actual cost to the Commonwealth for evaluating plan approval applications." See 24 Pa.B. 5902. The Board's position and the plan approval fee structure remains unchanged in this final-form rulemaking. The Board still holds that applicants should only have to pay for the service rendered, particularly considering that every plan approval application is different and requires a level of review based on the number and complexity of the components. The six categories of plan approval fees

required under § 127.702(b)—(g) were established in 1994. Thus, applicants have been paying separate fees for the processing of the components of plan approval applications since implementation of the fee schedule in 1994. Without the current fee structure, the Department would have to assess a higher application fee for all applicants.

The legislators commented that the current fee structure for the Department as authorized by the APCA for the Title V program is based on an emission fee model. The Legislature through the APCA, and Congress through the CAA, clearly intended for the emission fee to be the main source of revenue for the Title V program.

The legislators are correct that the current fee structure for the Department as authorized by the APCA for the Title V program is based on an emission fee model. In fact, most of the fees referenced in section 6.3 of the APCA are considered emission fees. Under section 6.3(d) of the APCA, "the board shall establish a permanent air emission fee which considers the size of the air contamination source, the resources necessary to process the application for plan approval or an operating permit, the complexity of the plan approval or operating permit, the quantity and type of emissions from the sources, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage and other relevant factors." Section 6.3(f) further states that the fees referenced in subsections (b), (c) and (j) are emissions fees.

However, the legislators seem to be referencing the permanent annual air emission fee required under section 6.3(c). The APCA includes the annual air emission fee as required for regulated pollutants under section 502(b) of the CAA, but does not stipulate that the annual air emission fee is to provide a certain percentage of the revenue for the Title V program, only that the annual air emission fee is a component of the fee schedule for the Title V program. Further, the Board does not agree that Congress through the CAA clearly intended for the annual air emission fee to be the main source of revenue for the Title V program. In the EPA's July 21, 1992, final rule addressing the Part 70 operating permit program, the EPA stated that ". . .[t]he EPA interprets title V to offer permitting authorities flexibility in setting variable fee amounts for different pollutants or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507 as it applies to part 70 sources." See 57 FR 32258 (July 21, 1992). Additionally, the EPA stated that ". . .[t]he State is not required to assess fees on any particular basis and can use application fees, service-based fees, emissions fees based on either actual or allowable emissions, other types of fees, or any combination thereof." See 57 FR 32292 (July 21, 1992).

The legislators expressed that while they truly appreciate the achievements in pollution reduction and the efforts made to provide for cleaner air, they believe that this goal can be achieved while not harming our economy. Section 5.2 of the RRA (71 P.S. § 745.5b) requires IRRC to consider the economic or fiscal impacts of a regulation, specifically the adverse effects on prices of goods and services, productivity or competition.

The Department reviewed the real gross domestic product (RGDP) data for this Commonwealth's private manufacturing sector available on the web site of the Federal Reserve Bank of St. Louis, MO, for the years 1997—2018. The Board's last increase to the permitting fee schedule was implemented in 2005. The RGDP output for this Commonwealth's private manufacturing sector averaged over the years 2005—2017 is greater than $81 billion. The projected increase in permitting fee revenue of approximately $13 million is 0.01% of the average annual total private manufacturing RGDP of the past 12 years. The Department contends that $13 million spread out across this Commonwealth's entire air quality regulated community will not have a significant adverse effect. Rather, by increasing the fee revenue and providing the Department the means to increase staffing, the Department will be able to review, approve and issue permits more quickly, thereby providing the regulated community with the opportunity to expand their businesses and hire more people. This will increase the industrial output and improve this Commonwealth's economy.

The legislators commented that it is entirely reasonable that a decline in revenue for the Air Quality Program would coincide with the significant decline in pollution and polluting facilities to be regulated. That is, in fact, the goal. As this goal is increasingly realized, Title V facilities which are regulated under this program should not have to subsidize efforts to reduce air pollution from other sources not under this program.

In response, the Board agrees that facilities regulated under the Title V program should not have to subsidize efforts to reduce air pollution from sources or facilities that are not regulated under the Title V program. Hence, this final-form rulemaking includes a fee-for-service schedule designed to spread the costs of the Air Quality Program across more of the users rather than concentrating the burden on Title V facilities. Moreover, even though emissions are declining, the overall services that the Department provides and the cost of those services continues to increase.

Two commenters and several members of AQTAC mentioned that the proposed fee package did not address the fact that carbon dioxide (CO_2) became a "regulated pollutant" on December 22, 2015, and therefore should be assessed in some way regarding the Title V emission fee dollar per ton calculation.

As mentioned previously, in the EPA's July 21, 1992, final rule addressing the Part 70 operating permit program, the EPA stated that ". . .[t]he EPA interprets title V to offer permitting authorities flexibility in setting *variable fee amounts for different pollutants* or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507 as it applies to part 70 sources." (emphasis added) See 57 FR 32258. Therefore, the Department is exercising enforcement discretion to not assess a permanent annual air emission fee for CO_2 emissions or, in other words, assessing a fee of $0 per ton in this final-form rulemaking.

However, the Department is exploring appropriate ways to address CO_2 emissions. On October 3, 2019, Governor Tom Wolf signed Executive Order 2019-07 published at 49 Pa.B. 6376 (October 26, 2019), directing the Department to develop a proposed rulemaking to abate, control or limit CO_2 emissions from fossil fuel-fired electric generating units as authorized by the APCA. The proposed rulemaking will establish a CO_2 budget consistent with

the participating states in the Regional Greenhouse Gas Initiative (RGGI), as well as a fee per ton of CO_2 emitted from a fossil fuel-fired electric generating unit.

G. *Benefits, Costs and Compliance*

Benefits

The revenue from the fees in this final-form rulemaking will be directed to the Clean Air Fund, comprised of the Title V and Non-Title V Accounts. Together, the funds in these accounts currently represent approximately 65% of the Air Quality Program budget. The General Fund and Federal grants make up the remaining 35%. It is unlikely that General Fund money or Federal grants directed to the Air Quality Program will increase in the foreseeable future to offset the declining revenue from the permitting fees and emission fees. In the early years of the Title V program when there were more facilities and emissions of regulated pollutants were significantly greater than today, the Clean Air Fund balance was large. After many years of drawing down this balance to cover Air Quality Program costs and expenditures that exceeded the combined annual revenue and money from the General Fund and Federal grants, the Clean Air Fund is expected to reach a zero balance sometime in FY 2021-2022. The final-form plan approval application and operating permit fee schedules are designed to bring the Clean Air Fund permitting fee revenue in line with expenditures so that the Air Quality Program is self-sustaining as required under the CAA.

Since deficit spending is not allowed, the Air Quality Program expenditures will need to be decreased by approximately $13 million per year if these final-form amendments to the fee schedules are not promulgated. To address ongoing shortfalls in Clean Air Fund revenue, the Air Quality Program has seen significant reductions in staff since 2000 (111 positions or 30%). If Clean Air Fund revenue is not restored to sustainable levels, additional reductions in air quality staff at all levels in both the Bureau of Air Quality and the Department's six regional offices will be required. Conservatively, a decrease of 80 staff members, an approximately 30% reduction from current staffing levels, would be needed. This would severely impact the ability of the Air Quality Program to process and review permit applications; inspect facilities and respond to citizen complaints; initiate compliance and enforcement activities; and develop the required regulatory and nonregulatory SIP revisions in a timely manner. Failure to maintain an approved SIP could result in the EPA establishing a FIP for the Commonwealth; under a FIP all fees, penalties and other revenue would be paid to the EPA. This would likely be unacceptable to the regulated industry, local governments and the public.

