

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 129]

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

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

This final-form rulemaking was adopted by the Board at its meeting on November 16, 2021.

A. Effective Date

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

B. Contact Persons

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C. Statutory Authority

This final-form rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (act) (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth and section 5(a)(8) of the act, which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7671q).

D. Background and Purpose

Purpose

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

The vapor leak monitoring procedures and other emission control requirements for small gasoline storage tanks required under § 129.61a are significant to the protection of air quality in this Commonwealth. These requirements apply in the five-county Philadelphia area (consisting of Bucks, Chester, Delaware, Montgomery and Philadelphia Counties) and the seven-county Pittsburgh area (consisting of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties). The protections under § 129.61a, which include preserving leak testing requirements in § 129.82 and enhancing vapor leak testing by requiring two additional tests, will help ensure that ozone pollution in these challenging ozone pollution areas does not increase upon decommissioning of Stage II vapor recovery equipment under new § 129.82a.

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

The ORVR systems, just like Stage II vapor recovery systems, are designed to reduce fuel vapor emissions from vehicle refueling. The ORVR-equipped vehicles capture 98% of the fugitive emissions caused by refueling. Pertaining to a GDF, a fugitive emission is an air contaminant emitted into the outdoor atmosphere when not properly emitted through a vent. When an ORVR-equipped vehicle is being refueled with a Stage II vacuum assist vapor recovery system, unwanted emissions of VOCs and air toxics may occur through adverse impacts of the ORVR system on the Stage I and Stage II vapor recovery systems. When a vacuum assist Stage II vapor recovery system is used while refueling an ORVR-equipped vehicle, the Stage II vapor recovery system mostly returns fresh air, not gasoline vapors, into the underground storage tank (UST), because nearly all the gasoline vapor is captured by the vehicle’s ORVR system. The fresh air returned to the UST pressurizes the empty space in the UST, forcing gasoline vapors out of the liquid gasoline portion in the UST. The pressure builds to a

point at which the vapors vent into the atmosphere through a pressure/vacuum vent valve. This venting is inherent in the UST design; it preserves the integrity and prevents damaging the UST, preventing underground leaks. When enough vehicles (approximately 90%) are equipped with ORVR systems in a Stage II area, the excess emissions emitted into the atmosphere due to the incompatibility between ORVR systems and Stage II vacuum assist vapor recovery systems exceed any emissions benefits.

To ensure that ozone pollution does not increase, the Board is repealing requirements under § 129.82 that a GDF owner or operator in the Philadelphia or Pittsburgh area install a Stage II vapor recovery system, preserving vapor leak testing requirements in § 129.82 and enhancing vapor leak testing by requiring two additional tests in § 129.61a. Other amendments are the new and amended definitions under § 121.1 that help implement this final-form rulemaking. The remaining amendments clarify Stage I vapor recovery system requirements under § 129.61.

Air quality

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

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

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

In 1997, after determining that the 1-hour NAAQS was inadequate to protect public health, the EPA promulgated a new NAAQS based on an 8-hour average of 0.08 ppm averaged over 8 hours. See 62 FR 38855 (July 18, 1997). Because ozone ambient air monitoring data is measured out to three decimal places, the standard effectively became 0.084 ppm with rounding; areas with ozone levels as high as 0.084 ppm (84 parts per billion (ppb)) were considered to be meeting the 0.08 ppm standard. In 2004, the EPA designated 37 counties in this Commonwealth as nonattainment areas for the 1997 8-hour ozone NAAQS. See 69 FR 23858, 23931 (April 30, 2004). Based on the certified ambient air monitoring data for the 2017 and 2018 ozone seasons, all monitored areas of this Commonwealth are attaining the 1997 8-hour ozone NAAQS. Maintenance plans have been submitted to the EPA and approved for the 1997 ozone standard. Section 175A(a) of

the CAA (42 U.S.C.A. § 7505a(a)) prescribes that the maintenance plans include permanent and enforceable control measures that will provide for the maintenance of the 1997 ozone NAAQS for at least 10 years following the EPA's redesignation of the areas to attainment of the 1997 ozone standard.

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

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

The reductions in VOC emissions that will be achieved following the implementation of this final-form rulemaking will enable the Commonwealth to make progress in attaining and maintaining the 2008 and 2015 8-hour ozone NAAQS. The Department will submit this final-form rulemaking to the EPA for approval as a revision to the Commonwealth's State Implementation Plan (SIP) at 40 CFR 52.2020 (relating to identification of plan).

Stage I vapor recovery systems—an overview

This final-form rulemaking addresses Stage I vapor recovery system requirements under amendments to § 129.61 and under new § 129.61a.

"Stage I" refers to a vapor recovery system, including equipment and components, that controls the emission

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

The Board initially adopted Stage I vapor recovery system requirements for areas of this Commonwealth with the most persistent ozone pollution problems, including the Philadelphia and Pittsburgh areas. See 9 Pa.B. 1447 (April 9, 1979). The Board later amended the regulations at 10 Pa.B. 3788 (September 27, 1980) and in 1991 expanded the requirements Statewide to address continuing ozone nonattainment problems in this Commonwealth and throughout the Northeast. See 21 Pa.B. 3406 (August 3, 1991). The Board streamlined the regulations in 1995 to eliminate two of three exemptions, rendering the regulations applicable to gasoline storage tanks with a capacity of more than 2,000 gallons, matching the EPA's exemption. See 25 Pa.B. 3849 (September 16, 1995).

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

The Commonwealth's existing Stage I vapor recovery regulations, under § 129.61, are more protective of air quality than the NESHAP. This final-form rulemaking, under new § 129.61a, is also more protective than the NESHAP because it requires vapor leak testing to be performed at more GDFs in the areas of the Commonwealth subject to these requirements, and more often, than under the NESHAP. Section 129.61a of this final-form rulemaking also requires the use of low permeation gasoline hoses and dripless enhanced conventional (ECO) nozzles to protect against VOC emissions into the atmosphere; measures not required by the NESHAP. These hoses and nozzles are cost effective measures that will significantly reduce VOC emissions and small gasoline spills.

A concern was raised by the Independent Regulatory Review Commission (IRRC) during the comment period on the proposed rulemaking that the Board should address in the Preamble and Regulatory Analysis Form (RAF) how the benefits of ECO nozzles outweigh the negative fiscal and environmental impacts. Another commentator stated that ECO nozzles could cause worse spills than conventional nozzles. The Board realizes that the cost of ECO nozzles will be more expensive than conventional nozzles, but the Department has explained that the cost-effectiveness of requiring ECO nozzles is comparable to other VOC control measures. The cost-effectiveness of ECO nozzles controlling gasoline from entering the environment is approximately \$2,173 per ton averaged over all subject GDFs. When considering that VOC emission reduction credits (ERC) are nearly unavailable in the two areas subject to this final-form rulemaking and those ERCs would likely be priced at a

higher premium when compared to the cost-effectiveness of the ECO nozzle at an average cost of approximately \$2,173 per ton over all subject GDFs, ECO nozzles are a cost-effective control measure.

As described previously, the protections under § 129.61a will help ensure that ozone levels do not increase upon decommissioning of Stage II vapor recovery equipment and that the current emission reductions continue to be achieved at GDFs after decommissioning of Stage II vapor recovery equipment.

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

Stage II vapor recovery—an overview

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

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

Stage II vapor recovery—two types

There are two types of Stage II vapor recovery technologies: (1) vapor balance and (2) vacuum assist. The two types of Stage II vapor recovery technologies work in different ways. As mentioned previously, Stage II vapor recovery systems are designed to reduce fuel vapor emissions from vehicle refueling at a GDF. A Stage II vapor recovery system also controls emissions into the atmosphere of vapors during the storage of gasoline at a GDF. Stage II vapor recovery technology uses special refueling nozzles, dispensing hoses and a system that draws refueling vapors into the UST. A Stage II “vapor balance” vapor recovery system uses direct displacement to collect or process vapors at a GDF. Vapor transfer to the UST is accomplished by the slight pressure created in the motor

vehicle fuel tank by the incoming flow of gasoline. This system is passive. A Stage II "vacuum assist" vapor recovery system creates a vacuum to assist the movement of vapors back into the UST for storage or processing. The vacuum assist system is more complex to operate. It also draws some ambient air into the vapor return hose to the UST, which in turn requires secondary processing to accommodate the excess vapors.

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

For this reason, this final-form rulemaking requires decommissioning of Stage II vacuum assist vapor recovery systems in the five-county Philadelphia and seven-county Pittsburgh areas, under § 129.82a. For Stage II vapor balance vapor recovery systems, however, § 129.82a will allow, but not require, decommissioning. Section 129.61a ensures that there are not excess emissions of VOCs and HAPs during or after decommissioning.

Stage II vapor recovery—statutory, regulatory and SIP history

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

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

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

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

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

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

Section 129.82 did not include the functional testing and certification requirements or the emission control requirements of the October 1991 EPA Stage II Enforcement Guidance. To correct the deficiencies, the Pennsylvania General Assembly added former section 6.7, formerly regarding control of volatile organic compounds from gasoline dispensing facilities, to the act (35 P.S. § 4006.7(b), (c) and (h)). Section 6.7 echoed the Stage II vapor recovery regulations, though with later compliance dates by 9 months. Section 6.7 also required use of the functional testing and certification requirements of the EPA's Stage II vapor recovery guidance documents. See section 9 of Senate Bill 1650 of 1992. This Senate Bill was enacted into law as the act of July 9, 1992 (P.L. 460, No. 95) (Act 95 of 1992).

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

On June 13, 1994, the EPA published notice of final rulemaking, providing a limited approval and a limited disapproval of the Department's Stage II vapor recovery SIP revision. The EPA approved § 129.82 as submitted but issued the limited disapproval to allow the Department to correct the functional testing and certification

requirement deficiencies noted by the EPA in its November 29, 1993, notice of proposed rulemaking. See 59 FR 30302 (June 13, 1994).

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

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

For Berks County, implementation never occurred because the area came into attainment of the NAAQS without implementation of § 129.82. In the same timeframe, the EPA promulgated ORVR system requirements for vehicles under section 202(a)(6) of the CAA (42 U.S.C.A. § 7521(a)(6)). Under this CAA provision, this EPA action enabled states to remove Stage II vapor recovery requirements from moderate ozone nonattainment areas. (For more information, see the subheading Stage II Vapor Recovery—conflict between Stage II vapor recovery systems and motor vehicle fueling emission controls; the EPA's widespread use determination, as follows.)

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

In its 1997 proposal, the Board proposed amending compliance dates for the seven-county Pittsburgh area under § 129.82(a), adding the functional testing and certification requirements to § 129.82 as new subsection (d) and making clarifying amendments. See 27 Pa.B. 2239. In reply and to remove conflicting compliance dates, the Pennsylvania General Assembly repealed the Stage II vapor recovery provisions from the act, leaving only the SIP-approved requirement under section 6.7(h) that the Department implement functional testing and certification requirements established by the EPA guidance. See

the act of November 26, 1997 (P.L. 530, No. 57). On April 10, 1999, the Board finalized the amendments to § 129.82, including the compliance dates, clarifying edits, a possible exit from the program for the Pittsburgh area in 2010 under subsection (d) and the functional testing and certification requirements under subsection (e). See 29 Pa.B. 1889.

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

In addition to the SIP revision that the Department plans to submit for approval of this final-form rulemaking, when adopted as a final regulation, the Department intends to submit a SIP revision to ensure removal of section 6.7 of the act from the SIP.

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

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

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

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

In its widespread use notice, the EPA explained that phasing out the use of Stage II vapor recovery systems could lead to long-term cost savings for affected gas station owners and operators while maintaining air quality protections. See 77 FR 28772, 28780 (May 16, 2012). The EPA also stated that the agency would issue nonbinding guidance on developing and submitting approvable SIP revisions to remove Stage II vapor recovery programs from the SIP. See 77 FR 28772 (May 16, 2012). On August 7, 2012, the EPA issued the guidance. See 77 FR 28772 (May 16, 2012). In the guidance, entitled “Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures,” EPA, H. Lynn Dail et. al., EPA-457/B-12-001, August 7, 2012 (Decommissioning Guidance), the EPA addressed how States should demonstrate that removing Stage II vapor recovery requirements will not cause “backsliding” and, for States in the OTR, how OTR States should demonstrate that they require “comparable measures” under section 184(b)(2) of the CAA.

Using the EPA’s Decommissioning Guidance, the Department completed its analysis of the effects that incompatibility between Stage II vacuum assist vapor recovery systems and ORVR systems has on emissions. Modeling shows that the equipment incompatibility will result in overall excess VOC emissions in this Commonwealth in 2021 in the seven-county Pittsburgh area and in 2022 in the five-county Philadelphia area without removal of these Stage II vapor recovery systems. Overall emissions will increase because emissions due to incompatibility will be greater than the emission reductions achieved by using Stage II vapor recovery systems to pump gasoline into vehicles not equipped with ORVR systems because ORVR-equipped vehicles comprise a larger share of the highway vehicle fleet. Excess VOC emissions would also result without the corresponding requirements to offset VOC emissions caused by, and following, the decommissioning of Stage II vapor recovery equipment.

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

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

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

The Department presented the draft final-form Annex A to the Air Quality Technical Advisory Committee on April 8, 2021, and to the Small Business Compliance Advisory Committee on May 19, 2021, and briefed the committees on the comments received on the proposed rulemaking. The Department presented the draft final-form Annex A to the Citizens Advisory Council’s (CAC) Policy and Regulatory Oversight Committee on June 1, 2021. On the recommendation of the Policy and Regulatory Oversight Committee, on June 15, 2021, the CAC concurred with the Department’s recommendation to present this final-form rulemaking to the Board for consideration. Advisory committee meetings are advertised and open to the public.

This final-form rulemaking is consistent with section 4.2(a) of the act (35 P.S. § 4004.2(a)), and is reasonably necessary to achieve and maintain the health-based and welfare-based 8-hour ground-level ozone NAAQS and to satisfy related CAA requirements in this Commonwealth. Decommissioning of Stage II vacuum assist vapor recovery systems is needed to avoid excess VOC and air toxic emissions. Vapor leak testing and related GDF emission control requirements are needed to protect against backsliding from emission reductions currently accounted for under the existing regulations.

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

§ 121.1. Definitions

This final-form rulemaking revises § 121.1 to amend the terms “CARB Executive Order” and “gasoline dispensing facility” and adds the terms “decommission,” “monthly throughput,” “Phase I vapor recovery system,” “Phase II vapor recovery system,” “pressure/vacuum vent valve,” “Stage I enhanced vapor recovery system,” “Stage I vapor recovery system,” “Stage II vacuum assist vapor recovery system,” “Stage II vapor balance vapor recovery system,” “Stage II vapor recovery system,” “storage tank system,” “UMI,” “UMX,” “ullage” and “underground storage tank” to support the amendments to Chapter 129.

The definition of “CARB Executive Order” is amended to expand the applicability of the term to include Executive Orders that CARB issues for Stage I equipment and other related equipment covered by this final-form rulemaking. The existing definition applied only to the Pennsylvania Clean Vehicles Program in Chapter 126, Subchapter D (relating to Pennsylvania clean vehicles program).

This final-form rulemaking adds a definition of “decommission” to describe the meaning of the term as it is used under § 129.82a. The definition relates to the process to disconnect a Stage II vapor recovery system.

This final-form rulemaking amends the definition of “gasoline dispensing facility” to clarify that it is a stationary source that contains a storage tank.

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

This final-form rulemaking adds the definition of a “Phase I vapor recovery system” because the term is used in a CARB test procedure title in § 129.61a(b)(4) of this

final-form rulemaking. This CARB-derived definition means the same thing as the EPA-derived definition of the term “Stage I vapor recovery system” also added in this final-form rulemaking. See explanation of “Stage I vapor recovery system” as follows.

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

This final-form rulemaking adds the definition of “pressure/vacuum vent valve” to describe the operation and purpose of this component of a Stage I vapor recovery system.

This final-form rulemaking adds the definition of a “Stage I enhanced vapor recovery system” to explain that the system must have received the necessary certification as specified by the required CARB Executive Order. A Stage I enhanced vapor recovery system is a type of Stage I vapor recovery system.

This final-form rulemaking adds the definition of a “Stage I vapor recovery system” to describe the purpose and operation of the system. The definition also includes a “Phase I vapor recovery system” and “Stage I enhanced vapor recovery system.” See the previous explanations regarding the definition of these two terms.

This final-form rulemaking adds definitions of the two types of “Stage II vapor recovery systems.” The two systems are subject to different requirements in this final-form rulemaking. They are described as follows.

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

The definition of a “Stage II vapor balance vapor recovery system” describes the purpose and operation of the vapor balance system.

This final-form rulemaking adds the definition of a “Stage II vapor recovery system” to describe the purpose and operation of the system. The definition also refers to a “Phase II vapor recovery system.” See the previous explanation regarding the definition of “Phase II vapor recovery system.” The definition of “Stage II vapor recovery system” is amended in response to a comment from IRRC to specify that the term includes both a Stage II vacuum assist vapor recovery system and a Stage II vapor balance vapor recovery system.

This final-form rulemaking adds the definition of “storage tank system” because the term is used throughout §§ 129.61a and 129.82a. The definition is the definition for the term under § 245.1 (relating to definitions).

This final-form rulemaking adds the definition of “ullage” to describe the meaning of this technical word in the context of measuring the vapor leak rate from a gasoline storage tank system under § 129.61a(e)(2)(iv).

This final-form rulemaking adds the definitions of “UMI” and “UMX” to specify certification requirements for persons performing specified work on USTs under §§ 129.61a(q) and 129.82(e). The terms have the meanings as defined under the term “certification categories” under § 245.1.

This final-form rulemaking adds the definition of “underground storage tank” because the term is used under proposed §§ 129.61a and 129.82a. The proposed definition would be the definition for the term under § 245.1.

Aside from the previously noted change to the definition of a “Stage II vapor recovery system,” no other changes were made to the definitions from the proposed to this final-form rulemaking.

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

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

The Board did not make any changes to § 129.61 from the proposed rulemaking to this final-form rulemaking.

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

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

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

Subsection (a) describes applicability. This subsection specifies that § 129.61a applies to the owner and operator of a gasoline storage tank with a capacity of greater than 2,000 gallons that is subject to the Stage I vapor recovery control requirements under § 129.61 only if the GDF is located in one of 12 counties in the five-county Philadelphia and seven-county Pittsburgh areas, and only if the monthly throughput of the GDF exceeds the applicable threshold specified under paragraph (1) or (2). The throughput thresholds in paragraphs (1) and (2) are the same as those under existing § 129.82, which in turn

are based on section 182(b)(3)(A) of the CAA, (42 U.S.C.A. § 7511a(b)(3)(A)). The thresholds exclude GDFs with low throughputs and specify a higher throughput threshold under paragraph (2) for a GDF owned or operated by an independent small business marketer of gasoline, consistent with section 324 of the CAA (42 U.S.C.A. § 7625), regarding vapor recovery for small business marketers of petroleum products. The GDFs below the monthly throughput threshold of 10,000 gallons in paragraph (1) account for less than 2% of total throughputs in the areas subject to this final-form rulemaking. Approximately 1/3 of GDFs in the areas subject to this final-form rulemaking have monthly throughputs below the 10,000 gallon threshold in paragraph (1). The cost-effectiveness of controlling GDFs below the threshold in paragraph (1) is very low in comparison to GDFs with throughputs at or above the applicability threshold in paragraph (1). See Section F of this Preamble, and Questions 15, 16, 17 and 24 of the RAF for this final-form rulemaking, for more information on benefits and impacts of this final-form rulemaking to small businesses.

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

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

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

Subsection (c) specifies a choice of two compliance options for satisfying monitoring requirements for GDF owners to comply with the vapor leak monitoring require-

ments under this section. The owner and operator of a GDF has the option to comply by using periodic or continuous vapor leak rate monitoring. For the periodic monitoring option, requirements under subsection (d) are to be followed. For the continuous monitoring option, requirements under subsections (e), (h), (i) and (j) are to be followed.

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

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

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

Section 129.61a(d)(1) is amended to add subparagraph (v) in response to two comments received on the proposed rulemaking. Subparagraph (v) specifies that the existing CARB TP-201.1E, CARB TP-201.3, CARB TP-201.3C and CARB TP-201.1B leak tests must be performed by the GDF owners and operators within 1 year after the effective date of this final-form rulemaking and within 1 year thereafter. This paragraph provides clarity as to the effective date for when GDF owners and operators must begin conducting these tests.