Without the revenue from the fees in this final-form rulemaking, in addition to further reductions in Air Quality Program staff, decreases in spending would be needed on the ambient air monitoring network. Shrinking the ambient air monitoring network would, however, virtually eliminate air toxics monitoring and leave large portions of rural areas with no air monitoring. Overall, the citizens of this Commonwealth would suffer from the loss of continued air quality planning, monitoring, permitting and inspection activities that are fundamental to the economy and protecting public health and welfare and the environment. With this final-form rulemaking, the Air Quality Program can maintain its current level of effort, gradually fill 17 currently vacant Title V positions, expand its air monitoring network in shale gas areas and develop new and improved information technology systems including ePermitting and publicly available online air quality data.

Moreover, delays in the issuance of plan approvals and operating permits can cause economic disruptions because the owner or operator of a regulated facility may not operate without an operating permit. Delays in receiving plan approvals can have a major impact on an owner or operator's decision to expand or locate an industrial operation in this Commonwealth. Increased funding for the plan approval and operating permit process will continue to allow for timely and complete review of plan approval and operating permit applications, help retain the current industry and provide certainty for businesses.

Compliance costs

The financial impact on the owners and operators of Title V facilities regulated by the Department, collectively, will be additional plan approval and operating permit costs of approximately $900,000 per year as well as approximately $4 million in annual operating permit maintenance fee costs. Title V small businesses, in total, will pay an estimated additional $820,000 annually.

The financial impact on the owners and operators of Non-Title V facilities regulated by the Department, collectively, will be additional plan approval and operating permit costs of approximately $1.5 million per year as well as approximately $5.5 million in annual operating permit maintenance fee costs. Non-Title V small businesses, in total, will pay an estimated additional $3.1 million annually.

Approximately $1.5 million in asbestos notification fees will be collected from 2,000 licensed remediation contractors, most of whom are small businesses.

Compliance assistance plan

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

Paperwork requirements

There are no additional paperwork requirements associated with this final-form rulemaking. The existing applications and forms will be updated with the new fees.

H. *Pollution Prevention*

The Pollution Prevention Act (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 final-form rulemaking allows the Department to maintain staffing levels in the Air Quality Program and the ambient air monitoring network, which will provide a sound basis for continued air quality assessments and planning that are fundamental to a strong economy, reducing pollution, and protecting public health and welfare and the environment.

I. *Sunset Review*

The Board is not establishing a sunset date for this final-form rulemaking because it is needed for the Department to carry out its statutory authority. If published as a final-form regulation, the Department will closely monitor its effectiveness and recommend updates to the Board as necessary. At least every 5 years, the Department will provide the Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and the Department's cost of administering the Air Quality Program with the objective of ensuring sufficient fees to meet all program costs.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 27, 2019, the Department submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 1777, to IRRC and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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

On September 15, 2020, the House Environmental Resources and Energy Committee issued a disapproval notification of this final-form rulemaking, triggering a 14-day review period after IRRC consideration of the rulemaking under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)). Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 17, 2020, and approved the final-form rulemaking. On September 30, 2020, the House Environmental Resources and Energy Committee voted to report a concurrent resolution to disapprove the final-form rulemaking approved by IRRC to the General Assembly under section 7(d) of the Regulatory Review Act (71 P.S. § 745.7(d)). The concurrent resolution was not passed by the General Assembly within 30 calendar days or 10 legislative days from the reporting of the concurrent resolution, and therefore this final-form regulation may be promulgated.

K. *Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 49 Pa.B. 1777.

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

L. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 127, are amended by amending §§ 121.1, 127.424, 127.702—27.705 and adding 127.465 and 127.708—127.710 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(*Editor's Note*: Proposed § 127.709 was renumbered to § 127.708.)

(*Editor's Note*: Proposed § 127.710 was renumbered to § 127.709.)

(*Editor's Note*: Proposed § 127.711 has been withdrawn.)

(*Editor's Note*: Proposed § 127.712 was renumbered to § 127.710.)

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

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

(d) The Chairperson of the Board shall certify this final-form regulation and deposit them with the Legislative Reference Bureau as required by law.

(e) This final-form regulation will be submitted to the EPA as a revision to the Commonwealth's SIP.

(f) This final-form regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PATRICK McDONNELL,
Chairperson

(*Editor's Note*: See IRRC's approval order at 50 Pa.B. 5597 (October 3, 2020).)

Fiscal Note: Fiscal Note 7-536 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 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:

* * * * *

Synthesized pharmaceutical manufacturing—Manufacture of pharmaceutical products by chemical synthesis.

Synthetic minor facility—An air contamination source subject to Federally enforceable conditions that limit the

facility's potential to emit to less than the major facility thresholds specified in the definition of "Title V facility."

TPY—Tons per year.

* * * * *

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

Subchapter F. OPERATING PERMIT REQUIREMENTS

REVIEW OF APPLICATIONS

§ 127.424. Public notice.

(a) Except as provided in § 127.462 (relating to minor operating permit modifications), the Department will prepare a notice of action to be taken on applications for an operating permit.

(b) For sources identified in § 127.44(b)(1)—(5) (relating to public notice), the notice required by subsection (a) will be completed and sent to the applicant, the EPA, any state within 50 miles of the facility and any state whose air quality may be affected and that is contiguous to this Commonwealth. The applicant shall, within 10 days of receipt of notice, publish the notice on at least 3 separate days in a prominent place and size in a newspaper of general circulation in the county in which the source is to be located. Proof of the publication shall be filed with the Department within 1 week thereafter. An operating permit will not be issued by the Department if the applicant fails to submit the proof of publication. The Department will publish notice for the sources identified in § 127.44(b) in the *Pennsylvania Bulletin*.

(c) If the Department denies an operating permit, written notice of the denial will be given to requestors and to the applicant and will be published in the *Pennsylvania Bulletin*.

(d) In each case, the Department will publish notices required in subsection (a) in the *Pennsylvania Bulletin*.

(e) The notice will state, at a minimum, the following:

(1) The location at which the application may be reviewed. This location shall be in the region affected by the application.

(2) A 30-day comment period, from the date of publication, will exist for the submission of comments.

(3) Permits issued to sources identified in § 127.44(b)(1)—(5) or permits issued to sources with limitations on their potential to emit used to avoid otherwise applicable Federal requirements may become a part of the SIP and will be submitted to the EPA for review and approval.

OPERATING PERMIT MODIFICATIONS

§ 127.465. Significant operating permit modification procedures.

(a) The owner or operator of a stationary air contamination source or facility may make a significant modification to an applicable operating permit under this section.

(b) Significant operating permit modifications must meet the requirements of this chapter, including §§ 127.424 and 127.425 (relating to public notice; and contents of notice).

(c) The owner or operator of the facility shall submit to the Department, on a form provided by or approved by the Department, a brief description of the change, the date on which the change is to occur and the proposed language for revising the operating permit conditions proposed to be changed.

(d) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to an operational flexibility change authorized by this section.

(e) The Department will take final action on the proposed change within 180 days of receipt of the complete application for the significant operating permit modification and, after taking final action, will publish notice of the action in the *Pennsylvania Bulletin*.