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

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

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

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

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

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

Subsection (f)(3) requires that the GDF owner or operator maintain onsite or electronically store allowing for onsite examination a copy of the CARB Executive Order issued for the Stage I enhanced vapor recovery system under subsection (e)(1). This will allow an inspector to determine if the proper equipment is installed at a facility that uses a continuous pressure monitoring system. This subsection is amended from proposed rulemaking to this final-form rulemaking in response to comments received to allow for GDFs to electronically store CARB Executive Orders and other records as long as they are readily available for onsite examination during inspection. This revision reflects that owners and operators of GDFs utilize electronic technology as opposed to just paper documentation.

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

Subsection (g) applies to all GDF owners and operators who install a Stage I vapor recovery system under § 129.61a. Subsection (g) requires regular leak monitor-

ing inspections. By following a schedule and examining potential problem spots where the vapor tightness of a Stage I vapor recovery system could easily become compromised, a person may prevent larger leaks. Larger leaks are often caused by the misuse or misoperation of a Stage I vapor recovery system and are usually apparent with a visual inspection. Small leaks, which are more difficult to discover, become large leaks over the course of several weeks or months and may be discovered by leak monitoring inspection.

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

Subsection (g)(2) requires the GDF owner or operator to inspect once per month components of the Stage I vapor recovery system that are less likely to be damaged during normal operation of the GDF. Subsection (g)(3) requires the GDF owner or operator to make a repair or correction to a failed component of the Stage I vapor recovery system as soon as possible before the next monthly inspection.

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

Subsection (h) applies to a GDF owner or operator who chooses the compliance option under subsection (c) of installing a continuous pressure monitor to perform leak monitoring. Subsection (h) specifies how a continuous pressure monitor must operate to be an equivalent form of leak monitoring as annual leak monitoring. This subsection specifies the operating parameters of the continuous pressure monitoring system, and related measurements, recordkeeping and record storage requirements, testing requirements and schedule for repairs. Subsection (h)(10) is amended from proposed rulemaking to this final-form rulemaking in response to comments received to allow for GDFs to electronically store records as long as they are readily available for onsite examination during inspection. This revision reflects that owners and operators of GDFs utilize electronic technology as opposed to just paper documentation.

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

Subsection (j) applies to a GDF owner or operator who chooses the compliance option under subsection (c) of

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

Subsection (k) applies to an owner or operator of a GDF who does not have a Stage II vapor recovery system. Paragraph (1) specifies when a GDF owner or operator must replace conventional hoses with low permeation hoses. GDF owners and operators must replace all conventional hoses with low permeation hoses within 2 years after the effective date of adoption of this final-form rulemaking. For all new gasoline dispensers at GDFs and all new GDFs, the owner or operator must install low permeation hoses on the dispensers upon installation of the dispensers. The low permeation hoses must be included on a specified component list in CARB Executive Order NVR-1-D or in an update or revision to the Executive Order.

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

Subsection (l) specifies additional requirements for GDF owners and operators. These requirements are best practices for maintenance of Stage I and Stage II vapor recovery systems. Although these additional requirements are currently codified only under § 129.82 for GDFs that have Stage II vapor recovery systems, they provide significant protections against vapor leaks and accidental spills that are equally important and applicable to all GDFs. They are listed in subsection (l) because most GDFs with Stage II vapor recovery systems covered under § 129.82 will be decommissioning their Stage II vapor recovery systems under § 129.82a. Subsection (l)(3) is amended from proposed rulemaking to this final-form rulemaking in response to comments received to allow for GDFs to electronically store records as long as they are readily available for onsite examination during inspection. This revision reflects that owners and operators of GDFs utilize electronic technology as opposed to just paper documentation.

Subsection (m) requires that a GDF owner or operator keep records for 2 years including measurements made, leak rate failures observed and corrective actions taken in the relevant paragraphs and subparagraphs listed, unless

a longer period is required under Chapter 127 (relating to construction, modification, reactivation and operation of sources). The records must be made readily available to the Department upon Department request or during an inspection and can be recorded in either written format or stored electronically for onsite examination. Subsection (m) is amended to correct a cross-reference to § 129.61a(j)(2)(iii) pertaining to recordkeeping information for second exceedances of the allowable vapor leak rate. Subsection (m)(1) is amended from proposed rulemaking to this final-form rulemaking in response to comments received to allow for GDFs to electronically store records as long as they are readily available for onsite examination during inspection. This revision reflects that owners and operators of GDFs utilize electronic technology as opposed to just paper documentation.

Subsection (n) requires a GDF owner or operator who chooses to demonstrate compliance by using continuous vapor leak rate monitoring under subsection (c)(2) to maintain onsite at the GDF or electronically stored allowing for onsite examination a copy of the valid CARB Executive Order for the enhanced Stage I vapor recovery system required under subsection (e)(1). Maintaining these documents onsite will facilitate the Department's inspections of the GDF. Subsection (n) is amended from proposed rulemaking to this final-form rulemaking in response to comments received to allow for GDFs to electronically store the CARB Executive Order and other records as long as they are readily available for onsite examination during inspection. This revision reflects that owners and operators of GDFs utilize electronic technology as opposed to just paper documentation.

Subsection (o) requires that the GDF owner or operator maintain onsite or electronically stored allowing for onsite examination at the GDF the CARB Executive Order required for low permeation hoses and enhanced conventional nozzles to facilitate the Department's inspections of the GDF. This subsection is amended from proposed rulemaking to this final-form rulemaking in response to comments received to allow for GDFs to electronically store CARB Executive Orders as long as they are readily available for onsite examination during inspection. This revision reflects that owners and operators of GDFs utilize electronic technology as opposed to just paper documentation.

Subsection (p) requires that the GDF owner or operator maintain onsite at the GDF or electronically stored allowing for onsite examination a copy of the record of the training schedule and written instructions required under subsection (1)(2) for the duration of the operation of the vapor recovery system. This subsection is amended from proposed rulemaking to this final-form rulemaking in response to comments received to allow for GDFs to electronically store records as long as they are readily available for onsite examination during inspection. This revision reflects that owners and operators of GDFs utilize electronic technology as opposed to just paper documentation.

Subsection (q)(1) specifies that a person making corrections or repairs to a vapor recovery system must be appropriately certified under Chapter 245, Subchapters A and B (relating to general provisions; and certification program for installers and inspectors of storage tanks and storage tank facilities). This requirement is included to ensure that appropriately qualified individuals work on these potentially dangerous sources of emissions. Paragraph (2) exempts from this requirement a person when

only performing a test specified under subsection (b), as opposed to a person performing installation or modification work.

Other than the amendments to § 129.61a(d)(1), (f)(3), (h)(10), (l)(3), (m), (n), (o) and (p), no other changes have been made from the proposed rulemaking to this final-form rulemaking.

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

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

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

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

Subsection (b) clarifies and updates the existing operating requirements that the GDF owner or operator must meet for an installed Stage II vapor recovery system until the system is decommissioned under § 129.82a. Subsection (b)(6) is amended from proposed rulemaking to this final-form rulemaking in response to comments received to allow for GDFs to electronically store records as long as they are readily available for onsite examination during inspection. This revision reflects that owners and operators of GDFs utilize electronic technology as opposed to just paper documentation.

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

Subsection (c) also retains the requirement that GDF owners and operators comply with the functional testing and certification requirements in the EPA's Stage II enforcement and technical guidance documents. Subsection (c) designates the appropriate CARB functional and certification requirements for both a vapor balance sys-

tem (paragraph (1)) and a vacuum assist system (paragraph (2)). Paragraph (3) specifies the schedule, frequency and recordkeeping requirements for the test procedures listed in paragraphs (1) and (2) and any possible repairs or corrections needed.

Subsection (d) informs a GDF owner or operator subject to § 129.82 that the owner or operator may also be subject to the vapor leak monitoring and other requirements for small gasoline storage tank emission controls under § 129.61a and the Stage II vapor recovery system decommissioning requirements under § 129.82a.

Other than the amendment to § 129.82(b)(6), no other changes have been made to § 129.82 from the proposed rulemaking to this final-form rulemaking.

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

Section 129.82a specifies the correct way to decommission a Stage II vapor recovery system, who must decommission, decommissioning deadlines and recordkeeping requirements.

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

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

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

Subsection (d) specifies the best practices and test procedures that need to be accomplished to decommission a Stage II vapor recovery system properly. In addition, a Department-approved form, 27-FM-BAQ1029, needs to be completed and sent to the Department to indicate that decommissioning was completed properly. The form must be kept onsite for 2 years unless other requirements require a longer duration of time. Subsection (d)(5) is

amended from proposed rulemaking to this final-form rulemaking in response to comments received to allow for GDFs to electronically store records as long as they are readily available for onsite examination during inspection. This revision reflects that owners and operators of GDFs utilize electronic technology as opposed to just paper documentation.

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

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

Subsection (g) informs GDF owners or operators State-wide who have decommissioned a Stage II vapor recovery system under this section that they must also comply with the Stage I vapor recovery requirements under § 129.61.

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

Other than the amendment to § 129.82a(d)(5), no other changes have been made to § 129.82a from the proposed rulemaking to this final-form rulemaking.

F. Summary of Comments and Responses on the Proposed Rulemaking

The Board adopted the proposed rulemaking at its meeting on May 19, 2020. The proposed rulemaking was published at 50 Pa.B. 5236 (September 26, 2020). Three virtual public hearings were held on October 27, 28 and 29, 2020, respectively. A 66-day public comment period closed on November 30, 2020.

Public comments were received from five commentators. Written comments were not received from the Senate or House Environmental Resources and Energy Committees. On December 30, 2020, IRRC submitted comments to the Board. The comments received on the proposed rulemaking are summarized as follows and are addressed in a comment and response document which is available from the Department.