Subchapter I. PLAN APPROVAL AND OPERATING PERMIT FEES

§ 127.702. Plan approval fees.

(a) Each applicant for a plan approval shall, as part of the plan approval application, submit the application fees required by this section to the Department. The applicable fees required under subsections (b)—(h) are cumulative.

(b) The owner or operator of a source requiring approval under Subchapter B (relating to plan approval requirements) shall pay a fee equal to:

(1) One thousand dollars ($1,000) for applications filed during calendar years 2005—2020.

(2) Two thousand five hundred dollars ($2,500) for applications filed during calendar years 2021—2025.

(3) Three thousand one hundred dollars ($3,100) for applications filed during calendar years 2026—2030.

(4) Three thousand nine hundred dollars ($3,900) for applications filed for the calendar years beginning with 2031.

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

(1) Five thousand three hundred dollars ($5,300) for applications filed during calendar years 2005—2020.

(2) Seven thousand five hundred dollars ($7,500) for applications filed during calendar years 2021—2025.

(3) Nine thousand four hundred dollars ($9,400) for applications filed during calendar years 2026—2030.

(4) Eleven thousand eight hundred dollars ($11,800) for applications filed for the calendar years beginning with 2031.

(d) The owner or operator of a source subject to and requiring approval under standards adopted under Chapter 122 (relating to National standards of performance for new stationary sources), Chapter 124 (relating to National emission standards for hazardous air pollutants) or § 127.35(b) (relating to maximum achievable control technology standards for hazardous air pollutants) shall pay the specified fee for each applicable standard up to and including three applicable standards per plan approval application. Applicants that have more than three applicable standards shall pay the fee for a maximum of three standards. The Department's permitting review will include all applicable standards. The fee for each applicable standard is equal to:

(1) One thousand seven hundred dollars ($1,700) for applications filed through calendar year 2020.

(2) Two thousand five hundred dollars ($2,500) for applications filed during calendar years 2021—2025.

(3) Three thousand one hundred dollars ($3,100) for applications filed during calendar years 2026—2030.

(4) Three thousand nine hundred dollars ($3,900) for applications filed for the calendar years beginning with 2031.

(e) The owner or operator of a source subject to and requiring approval under § 127.35(c), (d) or (h) shall pay a fee equal to:

(1) Eight thousand dollars ($8,000) for applications filed during calendar years 2005—2020.

(2) Nine thousand five hundred dollars ($9,500) for applications filed during calendar years 2021—2025.

(3) Eleven thousand nine hundred dollars ($11,900) for applications filed during calendar years 2026—2030.

(4) Fourteen thousand nine hundred dollars ($14,900) for applications filed for the calendar years beginning with 2031.

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

(1) Twenty-two thousand seven hundred dollars ($22,700) for applications filed during calendar years 2005—2020.

(2) Thirty-two thousand five hundred dollars ($32,500) for applications filed during calendar years 2021—2025.

(3) Forty thousand six hundred dollars ($40,600) for applications filed during calendar years 2026—2030.

(4) Fifty thousand eight hundred dollars ($50,800) for applications filed for the calendar years beginning with 2031.

(g) The owner or operator of a source that submits a plan approval application for a PAL permit under § 127.218(b) (relating to PALs), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to:

(1) Seven thousand five hundred dollars ($7,500) for applications filed during calendar years 2021—2025.

(2) Nine thousand four hundred dollars ($9,400) for applications filed during calendar years 2026—2030.

(3) Eleven thousand eight hundred dollars ($11,800) for applications filed for the calendar years beginning with 2031.

(h) The owner or operator of a source proposing a PAL under Subchapter D that is not included in an application submitted under subsection (f) or subsection (g) shall pay a fee equal to:

(1) Seven thousand five hundred dollars ($7,500) for applications filed during calendar years 2021—2025.

(2) Nine thousand four hundred dollars ($9,400) for applications filed during calendar years 2026—2030.

(3) Eleven thousand eight hundred dollars ($11,800) for applications filed for the calendar years beginning with 2031.

(i) The owner or operator of a source proposing a minor modification of a plan approval, an extension of a plan approval or a transfer of a plan approval shall pay the fee in paragraph (1) or paragraph (2) as applicable.

(1) An applicant for a minor modification of a plan approval may not include an increase in emissions, an analysis of the ambient impacts of the source or a reassessment of a control technology determination. The applicant shall do all of the following:

(i) Meet the applicable requirements of § 127.44 (relating to public notice).

(ii) Pay a fee equal to:

(A) Three hundred dollars ($300) for applications filed during calendar years 2005—2020.

(B) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(C) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(D) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(2) An applicant for an extension of a plan approval or a transfer of a plan approval shall pay a fee equal to:

(i) Three hundred dollars ($300) for applications filed during calendar years 2005—2020.

(ii) Seven hundred fifty dollars ($750) for applications filed during calendar years 2021—2025.

(iii) Nine hundred dollars ($900) for applications filed during calendar years 2026—2030.

(iv) One thousand one hundred dollars ($1,100) for applications filed for the calendar years beginning with 2031.

(3) The fee for an extension of a plan approval will not apply if, through no fault of the applicant, an extension is required.

(j) The owner or operator of a source proposing a revision to a plan approval application submitted by the applicant that includes one or more of the following changes after the Department has completed its technical review shall pay the fee in paragraph (1) or paragraph (2) as applicable.

(1) For an analysis of the ambient impacts of the source, a fee equal to:

(i) Nine thousand dollars ($9,000) for applications filed during calendar years 2021—2025.

(ii) Eleven thousand three hundred dollars ($11,300) for applications filed during calendar years 2026—2030.

(iii) Fourteen thousand one hundred dollars ($14,100) for applications filed for the calendar years beginning with 2031.

(2) For a reassessment of a control technology determination, the applicable fee under subsection (b).

(k) The owner or operator of a source applying for a risk assessment shall, as part of the plan approval application, pay the fee in paragraph (1) or paragraph (2) as applicable.

(1) For a risk assessment that is inhalation only for all modeling, a fee equal to:

(i) Ten thousand dollars ($10,000) for applications filed during calendar years 2021—2025.

(ii) Twelve thousand five hundred dollars ($12,500) for applications filed during calendar years 2026—2030.

(iii) Fifteen thousand six hundred dollars ($15,600) for applications filed for the calendar years beginning with 2031.

(2) For a multipathway risk assessment, a fee equal to:

(i) Twenty-five thousand dollars ($25,000) for applications filed during calendar years 2021—2025.

(ii) Thirty-one thousand three hundred dollars ($31,300) for applications filed during calendar years 2026—2030.

(iii) Thirty-nine thousand one hundred dollars ($39,100) for applications filed for the calendar years beginning with 2031.

§ 127.703. Operating permit fees under Subchapter F.

(a) Each applicant for an operating permit, which is not for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department.

(b) Each applicant subject to subsection (a) shall pay a fee equal to the following, as applicable. These fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof or to a transfer of an operating permit.

(1) For a new operating permit:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) Two thousand five hundred dollars ($2,500) for applications filed during calendar years 2021—2025.

(iii) Three thousand one hundred dollars ($3,100) for applications filed during calendar years 2026—2030.

(iv) Three thousand nine hundred dollars ($3,900) for applications filed for the calendar years beginning with 2031.