Public comments received from small and large businesses and an association were either supportive of the proposed rulemaking or asked the Board to make changes to specific provisions of the proposed rulemaking. A trade association expressed support and indicated that the proposed rulemaking would contribute to cost savings. A commentator and IRRC stated that the timeline to begin leak testing should be better described. A commentator and IRRC commented that this final-form rulemaking should clarify that CARB Executive Orders and other records may be electronically stored at gasoline dispensing facilities for inspection. IRRC commented that the Board needed to describe how small businesses would be notified of the testing certification requirements if they are not registered with the Department. A commentator suggested that the Board should incorporate into this final-form rulemaking 40 CFR Part 63, Subpart CCCCCC leak testing requirements for gasoline dispensing facilities in other areas of this Commonwealth. This requirement is already being enforced by the EPA and is outside

the intended scope of this final-form rulemaking. A commentator suggested allowing only individuals obtaining a level of certification of either UTT, UMX, UMI or IUM from the Department's Storage Tank Program to qualify to perform leak testing. Two commentators expressed concerns about motorists having difficulty operating ECO nozzles and that ECO nozzles cost more than other types of gasoline nozzles. A commentator stated that their company locations are reporting fewer minor drips and spills since converting to the ECO nozzles. A commentator stated that some of their customers have had difficulty operating the ECO nozzles, but the difficulty can be overcome with a little help from attendants.

In response to the comments, the Board has made two changes to clarify requirements in this final-form rulemaking. The Board amends § 129.61a(d)(1) to add subparagraph (v), which clarifies when existing and new leak testing is required to be conducted. Subparagraph (v) specifies that two test procedures, CARB TP-201.1E, TP-201.3, TP-201.3C and TP-201.1B will be required to be performed within 1 year of the effective date of the rule and annually thereafter. The Board also amends §§ 129.61a (f)(3), (h)(10), (l)(3), (m)(1), (n), (o) and (p), 129.82(b)(6) and 129.82a(d)(5), respectively, to allow the owner or operator of a gasoline dispensing facility to store CARB Executive Orders and other records electronically to demonstrate compliance during an inspection. The records must be readily available for onsite electronic examination by the Department upon request.

The Board did not make any other amendments to this final-form rulemaking in response to the other comments received. The Department will not require any of the certifications for vapor leak testers because none of the suggested certifications apply to vapor leak testers. The UTT certification for Underground Tightness Testers is a certification for liquid leak testers and is not suitable for vapor leak testers for several reasons. The Department does not believe that individuals performing vapor leak testing pose a significant safety risk to themselves or others. Leak testing takes place at ground level and above where there is adequate air circulation limiting the chance for combustion of volatile vapors. The leak tester would need to follow standard safety precautions followed by a motorist using the GDF. In addition, following the safety precautions specified in the pre-test procedures in the vapor recovery test procedure for TP-201.3 required to be followed in this final-form rulemaking will also greatly limit the chance of a safety risk. This final-form rulemaking requires an individual to obtain other types of certification, like UMI or UMX certification, for some types of work in this final-form rulemaking involving cutting and capping connections below ground level where gasoline vapors may concentrate. The Department will conduct outreach to the regulated community to inform them of the requirements in this final-form rulemaking. As a point of clarification, leak testers do not require certification as was erroneously stated in the proposed RAF. The Department will contact small businesses that perform work on USTs about the new requirements by placing a notice on the Department's public web site; notifying all individuals who are registered in the Storage Tanks Program with an existing certification category of UTT, UMI or UMX; distributing a notice with trade organizations; and by contacting gasoline dispensing facilities in the 12 counties.

In response to the comments about ECO nozzles, the nozzles are a cost-effective control measure and consumers in other states have learned how to operate these nozzles. Regarding the issue of ECO nozzles getting stuck

in vehicles, the Department stresses that the problem only affects model year 2015 through 2019 Dodge Ram vehicles. There is a method to extract the nozzle that works in most instances. The Board will keep the requirements for owners and operators of gasoline dispensing facilities to install ECO nozzles. The Board agreed with one commentator who stated that there are less minor drips at locations where his company uses ECO nozzles. The Department notes that the CARB staff believes that ECO nozzles are working better than their current emission performance standard.

IRRC stated during the comment period on the proposed rulemaking that the Board should address, in the Preamble and RAF, how the benefits of ECO nozzles outweigh the negative fiscal and environmental impacts. Another commentator stated that ECO nozzles could cause worse spills than conventional nozzles. The Board realizes that the cost of ECO nozzles will be more expensive than conventional nozzles, but the cost-effectiveness of requiring ECO nozzles is comparable to other VOC control measures. The cost-effectiveness of ECO nozzles controlling gasoline from entering the environment is approximately \$2,173 per ton averaged over all subject GDFs. Considering that VOC ERCs are nearly unavailable in the two areas subject to this final-form rulemaking and the ERCs would likely be priced at a premium to the cost-effectiveness of the ECO nozzle, ECO nozzles are a cost-effective control measure.

The requirements in this final-form rulemaking will allow owners and operators of GDFs to decommission Stage II vapor recovery equipment. Keeping Stage II vapor recovery equipment beyond 2022 will contribute to an increase in emissions. At the same time, the requirements of this final-form rulemaking will preserve elements of the Stage II program that will hold VOC emissions at their current level in the most populous areas of the Commonwealth. This will help this Commonwealth attain and maintain the 2008 and 2015 ozone standards.

G. Benefits, Costs and Compliance

Benefits

The amendments in this final-form rulemaking apply predominantly in the five-county Philadelphia and seven-county Pittsburgh areas, and therefore, these areas will experience most of the benefits of this final-form rulemaking. Downwind areas will also experience air quality benefits as a result of this final-form rulemaking.

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

Approximately 538 and 368 businesses in the five-county Philadelphia and seven-county Pittsburgh areas, respectively, will be subject to this final-form rulemaking. Some double counting between the two areas will result

when estimating total businesses, primarily due to large National companies operating in both areas. The number of double-counted businesses should not exceed more than ten companies. The Department determined that approximately 642 of these GDFs are small businesses that will be affected by this final-form rulemaking. This was determined by subtracting the 278 GDFs with throughputs below the level that requires compliance with this final-form rulemaking from the total of 920 GDFs supplied by the Pennsylvania Small Business Development Center.

This final-form rulemaking maintains fugitive VOC emissions at nearly the same level as is credited in the Commonwealth's SIP. The Department has determined that the amount of gasoline throughput controlled by Stage I and Stage II vapor recovery equipment now stands at over 98.4% versus 96% claimed in the SIP. In-use control of fugitive emissions for Stage I and Stage II vapor recovery systems, which is control of fugitive emissions during filling of USTs and during vehicle refueling, will be held to nearly the same level under this final-form rulemaking as it has been held to under the existing regulations. Breathing losses, which are emissions that occur when air is ingested and expelled from the UST, are controlled by Stage II vapor recovery equipment. Stage II vapor recovery system testing requirements also reduce emissions of the Stage I vapor recovery system that may occur when the UST is filled, from tank breathing emissions (these are emissions that occur when air is ingested and expelled from the UST) that occur throughout the day and from emissions that occur from spills. The control efficiency that limits breathing losses ranges from a level of 86% to 92% (widespread use determination, 77 FR 28772, 28774 (May 16, 2012)) under this final-form rulemaking. The Department claimed 90% in its SIP. With the increase in the amount of gasoline throughput controlled by vapor recovery systems increasing from 96% to 98%, the in-use control will remain approximately the same as it has been, based on a conservative estimate using 86% in-use control ($86\% \times 98.4\% = 85\%$ total control versus $90\% \times 96\% = 86\%$).

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

Consumers will benefit from the reduced gasoline evaporation from hoses and the reduced gasoline evaporation and small spills from ECO nozzles. Although requiring low permeation hoses and ECO nozzles are the most expensive element of this final-form rulemaking to owners and operators of GDFs, consumers will save approximately \$407,000 a year from reduced gasoline evaporation when using low permeation hoses and ECO nozzles (estimated reduced evaporation from low permeation hoses and ECO nozzles of approximately 67,000 and 60,000 gallons, respectively, at \$3.20 a gallon).

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

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

As mentioned previously, the implementation of the VOC emission control measures in this final-form rulemaking predominantly benefits the health and welfare of the inhabitants of the five-county Philadelphia and the seven-county Pittsburgh areas as well as any inhabitants that experience the deleterious effects of pollutants transported from these areas. Numerous animals, crops, ecosystems and natural areas of this Commonwealth should also be positively affected.

Exposure to high concentrations of ground-level ozone is a serious human and animal health and welfare threat, causing respiratory illnesses and decreased lung function as well as other adverse health effects leading to a lower quality of life. Reduced ambient concentrations of ground-level ozone will reduce the incidences of hospital admissions for respiratory ailments, including asthma, and will improve the quality of life for citizens overall. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ground-level ozone while engaged in activities that involve physical exertion. High levels of ground-level ozone affect animals, including pets, livestock and wildlife, in ways similar to humans.

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

adverse impacts including loss of species diversity and changes to habitat quality and water and nutrient cycles. High levels of ground-level ozone can also cause damage to buildings and synthetic fibers, including nylon, and reduced visibility on roadways and in natural areas.

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

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

Compliance costs

This final-form rulemaking requires GDF owners and operators to decommission Stage II vacuum assist vapor recovery systems and authorizes GDF owners and operators to decommission Stage II vapor balance vapor recovery systems. The costs for decommissioning under § 129.82a includes costs for: dispenser decommissioning, low permeation hose kits with ECO nozzles, conventional adaptors, vapor leak tests, tie tank tests, static torque tests if the GDFs are equipped with a rotatable adaptor and administrative fees. The total decommissioning cost was reduced by an estimated amount that the business owner receives for a tax deduction for performing the

work. It was assumed that the business owner would receive at least 30% of the total costs of testing and repair due to deductions from Federal, State and local taxes. Based on this methodology, the cost of decommissioning, as stated by industry sources, is approximately \$4,000 to \$6,000 per GDF, depending mostly on the number of dispensers (assuming approximately 6–10 dispensers at a GDF). After decommissioning gasoline dispensers equipped with Stage II vapor recovery equipment, the reduced costs of repairs associated with non-Stage II dispensers should pay for the cost of decommissioning in approximately 2 years.

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

Repairs under this final-form rulemaking are estimated to cost the owners and operators \$1.5 million more than the repairs under the NESHAP. Most of the increase in repair costs can be attributed to increased replacement costs of low permeation hoses and ECO nozzles, under § 129.61a(k). These costs will be offset by gasoline savings from reduced evaporation in the range of \$1.3 million to \$2.3 million per year. (Benefits of low permeation hoses and ECO nozzles to consumers are previously described under Benefits.)

The Department expects that annual vapor leak testing under § 129.61a of this final-form rulemaking will cost approximately \$600 for each facility each year or approximately \$1 million for all GDFs subject to this final-form rulemaking ($(\$750 \text{ a year testing costs} \times 1,981 \text{ GDFs subject to final-form rulemaking}) - (\$165 \text{ a year for testing costs} \times 817 \text{ GDFs subject to NESHAP}) = \1.35 million) × 0.7 factoring a 30% tax deduction for the increased costs equals approximately \$1.0 million). Increased annual repair costs will likely average \$500 or less per GDF ($\$1.0 \text{ million}/1,981 \text{ GDFs}$). These repairs include replacing the P/V vent valves, broken hoses and nozzles and other repairs to underground piping. It was assumed that the vapor leak testing and repair costs will increase approximately 2% per year. The total annual repair costs for hose kits under § 129.61a are estimated to be \$1.1 million more than for compliance with the NESHAP, which does not require low permeation hoses and ECO nozzles (Replacing low permeation hoses and ECO nozzles under this final-form rulemaking will cost approximately \$2.8 million annually and, replacing conventional hoses and nozzles under the NESHAP will cost approximately \$1.2 million. The difference of \$1.6 million minus a 30% tax deduction for businesses results in the \$1.1 million extra cost). These costs will be offset by cost savings to GDF owners and operators. By Department estimates, vapor leak testing and performing necessary repairs reduces gasoline evaporation and limit evaporation losses from USTs between \$400 and \$6,000 per year. The regulated community will save from \$1.3 million to \$2.3 million through reducing gasoline evaporation by reducing leaks. The estimated annual financial impact on potentially affected GDF owners and operators, including small businesses, when accounting for reduced Stage II vapor recovery equipment repair costs that will occur after decommissioning, could range from an average annual savings of \$1,450 to \$7,950 per GDF, excluding the one-time cost of decommissioning, which averages approximately between \$4,000 and \$6,000 per GDF.

Under these final-form amendments, individuals who perform UST system inspection, installation or repair will need to be appropriately certified as either a UMI or UMX storage tank installer. Certification training and testing requires costs approximately \$800 and takes 2 days to complete. There are 358 individuals certified as UMX and 12 individuals certified as UMI UST installers in this Commonwealth. A concern was raised by IRRIC during the comment period as to how the Department would notify small businesses that perform decommissioning, install, modify, test, or repair of newly required level of certification. As a point of clarification, leak testers do not require certification. The Department will contact small businesses that perform work on USTs about the new requirements by placing a notice on the Department's public web site; notifying all individuals who are registered in the Storage Tanks Program with an existing certification category of UTT, UMI or UMX; distributing a notice with trade organizations; and by contacting gasoline dispensing facilities in the 12 counties.

The projected changes in reporting, recordkeeping and other administrative costs are de minimis under this final-form rulemaking. The vapor leak rate inspections that will be required to be performed at the GDF under § 129.61a(d) differ only slightly from the vapor leak rate inspections required under existing § 129.82 and the NESHAP. Under existing § 129.82(e), GDF staff must visually inspect Stage I and Stage II vapor recovery equipment as a best maintenance practice. A periodic inspection under § 129.61a(g)(2) will take one person less than 15 minutes to complete. Section 129.61a(g)(1) requires GDF staff to visually inspect components that often either break or remain open after a gasoline delivery is made. This visual inspection requires approximately 5 minutes of GDF staff time for each gasoline delivery. Deliveries may occur each day or once every several days. An inspection report of basic information will need to be completed under § 129.61a(g)(3). This should take approximately 5 minutes or less and could possibly be completed during the visual inspections. Training of staff at the GDF could be accomplished on-the-job.

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

Compliance assistance plan

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

Paperwork requirements

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

H. Pollution Prevention

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

This final-form rulemaking allows owners and operators of GDFs to decommission Stage II vapor recovery systems under § 129.82a. This will reduce overall excess VOC emissions resulting from incompatible Stage II vacuum assist vapor recovery systems and ORVR systems. Without § 129.61a, owners and operators of GDFs with a gasoline throughput between 10,000 gallons and 100,000 gallons a month would no longer be required to vapor leak test or repair their equipment because the NESHAP does not contain this requirement. Under the NESHAP, the owners and operators of large GDFs (those with a gasoline throughput equal to or greater than 100,000 gallons a month) are only required to perform vapor leak testing and repair every 3 years. Implementation of the VOC emission control measures in the five-county Philadelphia and seven-county Pittsburgh areas under § 129.61a will require annual leak testing and repair and will maintain VOC emissions at a level comparable to that achieved currently by Stage II vapor recovery system control. This final-form rulemaking will keep emissions lower than levels that could be achieved under the NESHAP. In comparison to the NESHAP, this final-form rulemaking results in additional VOC emission reductions in 2021 between 548 and 1,300 tons, and 375 tons and 880 tons, in the five-county Philadelphia and seven-county Pittsburgh areas, respectively. The imple-

mentation of this final-form rulemaking achieves approximately an 86% control efficiency of hazardous air pollutants emitted from GDFs. These estimated reductions in VOC emissions and the subsequent reduced formation of ozone helps ensure that citizens and the environment of this Commonwealth will experience the benefits of improved air quality. Commonwealth residents will also potentially benefit from improved surface water and groundwater quality through reduced gasoline spills and toxic chemical releases.

The implementation of this final-form rulemaking will limit the evaporation of gasoline from USTs. This final-form rulemaking provides a cost-effective way to limit VOC emissions into the atmosphere.

I. Sunset Review

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

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 17, 2020, the Department submitted a copy of the proposed rulemaking and a copy of a Regulatory Analysis Form 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.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on January 25, 2022, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 26, 2022, and approved this final-form rulemaking.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder, 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 50 Pa.B. 5236.

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

(5) These regulations are reasonably necessary to attain and maintain the 2008 and 2015 ozone NAAQS by and to satisfy related CAA requirements.

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 129, are amended by adding §§ 129.61a and 129.82a and amending §§ 121.1, 129.61 and 129.82 to read as set forth in this final-form rule-making.

(b) The Chairperson of the Board shall submit this final-form rulemaking 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 rulemaking 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 rulemaking and deposit it with the Legislative Reference Bureau as required by law.

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

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

PATRICK McDONNELL,
Chairperson

(Editor’s Note: See 52 Pa.B. 1079 (February 12, 2022) for IRRC’s approval order.)

Fiscal Note: Fiscal Note 7-525 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

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

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CARB Executive Order—A document issued by CARB certifying one of the following, unless otherwise specified:

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

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

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

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Dealer—A person who is engaged in the sale or distribution of new motor vehicles or new motor vehicles to the

ultimate purchaser as defined in section 216(4) of the Clean Air Act (42 U.S.C.A. § 7550(4)).

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

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

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

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

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

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

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

Phase I vapor recovery system—

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

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

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

Phase 2 outdoor wood-fired boiler—An outdoor wood-fired boiler that has been certified or qualified by the EPA

as meeting a particulate matter emission limit of 0.32 pounds per million Btu output or lower and is labeled accordingly.

Phase II vapor recovery system—

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

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

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

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

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

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

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

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

Stage I vapor recovery system—

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

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

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

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

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

Stage II vapor recovery system—

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

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

(ii) The term includes a Phase II vapor recovery system, a Stage II vacuum assist vapor recovery system and a Stage II vapor balance vapor recovery system.

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

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

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

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

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

(ii) Is subsequently peeled off and disposed.

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

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

*UMI—*The term has the meaning as defined under the term “certification categories” in § 245.1 (relating to definitions).

*UMX—*The term has the meaning as defined under the term “certification categories” in § 245.1 (relating to definitions).

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

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

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

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

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

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CHAPTER 129. STANDARDS FOR SOURCES

SOURCES OF VOCs

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

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

(b) *Transfer requirements.* A person may not transfer gasoline from a gasoline tank truck into a gasoline storage tank at a gasoline dispensing facility unless the displaced vapors from the storage tank are transferred to the dispensing tank of the gasoline tank truck through a vapor tight return line and unless the gasoline dispensing facility storage tank is equipped with a submerged fill pipe which extends from the filling orifice to within 6 inches of the bottom of the storage tank.

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

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

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

(a) *Applicability.* Beginning March 26, 2022, this section applies to the owner and operator of a gasoline storage tank subject to § 129.61 (relating to small gasoline storage tank control (Stage I control)) if the gasoline storage tank is located in Allegheny, Armstrong, Beaver, Bucks, Butler, Chester, Delaware, Fayette, Montgomery, Philadelphia, Washington or Westmoreland County and, if one of the following is met:

(1) Except as specified in paragraph (2), the gasoline dispensing facility has had a monthly throughput greater than 10,000 gallons (37,850 liters) of gasoline assessed on December 31 annually, beginning with the 2021 calendar year.

(2) The owner or operator of the gasoline dispensing facility is an independent small business marketer of gasoline as defined under section 324(c) of the Clean Air Act (42 U.S.C.A. § 7625(c)) and the gasoline dispensing facility has had a monthly throughput equal to or greater than 50,000 gallons (189,250 liters), assessed on December 31 annually beginning with the 2021 calendar year.

(3) The monthly throughput of the gasoline dispensing facility exceeds the applicable monthly throughput threshold of paragraph (1) or paragraph (2) at any time after March 26, 2022, but later falls below the applicable monthly throughput threshold of paragraph (1) or paragraph (2). The owner and operator of the gasoline dispensing facility remain subject to the applicable requirements of this section for the gasoline dispensing facility, even after the monthly throughput falls below the applicable monthly throughput threshold of paragraph (1) or paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Perform CARB TP-201.1E, CARB TP-201.3, CARB TP-201.3C AND CARB TP-201.1B on or before March 26, 2023, and on an annual basis thereafter.

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

- (i) The name of the test procedure.
- (ii) The name of the person performing the test procedure.
- (iii) The date the test procedure was performed.
- (iv) The result of the test procedure.
- (v) The date, time, type and duration of the vapor leak rate failure.
- (vi) The name of the person correcting the vapor leak rate failure.
- (vii) The date the vapor leak rate failure was corrected.
- (viii) The action taken to correct the vapor leak rate failure.