(2) For a renewal and reissuance of an operating permit or part thereof:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) Two thousand one hundred dollars ($2,100) for applications filed during calendar years 2021—2025.

(iii) Two thousand six hundred dollars ($2,600) for applications filed during calendar years 2026—2030.

(iv) Three thousand three hundred dollars ($3,300) for applications filed for the calendar years beginning with 2031.

(3) For a minor modification of an operating permit or part thereof:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(iii) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(iv) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(4) For a significant modification of an operating permit or part thereof:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) Two thousand dollars ($2,000) for applications filed during calendar years 2021—2025.

(iii) Two thousand five hundred dollars ($2,500) for applications filed during calendar years 2026—2030.

(iv) Three thousand one hundred dollars ($3,100) for applications filed for the calendar years beginning with 2031.

(5) For an administrative amendment of an operating permit or part thereof or a transfer of an operating permit:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(iii) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(iv) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(c) Each applicant subject to subsection (a) shall pay the annual operating permit administration fee of three hundred seventy-five dollars ($375) through December 31, 2020.

(d) Except as specified in paragraph (1), beginning January 16, 2021, each applicant subject to subsection (a) shall pay the annual operating permit maintenance fee in paragraph (2) or paragraph (3) on or before December 31 of each year for the next calendar year.

(1) The annual operating permit maintenance fee in paragraph (2) or paragraph (3) for calendar year 2021 is due on or before March 17, 2021.

(2) For a synthetic minor facility, a fee equal to:

(i) Four thousand dollars ($4,000) for calendar years 2021—2025.

(ii) Five thousand dollars ($5,000) for calendar years 2026—2030.

(iii) Six thousand three hundred dollars ($6,300) for the calendar years beginning with 2031.

(3) For a facility that is not a synthetic minor, a fee equal to:

(i) Two thousand dollars ($2,000) for calendar years 2021—2025.

(ii) Two thousand five hundred dollars ($2,500) for calendar years 2026—2030.

(iii) Three thousand one hundred dollars ($3,100) for the calendar years beginning with 2031.

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

(a) Each applicant for an operating permit, which is for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department.

(b) Each applicant subject to subsection (a) shall pay a fee equal to the following, as applicable. These fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof or a transfer of an operating permit.

(1) For a new operating permit:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) Five thousand dollars ($5,000) for applications filed during calendar years 2021—2025.

(iii) Six thousand three hundred dollars ($6,300) for applications filed during calendar years 2026—2030.

(iv) Seven thousand nine hundred dollars ($7,900) for applications filed for the calendar years beginning with 2031.

(2) For a renewal and reissuance of an operating permit or part thereof:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) Four thousand dollars ($4,000) for applications filed during calendar years 2021—2025.

(iii) Five thousand dollars ($5,000) for applications filed during calendar years 2026—2030.

(iv) Six thousand three hundred dollars ($6,300) for applications filed for the calendar years beginning with 2031.

(3) For a minor modification of an operating permit or part thereof:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(iii) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(iv) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(4) For a significant modification of an operating permit or part thereof:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) Four thousand dollars ($4,000) for applications filed during calendar years 2021—2025.

(iii) Five thousand dollars ($5,000) for applications filed during calendar years 2026—2030.

(iv) Six thousand three hundred dollars ($6,300) for applications filed for the calendar years beginning with 2031.

(5) For an administrative amendment of an operating permit or part thereof or a transfer of an operating permit:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(iii) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(iv) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(c) Each applicant subject to subsection (a) that is the owner or operator of a facility identified in subparagraph (iv) of the definition of Title V facility in § 121.1 (relating to definitions) shall pay the annual operating permit administration fee of seven hundred fifty dollars ($750) through December 31, 2020.

(d) Except as specified in paragraph (1), beginning January 16, 2021, each applicant subject to subsection (a) shall pay the annual operating permit maintenance fee in paragraph (2), paragraph (3) or paragraph (4) on or before December 31 of each year for the next calendar year.

(1) The annual operating permit maintenance fee in paragraph (2) for calendar year 2021 is due on or before March 17, 2021.

(2) Eight thousand dollars ($8,000) for calendar years 2021—2025.

(3) Ten thousand dollars ($10,000) for calendar years 2026—2030.

(4) Twelve thousand five hundred dollars ($12,500) for the calendar years beginning with 2031.

(e) The owner or operator of a source that submits an application for a PAL permit under § 127.218(b) (relating to PALs), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to:

(1) Ten thousand dollars ($10,000) for applications filed during calendar years 2021—2025.

(2) Twelve thousand five hundred dollars ($12,500) for applications filed during calendar years 2026—2030.

(3) Fifteen thousand six hundred dollars ($15,600) for applications filed for the calendar years beginning with 2031.

(f) The owner or operator of a source proposing a PAL under Subchapter D (relating to prevention of significant deterioration of air quality) that is not included in an application submitted under subsection (e) shall pay a fee equal to:

(1) Ten thousand dollars ($10,000) for applications filed during calendar years 2021—2025.

(2) Twelve thousand five hundred dollars ($12,500) for applications filed during calendar years 2026—2030.

(3) Fifteen thousand six hundred dollars ($15,600) for applications filed for the calendar years beginning with 2031.

§ 127.705. Emission fees.

(a) The owner or operator of a Title V facility including a Title V facility located in Philadelphia County or Allegheny County, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), shall pay an annual Title V emission fee of $85 per ton for each ton of a regulated pollutant actually emitted from the facility. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. The owner or operator of a Title V facility located in Philadelphia County or Allegheny County shall pay the emission fee to the county Title V program approved by the Department under section 12 of the act (35 P.S. § 4012) and § 127.706 (relating to Philadelphia County and Allegheny County financial assistance).

(b) The emissions fees required by this section shall be due on or before September 1 of each year for emissions from the previous calendar year. The fees required by this section shall be paid for emissions occurring in calendar year 2013 and for each calendar year thereafter.

(c) As used in this section, the term "regulated pollutant" means a VOC, each pollutant regulated under sections 111 and 112 of the Clean Air Act (42 U.S.C.A. §§ 7411 and 7412) and each pollutant for which a

National ambient air quality standard has been promulgated, except that carbon monoxide shall be excluded from this reference.

(d) The emission fee imposed under subsection (a) shall be increased in each calendar year after December 14, 2013, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year.

(e) For purposes of subsection (d):

(1) The Consumer Price Index for a calendar year is the average of the Consumer Price Index for All-Urban Consumers, published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(2) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

§ 127.708. Asbestos abatement or regulated demolition or renovation project notification.

(a) An owner or operator of an asbestos abatement or regulated demolition or renovation project that is subject to 40 CFR Part 61, Subpart M (relating to National emission standard for asbestos) or the Asbestos Occupations Accreditation and Certification Act (Act 1990-194) (63 P.S. §§ 2101—2112) and which is not located in Philadelphia County or Allegheny County shall submit to the Department with the required notification form a fee equal to:

(1) Three hundred dollars ($300) for forms filed during calendar years 2021—2025.

(2) Four hundred dollars ($400) for forms filed during calendar years 2026—2030.

(3) Five hundred dollars ($500) for forms filed for the calendar years beginning with 2031.

(b) The Department will waive the fee for a subsequent notification form submitted for the asbestos abatement or regulated demolition or renovation project.

§ 127.709. Fees for requests for determination.