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

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

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

- (i) Include a console, a vapor pressure sensor, an automatic gasoline storage tank system pressure gauge and vapor leak rate detection software.
- (ii) Operate at least 95% of the time on a calendar-month basis.
- (iii) Calculate and record the percentage of continuous pressure monitoring system operational time.
- (iv) Measure once every 7 days the vapor leak rate from the gasoline storage tank system at any working ullage pressure, both positive and negative.
- (v) Measure the gasoline storage tank system pressure once every 7 days.
- (vi) Record once every 7 days, with not more than 7 days between recordings, the calculated percentage of time that the gasoline storage tank system pressure is at least 0.5 inches of water column below the positive cracking pressure of the pressure/vacuum vent valve.

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

- (1) Perform, and ensure that the Stage I vapor recovery system passes, all of the following CARB vapor leak rate monitoring test procedures within 10 days of installation of the Stage I vapor recovery system:
 - (i) CARB TP-201.1B if the Stage I vapor recovery system is equipped with a rotatable adaptor.

- (ii) CARB TP-201.1E.
- (iii) CARB TP-201.3.
- (iv) CARB TP-201.3C.

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

- (i) The completion date of installation of the Stage I vapor recovery system.
- (ii) The name of the test procedure.
- (iii) The name of the person performing the test procedure.
- (iv) The date the test procedure was performed.
- (v) The result of the test procedure.
- (vi) The date, type and duration of a vapor leak rate failure.
- (vii) The name of the person correcting the vapor leak rate failure.
- (viii) The date the vapor leak rate failure was corrected.
- (ix) The action taken to correct the vapor leak rate failure.
- (3) Maintain onsite at the gasoline dispensing facility or electronically stored allowing for onsite examination a copy of the CARB Executive Order specified in subsection (e)(1).

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

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

- (1) Perform an inspection after each gasoline tank truck delivery to check all of the following:
 - (i) That each fill pipe adaptor and Stage I adaptor is tightly sealed.
 - (ii) That each Stage I dry break is tightly sealed.
 - (iii) That each automatic tank gauge cap is tightly sealed.
- (2) Perform an inspection one time per month to check all of the following:
 - (i) That each automatic tank gauging electrical grommet and vent extractor cap is in good working order.
 - (ii) That the riser and pressure/vacuum vent valve and cap are installed and not damaged above ground level.
 - (iii) That there are no tears or holes in gasoline hoses.
 - (iv) That gasoline nozzles are functioning according to their design.
 - (v) That gasoline hoses are not touching the ground when the nozzle is resting on its holding bracket.
 - (vi) That each gasoline nozzle fits in its holding bracket.
 - (vii) If a Stage II vapor balance vapor recovery system is installed, that a face plate can make a positive seal.

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

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

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

- (i) The name of the person performing the inspection.
- (ii) The component inspected under paragraphs (1) and (2).
- (iii) The date the inspection was performed.
- (iv) The result of each inspection of the components under paragraphs (1) and (2).
- (v) The name of the person making the correction to the Stage I system or the repair to a failed component.
- (vi) The date the correction was made to the Stage I system or the repair was made to the failed component.
- (vii) The action taken to correct the Stage I system or to repair the failed component.

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

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

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

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

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

- (i) Continuous pressure monitoring system operational time as a percentage.
- (ii) Percentage of time the tank system pressure is above atmospheric pressure.
- (iii) Percentage of time the tank system pressure is at least 0.5 inches water column below the positive cracking pressure of the pressure/vacuum vent valve.

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

- (i) Continuous pressure monitoring system operational time as a percentage.
- (ii) Percentage of time the tank system pressure is above atmospheric pressure.
- (iii) Percentage of time the tank system pressure is at least 0.5 inches water column below the positive cracking pressure of the pressure/vacuum vent valve.

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

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

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

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

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

- (i) The name of the person performing the test.
- (ii) The date the test was performed.
- (iii) The result of the test.

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

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

- (i) The name of the person recording the operability test failure.
- (ii) The date and time the continuous pressure monitoring system failed the operability test.
- (iii) The type and duration of the operability test failure.
- (iv) The name of the person correcting the operability test failure.
- (v) The date the repair was made to correct the operability test failure.
- (vi) The action taken to correct the operability test failure.

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

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

- (1) The continuous pressure monitoring system must activate a warning alarm and record the event.
- (2) The owner or operator shall do all of the following:
 - (i) Determine the cause of the failure and take corrective action within 7 calendar days of the alarm. If this correction does not require a repair or correction to the gasoline storage tank system, the person correcting the cause of the failure need not meet the certification requirements under subsection (q).
 - (ii) Reset the continuous pressure monitoring system when the correction under subparagraph (i) is made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) For a gasoline dispensing facility in operation on or before March 26, 2022, install low permeation hoses by March 26, 2024, on each gasoline dispenser that is located at the gasoline dispensing facility as of March 26, 2022.

(ii) For a gasoline dispenser installed after March 26, 2022, install low permeation hoses described in subparagraph (iv) upon installation of the gasoline dispenser.

(iii) For a gasoline dispensing facility that begins operation after March 26, 2022, install low permeation hoses described in subparagraph (iv) upon installation of each gasoline dispenser.

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

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

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

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

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

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

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

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

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

(3) Maintain onsite at the gasoline dispensing facility or electronically stored allowing for onsite examination a

copy of the training schedule and written instructions required under paragraph (2).

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

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

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

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

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

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

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

(m) *Recordkeeping and reporting requirements.* The owner or operator of a gasoline dispensing facility subject to this section that creates a record under subsection (d)(2), (f)(2), (g)(4), (h)(4), (h)(10), (i)(2)(iii) or (j)(2)(iii) shall do both of the following:

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

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

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

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

(p) *Record of training schedule and written instructions.* The owner or operator shall maintain onsite at the

gasoline dispensing facility or electronically stored allowing for onsite examination a copy of the training schedule and written instructions required under subsection (l)(2) for the duration of the operation of the vapor control system. The copy must be made available to the Department upon receipt of a request.

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

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

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

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

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

MOBILE SOURCES

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

(a) (Reserved).

(a.1) *Applicability.* This section applies to the owner and operator of a gasoline dispensing facility equipped with a Stage II vapor recovery system and located in Allegheny, Armstrong, Beaver, Bucks, Butler, Chester, Delaware, Fayette, Montgomery, Philadelphia, Washington or Westmoreland County.

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

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

(1.1) Provide necessary maintenance and make modifications necessary to comply with this section.

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

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

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

(ii) If the Department finds during an inspection that a defective vapor recovery hose, nozzle or other component of the Stage II vapor recovery system is not properly

tagged, the component may not be returned to service until the defect is corrected and the Department approves its return to service.

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

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

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

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

(5) Maintain records of the gasoline dispensing system test procedure results, monthly throughput, type and duration of any failure of the system and maintenance and repair records onsite at the gasoline dispensing facility or electronically stored allowing for onsite examination. The records must be:

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

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

(c) (Reserved).

(d) (Reserved).

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

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

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

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

(2) The owner or operator of a gasoline dispensing facility that uses a Stage II vacuum assist vapor recovery system shall quantify the air to liquid volumetric ratio conducted under CARB TP-201.5 "Air to Liquid Volume Ratio," amended February 1, 2001, including updates and revisions, once in every 12-month period.

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

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

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

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

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

(A) The name of the test procedure.

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

(C) The date the test procedure was performed.

(D) The result of the test procedure.

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

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

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

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

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

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

(a) *Applicability.* Beginning March 26, 2022, this section applies to the owner and operator of a gasoline dispensing facility that uses, has decommissioned or is decommissioning a Stage II vapor recovery system.

(b) *Compliance deadline.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The person must comply with the applicable requirements of Chapter 245, Subchapter B (relating to

certification program for installers and inspectors of storage tanks and storage tank facilities).

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

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

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

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Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16, 17 AND 18]

Child Abuse Reporting Requirements

The State Board of Medicine (Board) amends Chapters 16, 17 and 18 (relating to State Board of Medicine—general provisions; State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors) to read as set forth in Annex A. Specifically, the Board amends §§ 16.12, 16.15, 16.18, 16.19, 16.101—16.107, 17.1—17.7, 18.2, 18.3, 18.13, 18.14, 18.141, 18.145, 18.307, 18.309a, 18.504, 18.511, 18.523, 18.525, 18.603, 18.610, 18.703, 18.704, 18.709, 18.814, 18.824, 18.833, 18.843 and 18.862, and adds §§ 16.108 and 16.109 (relating to child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process.)

Effective Date

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

Statutory Authority

Section 8 of the Medical Practice Act of 1985 (act) (63 P.S. § 422.8) sets forth the Board’s general rulemaking authority. Under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) (CPSL), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for Board-regulated practitioners.

Background and Purpose

Since 2014, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31)

(Act 31) on all health-related Boards to require training in child abuse recognition and reporting for licensees who are considered “mandated reporters” under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license or applying for renewal of a license on or after January 1, 2015. The Board implemented the training requirements as mandated at the beginning of 2015 and subsequently proposed this final-form rulemaking to update the Board’s existing regulations on the subject of child abuse reporting to be consistent with the CPSL, as amended.

The proposed rulemaking was published at 51 Pa.B. 545 (January 30, 2021) for 30 days of public comment, but no public comments were received. The Independent Regulatory Review Commission (IRRC) submitted comments on March 31, 2021. The House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. The following represents a summary of IRRC’s comments and the Board’s response, and a description of the amendments made to this final-form rulemaking.

Summary of IRRC’s Comments and the Board’s Response

Initially, IRRC notes that auxiliary personnel who are authorized to perform radiologic procedures under Chapter 18, Subchapter E (relating to performance of radiologic procedures by auxiliary personnel) work under the direct supervision of a medical doctor, and therefore, would be considered “mandated reporters” under 23 Pa.C.S. § 6311(a)(12) (relating to persons required to report suspected child abuse) if they have direct contact with children in the course of employment. IRRC asks the Board to explain why Subchapter E has been omitted from the rulemaking. Specifically, IRRC asks the Board to amend Subchapter E to include the appropriate cross-references to the required CPSL training in child abuse recognition and reporting for auxiliary personnel or explain why it is unnecessary to do so.