The owner or operator of a source subject to this chapter that submits a request for determination under § 127.14 (relating to exemptions) for a plan approval, an operating permit or for both a plan approval and an operating permit shall pay the applicable fee specified in paragraph (1) or paragraph (2):

(1) The owner or operator of a source that meets the definition of small business stationary source set forth in section 3 of the act (35 P.S. § 4003) shall pay a fee equal to:

(i) Four hundred dollars ($400) for requests for determination filed during calendar years 2021—2025.

(ii) Five hundred dollars ($500) for requests for determination filed during calendar years 2026—2030.

(iii) Six hundred dollars ($600) for requests for determination filed for the calendar years beginning with 2031.

(2) The owner or operator of a source that does not meet the criterion in paragraph (1) shall pay a fee equal to:

(i) Six hundred dollars ($600) for requests for determination filed during calendar years 2021—2025.

(ii) Eight hundred dollars ($800) for requests for determination filed during calendar years 2026—2030.

(iii) One thousand dollars ($1,000) for requests for determination filed for the calendar years beginning with 2031.

§ 127.710. Fees for the use of general plan approvals and general operating permits under Subchapter H.

The Department may establish application fees for the use of general plan approvals and general operating permits under Subchapter H (relating to general plan approvals and operating permits) for stationary or portable sources. These application fees will be established when the general plan approval or general operating permit is issued or modified by the Department. These application fees will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice and review period).

[Pa.B. Doc. No. 21-78. Filed for public inspection January 15, 2021, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

Public Health Dental Hygiene Practitioner Practice Sites

The State Board of Dentistry (Board) hereby amends § 33.205b (relating to practice as a public health dental hygiene practitioner), to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of this final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 3(o) of the Dental Law (act) (63 P.S. § 122(o)) authorizes the Board to adopt, promulgate and enforce rules and regulations as may be deemed necessary by the Board to carry out the provisions of the act. Section 11.9(b)(10) of the act (63 P.S. § 130j(b)(10)) authorizes the Board to determine other locations at which public health dental hygiene practitioners may practice.

Background and Purpose

On January 4, 2016, the act of November 4, 2015 (P.L. 225, No. 60) (Act 60 of 2015) became effective, amending section 11.9 of the act to allow the Board to add other "locations" it deems appropriate for practice by public health dental hygiene practitioners in addition to those enumerated by the General Assembly. Prior to this amendment, subsection (b)(10) permitted the Board to add other "institutions" it deemed appropriate. On March 3, 2016, the Pennsylvania Dental Hygienists' Association (PDHA) petitioned the Board, seeking amendments to the regulations to include additional practice sites for public health dental hygiene practitioners. Specifically, the PDHA asked the Board to consider adding the following locations: private settings of hospice and home-bound patients; primary care settings, especially pediatric settings; and childcare settings. The Board developed the proposed rulemaking in response to the PDHA's petition. The proposed rulemaking sought to clarify the acceptable practice sites included within the definition of "health care facilities" under section 802.1 of the Health Care

Facilities Act (35 P.S. § 448.802a); expand the locations at which a public health dental hygiene practitioner may practice beyond just "personal care homes" to include other "facilities" regulated by the Department of Human Services as defined in section 1001 of the Human Services Code (62 P.S. § 1001); and add as an acceptable practice site an office or clinic of a physician. These additional sites were meant to expand access to dental hygiene services, oral health education and referrals to dentists as authorized by Act 60 of 2015.

Summary of Comments to the Proposed Rulemaking; the Board's Response and Description of Amendments to the Final-form Rulemaking

Notice of proposed rulemaking was published at 49 Pa.B. 1396 (March 23, 2019). Publication was followed by a 30-day public comment period. The Board received numerous comments from different state and National organizations and individual licensees, both dentists and dental hygienists, throughout this Commonwealth. Public health dental hygiene practitioners, and dental hygienists uniformly advocated in favor of the regulation, while dentists and other representative groups expressed opposition. In addition, the Independent Regulatory Committee (IRRC) reviewed the proposed rulemaking and provided comments and recommendations. The Board also received comments from the House Professional Licensure Committee (HPLC). The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). To effectively address all the comments, the Board has categorized them by topic.

Public comments

A common concern among dentists is that parents will falsely believe that if their children have been seen by a public health dental hygiene practitioner (PHDHP) in offices of pediatricians or primary care physicians, they will have a false sense of security that their children have had adequate quality comprehensive dental care and will not take their children to a dentist. There were also were many questions about how the PHDHP will ensure that patients make a referral appointment with a dentist or if the patient will even follow through with the referral to a dentist when they are already receiving cleanings at their primary care physician's office. Other dentists opined that the regulation contains no language that limits PHDHP's location of practice to economically depressed, dentally underserved areas, and that expanding practice to physicians' offices does not necessarily provide additional access to care because physicians can locate their practice where they see fit, including high-access or affluent areas of the State.

The Board recognizes that pediatric medical offices and other primary care settings see populations that need the most preventive oral health care on a regular basis for well-child visits. The Board therefore believes that medical offices are the perfect setting to deliver safe and effective oral hygiene education and preventive services to underserved areas. The Board further believes that this additional site will expand access to oral health care and education by public health dental hygiene practitioners and will assist patients, particularly pediatric patients, find a "dental home" by way of the annual referral to a dentist. However, the Board agrees that simply expanding practice to physicians' offices does not necessarily provide additional access to dental care because physicians can locate their practice where they see fit. The Board also agrees that economically depressed, underserved areas are those that are most lacking in access to oral health care. After careful deliberation, the Board's final-form rulemaking adds language to § 33.205b(c)(11) to clarify that PHDHPs may perform dental hygiene services without the supervision of a dentist in an office or clinic of a physician, including a satellite location/operation, that is located in a dental health professional shortage area, as determined by the United States Department of Health and Human Services, Health Resources & Services Administration. The Pennsylvania Department of Health publishes a list of dental health professional shortage areas in this Commonwealth on its web site, and the Board will include a link to that list on its web site. The Board believes that expanding the practice sites to offices or clinics of a physician, but limiting these locations to those in dental health professional shortage areas, is a fair compromise that takes into consideration concerns expressed by opponents to this final-form rulemaking, while increasing access to quality oral health care to those who might not be able to obtain services from a traditional dental setting.

The Board appreciates that many opponents of this final-form rulemaking question how the PHDHP will ensure that patients make a referral appointment with a dentist. But that concern is true with any practice site at which the professional practice of a PHDHP is currently permitted, including those sites already authorized in the Dental Law, and those sites added by this final-form rulemaking. Frankly, there is no way for a PHDHP to ensure that a patient follows through with any referral. However, by providing a patient with oral hygiene education and services and a referral to a dental home, the PHDHP is providing preventative care, services and information to individuals who may never receive it otherwise.

Some commenters suggested that patients will likely not show for their dental appointments and that parents may not understand the difference between a screening performed by a PHDHP and a comprehensive exam performed by a dentist. This, too, is true of any practice site at which the professional practice of a PHDHP is permitted. It is the responsibility of the PHDHP providing the preventative care and screenings to inform the patients and their guardians of their role as a PHDHP. Further, the Board's regulations already require a PHDHP to refer each patient to a licensed dentist on an annual basis. Documentation of this annual referral must be maintained in the dental record for each patient. While a PHDHP may choose not to refuse services to a patient who has failed to follow through with the referral, a yearly reminder to see a dentist is better than no reminder at all. Contrary to a commonly expressed concern, the PHDHP will not be reassuring patients that it is not necessary to see a dentist.

Others commented that PHDHPs are not trained as extensively as a dentist or a nurse practitioner and, as a result, pathology, caries, and malocclusion may be overlooked or misdiagnosed, and patient care will suffer. A similar concern is that yearly cleanings and preventative care could cause patients to be even more delayed in seeking dental care and could result in higher instances of emergency treatments. The Board recognizes that many low-income patients need services that a PHDHP cannot provide; however, a PHDHP is generally a dental hygiene graduate of a dental hygiene program accredited by the American Dental Association's Commission on Dental Accreditation (CODA). The CODA standard (Standard 2-8) for dental hygiene curricula includes content in four areas: general education, biomedical sciences, dental sciences and dental hygiene sciences.

General education content must include oral and written communications, psychology and sociology. Biomedical science content must include content in anatomy, physiology, chemistry, biochemistry, microbiology, immunology, general and maxillofacial pathology or pathophysiology, or both, nutrition and pharmacology. Dental sciences content must include tooth morphology, head, neck and oral anatomy, oral embryology and histology, oral pathology, radiography, periodontology, pain management and dental materials. Finally, dental hygiene science content must include oral health education and preventive counseling, health promotion, patient management, clinical dental hygiene, provision of services for and management of patients with special needs, community dental/oral health, medical and dental emergencies, infection and hazard control management, and the provision of oral health care services to patients with bloodborne infectious diseases. In addition, a PHDHP must have completed at least 3,600 hours of practice under the supervision of a licensed dentist. A PHDHP can certainly educate the public on the importance of oral health and connect them to a dental home. PHDHPs are already required to refer each patient to a licensed dentist on an annual basis so that the dentist can provide diagnosis of dental disease, radiographic examination, oral cancer screening and treatment, along with other dental care or referral to other dental specialists.

Some commenters opined that the Board's proposed rulemaking is inconsistent with the American Academy of Pediatric Dentistry's (AAPD) goal of establishment of a "dental home" for all children by 1 year of age. These same individuals commented that the proposed rulemaking is inconsistent with AAPD's policy on "Maintaining and Improving the Oral Health of Young Children," because by allowing a hygienist to function independently in a pediatrician's office, the concept of a dental home is broken. The Board's response to this comment is that by allowing PHDHPs to offer preventative care in primary care physicians' offices with an annual referral to a dentist office, will at least raise awareness to children and their parents of the need to secure a dental home. PHDHPs are already practicing in elementary and secondary schools in a way that is consistent with AAPD's goal of establishing a dental home and policies on "Maintaining and Improving the Oral Health of Young Children." Expanding the practice sites to physicians' offices that are located in a dental health professional shortage area will reach more children and allow them to receive preventative care and yearly referrals to licensed dentists that they might not otherwise receive.

Some commenters expressed concern that the Board's proposed rulemaking is not in the best interest of patients, opining that unsupervised hygienists will not protect the public and will limit additional access to address unmet dental needs. However, PHDHPs are already permitted to practice unsupervised. Interprofessional care is becoming a standard. Pediatric medical offices and other primary care settings see populations that need the most preventive oral health care on a regular basis for well-child visits. The Board agrees with the PDHA that these medical offices are "a perfect setting to deliver safe and effective oral hygiene education and services," to the neediest of populations. The inclusion of these new locations will improve access to oral health care in this Commonwealth and will improve the oral health of citizens of this Commonwealth.

The Board emphasizes that this final-form rulemaking only expands the practice sites in which the PHDHPs can practice. The scope of practice for PHDHPs, as well as their ability to practice unsupervised, already exists. Therefore, many of the comments received, such as the level of training for PHDHPs, the scope of practice of PHDHPs, the placement of sealants, supervision of PHDHPs, or the inability of PHDHPs to diagnose or treat patients or take radiographs are outside the scope of this final-form rulemaking. The Board agrees that early detection of dental problems is crucial. PHDHPs are permitted to take radiographs as outlined in § 33.302(a) (relating to requirements for personnel performing radiologic procedures) and must provide to the patient a copy of the radiograph and a referral to a dentist indicating the reason the radiograph was taken and any observations made by the PHDHP. The dentist can then read the radiograph and make a diagnosis for comprehensive care, including restorations for caries and extractions or referrals to dental specialists such as orthodontists, periodontists, oral surgeons or endodontists. It is the licensed dentists who will provide medication that PHDHPs cannot prescribe.

Some commenters question how the Board will know that the standard of care is being met by PHDHPs when there is no dental supervision with dental expertise. The Board responds, again, that the authority allowing PHDHPs to practice independently already exists. By statutory definition a PHDHP who has satisfied the requirements of section 11.9 of the act "may perform educational, preventive, therapeutic and intra-oral procedures which the hygienist is educated to perform and which require the hygienist's professional competence and skill but which do not require the professional competence and skill of a dentist without the authorization, assignment or examination of a dentist." 63 P.S. § 121. It is the responsibility of the PHDHP to follow the Board's regulations relating to their practice and the standard of care. If a PHDHP's treatment falls below the acceptable standard of care, a complaint can be made with the Board in the same manner that complaints are made against dentists or any other licensees. Every complaint is investigated and prosecuted when appropriate. Like dentists and other licensees, PHDHPs may face disciplinary actions against their license such as public reprimand, probation, suspension, revocation or the imposition of monetary civil penalties.

Many reviewers questioned whose malpractice insurance will pay should something go wrong when being treated by a PHDHP? The Board's response to these inquiries is that section 11.9 of the act and the Board's regulations in § 33.116 (relating to certification of public health dental hygiene practitioners) require PHDHPs to provide the Board with documentation demonstrating that they obtained professional liability insurance or are a named insured governed by a group policy in the amount of $1 million per occurrence and $3 million per annual aggregate. If something were to occur while the PHDHP is treating a patient, the patient would be covered by the PHDHP's professional liability insurance.

Many commenters questioned, if PHDHP practice sites are expanded to include physician's offices, what are the responsibilities of physicians employing PHDHPs, and what oversight or supervision must the physician provide to the PHDHP? While dental hygienists are required to work under the supervision of a dentist, PHDHPs are not. It follows that a PHDHP who is working in a physician's office is not required to work under the supervision of the physician. While the physician may choose to have an employer/employee relationship or an employer/independent contractor relationship with the PHDHP, that is up to the parties to determine independently.

Therefore, the Board will not be regulating the relationship between the PHDHP and the physician.

Similarly, some individuals questioned to what extent the Board will oversee issues that could arise in the physician's offices, such as disciplinary actions, which are otherwise regulated by the Medical Board. The Board regulates the practice of PHDHPs; therefore, if a PHDHP commits a violation of the act or regulations, regardless of practice site, the PHDHP is subject to disciplinary action by the Board.

One commenter questioned whether it is voluntary for a physician to employ a PHDHP, and will the Board play a role in approving these arrangements or otherwise reviewing the terms and conditions between the physician and the PHDHP. As discussed previously, it is up to the parties to establish what type of employment relationship, if any, they choose to have. They might not choose to have an employment relationship. A PHDHP might opt to lease space in a physician's office and work as an independent contractor. A physician will not be forced to employ a PHDHP, as neither the Board's regulations nor the regulations of the State Board of Medicine or the State Board of Osteopathic Medicine (medical boards) mandate that arrangement.