Although auxiliary personnel supervised by a medical doctor who have direct contact with children in the course of employment would be considered mandated reporters under the CPSL, the Board does not believe they are subject to the mandatory training requirements set forth in section 6383(b)(3) of the CPSL. As noted by IRRC, the mandatory training requirements apply to “all persons applying for a license or certification” and “all persons applying for renewal of a license or certification” issued by the Board. See 23 Pa.C.S. § 6383(b)(3)(i) and (ii). Auxiliary personnel do not apply for, and are not issued, a license or certificate. For this reason, the Board did not include cross-references to the mandatory training requirements in Subchapter E. However, the Board reminds its licensees and certificate holders that all personnel that they manage or supervise, including auxiliary personnel who perform radiologic procedures, would be considered mandated reporters if they have direct contact with children in the course of their employment and should be aware of their responsibilities to report suspected child abuse.

Next, IRRC noted that section 6383(b)(3)(ii) of the CPSL requires all persons applying for renewal of a license or certificate to submit documentation acceptable to the Board of the completion of at least 2 hours of approved continuing education “per licensure cycle.” IRRC asked three questions regarding the Board’s interpretation of the phrase “per licensure cycle” as it pertains to exemptions. The first question relates to Board-regulated practitioners that are exempt from completing the con-

tinuing education requirements during the initial biennial renewal period in which the license is issued. IRRC asked whether this exemption for first-time licensees include the continuing education mandated in Act 31.

The Board believes the quoted language in section 6383(b)(3)(ii) of the CPSL indicates a legislative intent that all licensees complete the required training at least once during every biennial renewal period. For that reason, the Pennsylvania Licensing System (PALS) was programmed to “look back” 24 months from the biennial licensure expiration date (that is, December 31st of even-numbered years) to determine if a licensee had completed an approved course of at least 2 hours during the 24 months prior to the expiration of the license. There is technically no “exemption” in the CPSL that would apply to the first biennial renewal cycle. However, for example, an individual who was initially licensed in March of 2019, and who took an approved course as a prerequisite to obtaining a license at that time, and who subsequently applied for renewal when all licenses expired on December 31, 2020, would not have been required to take another approved course because the initial course was taken within the 2-year “licensure cycle.” Conversely, an individual who was initially licensed in November of 2018 would not have been expected to renew the license the following month (December 31, 2018), but would have been granted a license through December 31, 2020. If this individual took an approved course in November of 2018 as a prerequisite to obtaining a license, it would be outside of the 24-month “look back” and this individual would be required to take an approved course as a condition of renewal in December of 2020. In this way, all licensees are required to complete an approved course within each biennial “licensure cycle.” In addition, there are licensees of the Board that are not required to complete continuing education at all (acupuncturists, practitioners of Oriental medicine and behavior specialists). These licensees are not exempt from the mandatory training in child abuse recognition and reporting, either as a condition of initial licensure or biennial renewal, even though section 6383(b)(3)(ii) of the CPSL is clear that this training is to be accepted as a “portion of the total continuing education required for biennial renewal,” if applicable. The Board believes its implementation of the training requirements comports with the legislative intent and has made no revisions to this final-form rulemaking in response to this comment.

IRRC’s second question related to how the Board will implement the mandatory training requirement for individuals that hold more than one license or certification. Specifically, IRRC asked if an individual is required to have licensure as a prerequisite for another level of certification or licensure, would the CPSL training credits earned for the initial license or certification satisfy the requirements for the second, if the training was completed within the same biennial renewal period. IRRC suggests that it is unclear in § 16.108 whether a Board-regulated practitioner with more than one level of certification or license would need to apply for an exemption or will the credit for the training be applied automatically to both licenses/certifications.

When a Board-regulated practitioner takes an approved course and that attendance/participation is reported by the approved provider to the Bureau of Professional and Occupational Affairs (Bureau), it is applied to all licenses held by the individual. Thus, if an individual holds two licenses issued by the Board, both of which expire on December 31st of even-numbered years, they would not need to take the course twice or apply for an exemption.

This would also apply across licensure Boards within the Bureau that also require this training. For example, a registered nurse license issued by the State Board of Nursing is a prerequisite to obtaining a license as a nurse-midwife from the Board. When an individual holding both licenses takes an approved course, the report from the approved provider received by the Bureau is applied to both licenses in PALS. Provided the course was completed within 24 months of the biennial renewal date of each license, there is no need to repeat the course or obtain an exemption from either board. In response to this question, the Board amends § 16.108(b) to clarify that “if a licensee holds more than one license issued by the Board, or holds a license issued by another licensing board within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.”

Third, IRRC asked about the exemption provided for individuals who took comparable training under section 6383(c) of the CPSL. IRRC points out that under section 6383(c)(3) of the CPSL, certain individuals are required to complete 3 hours of training within 90 days of hire or approval as a foster parent and 3 hours of training every 5 years thereafter. IRRC asked, “In order for an applicant or licensee to be granted an exemption under § 16.108(c), must the training have been completed within a certain time period to satisfy the CPSL requirements?”

Generally, exemptions under either § 16.108(c)(1) or (2) based on the completion of comparable training under either the Public School Code (24 P.S. §§ 1-101—27-2702) or under section 6383(c)(3) of the CPSL for individuals regulated by the Department of Human Services are subject to the same time frames as that required of licensees completing the mandatory training. Thus, for purposes of licensure renewal, the comparable training must have been completed during the relevant biennial renewal period (January 1 of an odd-numbered year to December 31 of the next following even-numbered year) to qualify for an exemption. To clarify this in this final-form rulemaking, the Board amends § 16.108(c)(1) and (2) by adding subparagraph (iv) which provides that “[f]or purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.”

Next, IRRC questioned whether the process for verifying completion of the mandatory training in child abuse recognition and reporting is different for volunteer license applicants, noting that § 16.18(c)(3) (relating to volunteer license) requires an applicant for a volunteer license to “provide verification” of having completed 3 hours of the mandated reporter training, while § 16.108 makes it clear that it is the approved course provider that verifies completion of the training for applicants and licensees. If the process for volunteer licensees does not work differently, IRRC suggested that the Board place the requirement in § 16.18(b) instead and revise the language to make it clear that the Board will issue a volunteer license only to Board-regulated practitioners “for whom the Board has received verification that the applicant has received 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a). . .” As the process for volunteer license applicants is the same as all other categories of license, the Board makes the clarity edits to § 16.18 suggested by IRRC.

IRRC also noted that while the Board has included the mandatory continuing education requirement for medical

doctors in § 16.19 (relating to continuing medical education), the proposed rulemaking did not address the “at least 3 hours of approved child abuse recognition and reporting training” for medical doctors as a condition of licensure in Chapter 17. The Board believes that the requirement in § 16.12 (relating to general qualifications for licenses and certificate), as amended to include paragraph 3.1 which incorporates the mandatory training requirement, applies to all licensees, including medical doctors. In addition, most of the licensure provisions in Chapter 17 include a cross-reference to § 16.12, which makes it clear that applicants for licensure as a medical doctor must complete the training. However, to aid clarity, the Board amends this final-form rulemaking to include appropriate cross-references in Chapter 17, including §§ 17.1—17.7. The Board does not believe adding these cross-references expands the scope of the proposed rulemaking.

Next, IRRC makes three comments relating to the definitions in § 16.101 (relating to definitions). First, IRRC noted that the term “Board-regulated practitioner” in § 16.101 of Subchapter G (relating to minimum standards of practice—child abuse) is inconsistent with the existing definition of that term in § 16.1 (relating to definitions), which applies to Chapters 16, 17 and 18, unless the context clearly indicates otherwise. IRRC suggested that the Board make the definition throughout Chapter 16 in this final-form rulemaking. Over the years, various licensure categories were added, but the definitions in both §§ 16.1 and 16.101 were not updated to reflect the additional categories. In response to IRRC’s suggestion, the Board amends the definition in § 16.1—the general definitions section—and deletes the inconsistent definition in § 16.101 to avoid this problem in the future. IRRC also asked the Board to revise the language in the definition of the term “perpetrator” to be consistent with the term “person responsible for the child’s welfare.” The Board notes that the definition of the term “perpetrator” was copied verbatim from section 6303 of the CPSL (relating to definitions), which uses a variation of the defined term “person responsible for the child’s welfare.” However, to aid in consistency and clarity, the Board amends the definition of perpetrator in subparagraph (i)(D) to read, “An individual 14 years of age or older who is a person responsible for the child’s welfare or who has direct contact with children. . .” and in subparagraph (ii)(D) to read, “A person responsible for the child’s welfare who is 18 years of age or older.” Finally, IRRC pointed out a typographical error in the definition of “recent act or failure to act,” where the word “of” should have been “or.” This error is corrected in this final-form rulemaking.

With regard to § 16.102 (relating to suspected child abuse—mandatory reporting requirements), IRRC pointed out that the provisions of section 6311(b)(2) and (3) of the CPSL were not carried over in the Board’s proposal. These sections make it clear that the mandated reporter is responsible to make a report of suspected child abuse even if the child has not come before the mandated reporter or if the mandated reporter cannot identify the person responsible for the suspected child abuse. IRRC asks the Board to incorporate these provisions in this final-form rulemaking, noting that doing so would also make this section consistent with the requirements for written or electronic reports in § 16.102(d). In response, the Board adds these provisions to § 16.102(a).

Pertaining to § 16.103 (relating to photographs, medical tests and X-rays of child subject to report), IRRC also noted that the last sentence of section 6314 of the CPSL

(relating to photographs, medical tests and X-rays of child subject to report) was omitted from the proposed rule-making. This sentence provides that medical summaries or reports of the photographs, X-rays and medical tests “shall be made available to law enforcement officials in the course of investigating cases pursuant to section 6340(a)(9) or (10) (relating to release of information in confidential reports).” IRRC notes that § 16.103 is referenced in § 16.105 (relating to immunity from liability) which provides that a Board-regulated practitioner who acts in good faith in making a report of suspected child abuse, a referral to general protective services, cooperates in or consults with an investigation, testifies in a proceeding or engaged in any action under sections 6314—6317 of the CPSL immunity from civil and criminal liability that might otherwise result by reason of the practitioner’s actions. To be consistent with the CPSL and § 16.105, IRRC suggests that the Board should amend this section to include the omitted language. In response, the Board amends this final-form rulemaking to include the omitted language.