Several comments/questions were received concerning billing and insurance. One concern was that most dental plans allow for a cleaning every 6 months, and if a patient is receiving a cleaning at the primary care physician's office, how can a dentist then examine the patient within this 6-month period? Similarly, many licensees seem to be concerned that expanding practice sites this far will create a Statewide workforce conflict with two workforce groups fighting for reimbursement from the same pool of resources instead of working together. There are also concerns that the dental community will view a hygienist as a fee for service competitor because hygienists will be billing insurance for cleanings and sealants without ever diagnosing anything. However, as previously mentioned, this is what PHDHPs do now. PHDHPs are already authorized to provide these services outside of dental offices in daycares and schools, correctional facilities, health care facilities, personal care homes, older adult daily living centers, and Federally qualified health centers, and so forth. This final-form rulemaking simply expands the PHDHPs practice sites as authorized by section 11.9 of the act. Moreover, the Board does not regulate billing. The Board recognizes that it may not be ideal for dentists to perform examinations when an oral prophylaxis was not completed immediately prior to the examination; however, the goal of this final-form rulemaking is to provide preventive oral health care on a regular basis to this Commonwealth's neediest population and to then refer these patients to a dental home. The anticipation is that patients, who otherwise would not seek dental care for themselves or their children, will seek dental care at the advice of PHDHPs.

Many individuals provided alternative suggestions to this final-form rulemaking such as offering incentives to dentists who offer low cost or free services to the underserved population. Some suggestions were to provide dental loan forgiveness or tax credit. While these suggestions are laudable, the General Assembly is more equipped to respond to these urgings. The Board is without authority to extend dental loan forgiveness or tax credits to dentists who offer low cost services to underserved populations. The Board does, however, have authority to expand the practice sites for PHDHPs to locations the Board deems appropriate. The Board feels strongly that expanding the practice sites to areas where PHDHPs can provide preventative oral care and hygiene education services to this Commonwealth's neediest populations, is in the public's best interest.

Other suggestions included adding a uniform referral form with specific language that the PHDHP is not a licensed dentist and that the care provided by the PHDHP does not replace the need for a comprehensive dental examination with a licensed dentist. It was further suggested that this uniform referral form should provide contact information for local dentist offices or community resources that can provide dental examinations and specifically recommend that the patient schedule dental services with a licensed dentist. The Board believes that the implementation of a uniform referral form would exceed the scope of this final-form rulemaking, which is limited to the practice sites at which a PHDHP may practice. However, the Board is not opposed to considering this suggestion as part of a future rulemaking and will take it under advisement. In the meantime, the referral process for PHDHPs is already clearly outlined in the Board's existing regulations. Section 33.205b(b) currently provides that PHDHPs shall refer each patient to a licensed dentist on an annual basis. In addition, PHDHPs are required to document the referral in the patient's dental record. To date, there have not been reported issues with referrals by PHDHPs to dental offices. The reality is that with or without a uniform referral form, PHDHPs cannot force patients to follow through and see a dentist. However, the PHDHP can and should emphasize the need for regular dental care.

Last, the Board received numerous comments about in-home treatment by PHDHPs. Commentators opined that it is inherently risky because patients who need in-home attention generally have extreme physical and medical complications. Many licensees and organizations expressed concern that these patient's lives should not be put in the hands of someone who lacks emergency care training, basic life support and the availability of an AED or medical kit which would have restricted drugs. The Board agrees that in-home treatment by PHDHPs is inherently risky due to the compromised health that these patients often have. The Board notes that PHDHPs, like dentists, are required, as a condition of biennial licensure renewal, to provide proof of current certification to administer cardiopulmonary resuscitation. However, in response to these comments, the Board has deleted from § 33.205b(c) the language originally proposed in paragraph (3)(iii), which added as an acceptable practice location for PHDHPs "services provided by a health care facility to patients in their places of residence or other independent living environment."

Comments from the HPLC

The HPLC questioned whether the term "mental health establishment" includes drug and alcohol treatment facilities. If it does not, the HPLC urged the Board to include those facilities. Drug and alcohol treatment facilities are regulated by the Department of Drug and Alcohol Programs (DDAP). Specifically, the Pennsylvania Drug and Alcohol Abuse Control Act (71 P.S. §§ 1690.101—1690.115) references these types of facilities. The term "facility" is defined in the DDAP's regulations in 28 Pa. Code § 701.1 (relating to general definitions) as the physical location in which ongoing, structured and systematic drug and alcohol services are delivered. The Board has therefore amended this final-form rulemaking by adding an additional paragraph to subsection (c) to include a "facility" as defined in 28 Pa. Code § 701.1, that

is licensed by the DDAP to provide drug and alcohol treatment services as an acceptable place of practice for a PHDHP. Those attending drug and alcohol treatment facilities typically do not have access to dental care. The Board agrees that treatment by a PHDHP with an annual referral to a dental office would be beneficial in these facilities.

Like several of the public commenters, the HPLC further requested clarification regarding the Board's role in regulating the relationship between the PHDHP and the physician when services are provided in a physician's office or clinic. As noted previously, the Board has no role in regulating that relationship. How the PHDHP and the physician structure their relationship is up to them. Physicians located in dentally underserved areas are free to utilize the services of a PHDHP, or not.

Comments from IRRC

First, IRRC recommended that the Board address the HPLC's comments for IRRC's review as part of their determination of whether this final-form rulemaking is in the public's interest. The Board reviewed the HPLC's comments and addressed them previously.

Subsection (c)(3)(ii)

IRRC next requested that the Board explain why a birth center was not carried over to the list of examples outlined in § 33.205b(c)(3)(ii) as one of the acceptable practice sites where a PHDHP may perform dental hygiene services. The Board initially did not include a birth center among the examples listed because individuals typically stay in birth centers for a short period of time. However, because of IRRC's concern, the Board has reconsidered its position. The Board recognizes that receiving preventative dental care and other dental hygiene services from a PHDHP soon after the birth of a child is essential as the health of the mother's teeth could have been compromised during the pregnancy. The referral that the new mother would receive to a dentist may also encourage her to obtain a dental home for the new baby in that first year of life. Therefore, this final-form rulemaking reflects "a birth center" in the list of examples of acceptable places where a PHDHP may practice.

IRRC also commented that the phrase, "or any other facility licensed and regulated by the Department of Health or successor agency" under subsection (c)(3)(ii), is not a specific example of a facility. IRRC suggested that the Board delete this phrase from the subparagraph and include it as a separate paragraph. Similarly, IRRC suggested that the Board make the same revision to subsection (c)(4)(ii) regarding the phrase "or any other facility licensed and regulated by the Department of Human Services or a successor agency." The Board has made these revisions, which are reflected in this final-form rulemaking. In so doing, the paragraphs in subsection (c) have been renumbered.

Subsection (c)(11)

With respect to the Board's proposed expansion of PHDHP practice sites to offices and clinics of physicians licensed by the medical boards, IRRC observed that the regulations of the medical boards allow for satellite locations and operations maintained by physician assistants. IRRC therefore questioned whether satellite locations would be considered "an office or a clinic" for purposes of this paragraph and suggested that the Board clarify that issue or explain why this is unnecessary. Upon further review, the Board has included language clarifying that an office or clinic of a physician includes "a satellite location" as defined in the State Board of Medicine's regulations in § 18.122 (relating to definitions) or "satellite operations" as defined in the State Board of Osteopathic Medicine regulations in § 25.142 (relating to definitions). Because there is no supervision required by the physician, a PHDHP can practice in a satellite office or clinic where there is no physician on the premises. Further, under §§ 18.155 and 25.175 (relating to satellite locations; and physician assistants and satellite operations), satellite locations/operations are generally utilized in areas of medical need, so this is consistent with where the PHDHP will be practicing. This final-form rulemaking reflects this change.

Miscellaneous clarity

IRRC noted that the phrase "includes, but is not limited to" appears in § 33.205b(3)(ii) and 4(ii) of the proposed rulemaking, when the *Pennsylvania Code & Bulletin Style Manual* (*Manual*) requires in section 6.16 (relating to words and phrases to avoid) that agencies avoid this phrase and use "includes" instead. IRRC also noted that the *Manual* states in section 2.1f (relating to arrangement of *Code*) that a subdivision may not have two designators. The Board made corrections to this final-form rulemaking consistent with IRRC's comment.

Last, IRRC recommended that cross-references to the applicable regulations of the medical boards should be added to § 33.205b(c)(11). In response, the Board has added cross references to the relevant statutes governing physicians and included pinpoint citations to the definitions of "satellite location" in Chapter 18 (relating to State Board of Medicine—practitioners other than medical doctors) and "satellite operations" in Chapter 25 (relating to State Board of Osteopathic Medicine).

Fiscal Impact and Paperwork Requirements

There are no fiscal impacts or paperwork requirements associated with this final-form rulemaking.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 12, 2019, the Board submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 1396, and a copy of a Regulatory Analysis Form to the IRRC and to the Chairpersons of the HPLC and the SCP/PLC for review and comment. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC and the public.

Under section 5.1(g)(3) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(g)(3) and (j.2)), on December 2, 2020, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, the IRRC met on December 3, 2020, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by contacting Lisa Burns, Administrator, State Board of Dentistry, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-DENTISTRY@PA.GOV.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) This final-form rulemaking does not include any amendments that would enlarge the scope of the proposed rulemaking published at 49 Pa.B. 1396.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the act.

Order

The Board orders that:

(a) The regulations of the Board at 49 Pa. Code Chapter 33, are amended by amending § 33.205b to read as set forth in Annex A.

(b) The Board shall submit this final-form rulemaking to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall submit this final-from rulemaking to IRRC, the HPLC and the SCP/PLC for approval as required by law.

(d) The Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

R. IVAN LUGO, DMD,
Chairperson

(*Editor's Note*: See 50 Pa.B. 7255 (December 19, 2020) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-4633 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

§ 33.205b. Practice as a public health dental hygiene practitioner.

(a) *Scope of professional practice*. A public health dental hygiene practitioner may perform the dental hygiene services set forth in § 33.205(a)(2)—(6) (relating to practice as a dental hygienist) in the practice settings identified in subsection (c) without the authorization, assignment or examination by a dentist. A public health dental hygiene practitioner may perform the dental hygiene services set forth in § 33.205(a)(1) and (7) in accordance with § 33.205(d).

(b) *Requirement of referral*. A public health dental hygiene practitioner shall refer each patient to a licensed dentist on an annual basis. Documentation of the referral must be maintained in the patient's dental record. The failure of the patient to see a dentist as referred will not prevent the public health dental hygiene practitioner from continuing to provide dental hygiene services to the patient within the scope of professional practice set forth in subsection (a).

(c) *Practice settings*. A public health dental hygiene practitioner may perform dental hygiene services without the supervision of a dentist in the following practice settings:

(1) Public and private educational institutions that provide elementary and secondary instruction to school aged children under the jurisdiction of the State Board of Education, and in accordance with all applicable provisions of the Public School Code of 1949 (24 P.S. §§ 1-101—27-2702), the regulations relating to the certification of professional personnel in 22 Pa. Code Chapter 49 (relating to certification of professional personnel),
and the regulations of the Department of Health in 28 Pa. Code § 23.35 (relating to dental hygienists).

(2) *Correctional facilities*. For purposes of this section, correctional facilities include Federal prisons and other institutions under the jurisdiction of the United States Department of Justice, Bureau of Prisons which are located within this Commonwealth; institutions, motivational boot camps and community corrections centers operated or contracted by the Department of Corrections; and jails, prisons, detention facilities or correctional institutions operated or contracted by local, county or regional prison authorities within this Commonwealth.

(3) Health care facilities, as defined in section 802.1 of the Health Care Facilities Act (35 P.S. § 448.802a), including a general, chronic disease or other type of hospital; a home health care agency; a home care agency; a hospice; a long-term care nursing facility; a cancer treatment center; an ambulatory surgical facility or a birth center.

(4) Any other facility licensed and regulated by the Department of Health or a successor agency.

(5) A "facility," as defined in section 1001 of the Human Services Code (62 P.S. § 1001), including an adult day care center; child day care center; family child care home; boarding home for children; mental health establishment; personal care home; assisted living residence; nursing home, hospital or maternity home.

(6) Any other facility licensed and regulated by the Department of Human Services or a successor agency.

(7) Domiciliary care facilities, as defined in section 2202-A of The Administrative Code of 1929 (71 P.S. § 581-2).

(8) Older adult daily living centers, as defined in section 2 of the Older Adult Daily Living Centers Licensing Act (62 P.S. § 1511.2).

(9) Continuing-care provider facilities, as defined in section 3 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. § 3203).

(10) *Federally-qualified health centers*, as defined in section 1905(1)(2)(B) of the Social Security Act (42 U.S.C.A. § 1369(1)(2)(B)). For purposes of this section, the term includes Federally-qualified health center lookalikes that do not receive grant funds under section 330 of the Public Health Service Act (42 U.S.C.A. § 254b).

(11) Public or private institutions under the jurisdiction of a Federal, State or local agency.

(12) Free and reduced-fee nonprofit health clinics.

(13) An office or clinic of a physician who is licensed by the State Board of Medicine under the Medical Practice Act of 1985 (63 P.S. §§ 422.1—422.53) or by the State Board of Osteopathic Medicine under the Osteopathic Medical Practice Act (63 P.S. §§ 271.1—271.18), that is located in a dental health professional shortage area, as determined by the United States Department of Health and Human Services, Health Resources & Services Administration, and published on the Pennsylvania Department of Health's web site at www.health.pa.gov. For purposes of this paragraph, an office or clinic of a physician includes a "satellite location" as defined in § 18.122 (relating to definitions) or "satellite operations" as defined in § 25.142 (relating to definitions).

(14) A "facility," as defined in 28 Pa. Code § 701.1 (relating to general definitions) that is licensed by the Department of Drug and Alcohol Programs to provide drug and alcohol treatment services.

(d) *Recordkeeping*. A public health dental hygiene practitioner shall maintain a dental record which accurately, legibly and completely reflects the dental hygiene services provided to the patient. The dental record must be retained for at least 5 years from the date of the last treatment entry. The dental record must include, at a minimum, the following:

(1) The name and address of the patient and, if the patient is a minor, the name of the patient's parents or legal guardian.

(2) The date dental hygiene services are provided.

(3) A description of the treatment or services rendered at each visit.

(4) The date and type of radiographs taken, if any, and documentation demonstrating the necessity or justification for taking radiographs, as well as the radiographs themselves.

(5) Documentation of the annual referral to a dentist.

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