IRRC next points out that § 16.108(a) requires an individual applying for an initial license to complete at least 3 hours of training in child abuse recognition and reporting requirements. However, unlike subsection (b), this subsection does not address the documentation and reporting of completion of training as required under section 6383(b)(3)(1) of the CPSL. IRRC asked the Board to revise this subsection to include the implementation procedures for submitting proof of training. As with licensees, completion information for applicants is submitted electronically by the approved course provider. Therefore, the Board amends § 16.108(a) to clarify that the 3 hours of training must be approved by the Department of Human Services and the Bureau, as set forth in § 16.109 to assure that the course provider can electronically report the completion of the training to the Bureau. The completion of the training is then automatically recorded on the applicant’s profile in the Pennsylvania Licensing System (PALS). An applicant would need to certify on the application that the applicant has either completed the training or has been granted an exemption by the Board. The Board amends this section to clarify that the Board will not issue a license unless the PALS system includes the report from an approved course provider or the Board has granted an exemption.

IRRC also commented that the standards for documentation and evaluation of exemption requests under § 16.108(c)(3) is vague. This provision implements section 6383(b)(6) of the CPSL which provides that a licensing board may exempt an applicant or licensee if that individual submits documentation acceptable to the licensing board that demonstrates that the individual should not be subject to the training or continuing education requirement. IRRC asks the Board to explain the standards for sufficient documentation and the evaluation process for reviewing a request for an exemption. Further, IRRC asked the Board to clarify that exemptions granted under this subsection are applicable only for the biennial renewal period for which the exemption is requested. Finally, IRRC asked for a description of how the applicant or licensee will be notified if their request for exemption is granted or denied to be included in this final-form rulemaking.

It is difficult to set standards for documentation that would apply to all situations. For example, it may include documentation that the licensee is an approved trainer in the area of child abuse recognition and reporting. Another example might be a licensee who volunteers as a Court-

appointed Special Advocate (CASA) for children who are victims of abuse or neglect. These individuals are required to complete at least 30 hours of pre-service training and 12 hours of annual in-service training. See 37 Pa. Code § 200.221 (relating to training). Generally, the Board evaluates these requests to determine whether 3 hours of training in the area of child abuse recognition and reporting would be duplicative of other training the individual has completed or is unnecessary under the circumstances. In addition, the Board would not find it sufficient for an applicant or licensee to simply state that they do not include children in their practice due to the expanded scope of the duty to report set forth in section 6311(b) of the CPSL, which no longer requires the mandated reporter to come into contact with the child in the course of their employment, occupation or practice of a profession.

In response to IRRC’s comment, the Board amends subsection (c)(3) to clarify these standards. The Board adds subsection (d) to clarify that exemptions granted under subsection (c) are only applicable for the biennial renewal period for which the exemption is requested. The Board explains the process for notifying applicants/licensees of the grant or denial of an exemption request in subsection (d). If an exemption is granted, the license will be issued or renewed. If an exemption is denied, the applicant or licensee will receive a discrepancy notice by e-mail notifying them of the need to complete an approved course, or to submit additional documentation in support of their request for an exemption.

With regard to § 16.109(c), IRRC points out that this subsection states that the Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau’s web site. “Applicant” as used in this subsection means an “individual, entity or organization” applying for approval to provide mandated reporter training. However, IRRC notes that in § 16.108, the term “applicant” refers to a person applying for initial certification or licensure. IRRC suggests that the Board clarify this subsection with regard to the use of the term “applicant.” In response, the Board amends subsection (c) to instead use “individual, entity or organization” in place of the term “applicant.”

IRRC asked the Board to amend § 18.603(a) (relating to application for perfusionist license) to include the phrase “or cause to be submitted” because the verification of taking the mandated child abuse recognition and reporter training will be submitted electronically by the course provider. In response, the Board makes the amendment suggested by IRRC.

Finally, IRRC asks the Board to update the statutory citation for the CPSL in item # 7 in the Regulatory Analysis Form that accompanies this final-form rulemaking. Because the CPSL was amended in 2020 and 2021 to include two additional sections, the Board updates the statutory citation to the CPSL to include 23 Pa.C.S. §§ 6301—6388.

Description of the Amendments Made to this Final-Form Rulemaking

The following is a section-by-section description of the amendments made to this final-form rulemaking.

§ 16.1 Definitions

The Board amends the definition of “Board-regulated practitioner” to include professions that have not been added over the years, including respiratory therapist, genetic counselor, behavior specialist, prosthetist, orthotist, pedorthist and orthotic fitter.

§ 16.18 *Volunteer license*

The Board amends § 16.18(b) and (c) to clarify that although the applicant for a volunteer license is expected to certify on the application that the applicant has completed the required 3 hours of approved training in child abuse recognition and reporting, it is the course provider that submits documentation verifying the applicant's attendance/participation in an approved course.

§ 16.101 *Definitions*

The Board deletes the definition of "Board-regulated practitioner" from this section as it is unnecessary. The term is defined (as amended) in § 16.1 in Subchapter A (relating to basic definitions and information) and applies to Chapters 16, 17 and 18; therefore, there is no need to repeat the term in Subchapter G. The Board amends the definition of "perpetrator" as suggested by IRRC to incorporate the defined term "person responsible for the child's welfare." The Board corrects a typographical error in the definition of "recent act or failure to act."

§ 16.102 *Suspected child abuse—mandated reporting requirements*

The Board amends subsection (a) to incorporate the provisions of 23 Pa.C.S. § 6311(b)(2) and (3) as suggested by IRRC. These sections make it clear that the mandated reporter is responsible to make a report of suspected child abuse even if the child has not come before the mandated reporter or if the mandated reporter cannot identify the person responsible for the suspected child abuse.

§ 16.103 *Photographs, medical tests and X-rays of child subject to report*

The Board amends this section to include the last sentence of section 6314 of the CPSL, which IRRC pointed out was omitted from the proposed rulemaking. This added sentence provides that "[m]edical summaries or reports of the photographs, X-rays and relevant medical tests shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6340(a)(9) or (10) (relating to release of information in confidential reports)."

§ 16.108 *Child abuse recognition and reporting—mandatory training requirement*

The Board amends subsection (a) to clarify that the 3 hours of training must be approved by the Department of Human Services and the Bureau of Professional and Occupational Affairs (Bureau), as set forth in § 16.109; and that an applicant would need to certify on the application that the applicant has either completed the training or has been granted an exemption by the Board. The Board amends this subsection to clarify that the Board will not issue a license unless the Bureau has received a report from an approved course provider documenting that attendance/participation or the Board has granted an exemption.

Subsection (b) is amended to clarify that, for purposes of licensure renewal, the approved course must have been taken during the relevant biennial renewal period; and that if a licensee holds more than one license, credit for completing an approved course will be applied to both licenses.

Subsection (c) is amended to likewise clarify that to qualify for an exemption of the continuing education requirement as a condition of renewal, comparable training completed as required under the Public School Code or for individuals regulated by the Department of Human Services must have been completed during the relevant

biennial renewal period. In addition, the Board amends this subsection to clarify the standards for documentation and consideration of exemptions under section 6383(b)(6) of the CPSL which provides that a licensing board may exempt an applicant or licensee if that individual submits documentation acceptable to the licensing board that demonstrates that the individual should not be subject to the training or continuing education requirement.

The Board adds subsection (d) to clarify that exemptions granted under subsection (c) are only applicable for the biennial renewal period for which the exemption is requested and to explain the process for notifying applicants/licensees of the grant or denial of an exemption request.

§ 16.109 *Child abuse recognition and reporting course approval process*

The Board amends subsection (c) to eliminate the term "applicant" and replace it with "individual, entity or organization."

Chapter 17 State Board of Medicine—medical doctors

To aid clarity, the Board adds amendments to §§ 17.1—17.7, pertaining to the various means to be licensed to practice medicine and surgery, to incorporate appropriate cross references to the mandatory training in child abuse recognition and reporting in § 16.108.

§ 18.603 *Application for perfusionist license*

The Board amends subsection (a) as suggested by IRRC to include the phrase "or cause to be submitted" in recognition of the fact that the verification of having taken the mandated child abuse recognition and reporter training will be submitted electronically by the course provider.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Most of the Board's licensees are already required to complete mandatory continuing education, and as these 2 hours are incorporated in the existing requirement, there would be no increased burden. Only acupuncturists, practitioners of Oriental Medicine and behavior specialists do not currently have continuing education requirements, therefore, the mandatory 2 hours in child abuse recognition and reporting would be an additional requirement for biennial renewal for those licensure classifications. Additionally, all applicants for licensure are impacted by the costs associated with completing at least 3 hours of approved training in child abuse recognition and reporting. Because there are many low-cost and free options available to complete the training, the Board anticipates this impact to be minimal. Because all approved providers of this training are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandatory reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

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) and (f) of the Regulatory Review Act (71 P.S. § 745.5(a) and (f)), on January 15, 2021, the

Board submitted a copy of the notice of proposed rule-making, published at 51 Pa.B. 545, to IRRC and the Legislative Reference Bureau. The Board subsequently submitted the notice of proposed rulemaking to the Chairpersons of the HPLC and the SCP/PLC for review and comment on February 19, 2021, as required under section 5(f) of the Regulatory Review Act.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received on the rulemaking, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments received from IRRC. No public comments were received. The Board also received no comments from the HPLC or the SCP/PLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on November 30, 2021, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulation Review Act, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC on January 25, 2022. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 26, 2022, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Suzanne Zerbe, Board Administrator, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-MEDICINE@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), referred to as the Commonwealth Documents Law and 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.
- (3) This final-form rulemaking does not include any amendments that would enlarge the scope of the proposed rulemaking published at 51 Pa.B. 545.
- (4) This final-form rulemaking is necessary and appropriate for the administration of 23 Pa.C.S. §§ 6301—6388.

Order

The Board, therefore, orders that:

(a) The regulations of the Board at 49 Pa. Code Chapters 16, 17 and 18 are amended by amending §§ 16.1, 16.12, 16.15, 16.18, 16.19, 16.101—16.107, 17.1—17.7, 18.2, 18.3, 18.13, 18.14, 18.141, 18.145, 18.307, 18.309a, 18.504, 18.511, 18.523, 18.525, 18.603, 18.610, 18.703, 18.704, 18.709, 18.814, 18.824, 18.833, 18.843 and 18.862, and adding §§ 16.108 and 16.109 to read as set forth in Annex A.

(Editor’s Note: The amendments to §§ 16.1 and 17.1—17.7 were not included in the proposed rulemaking.)

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

(c) The Board shall submit this order and Annex A to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

MARK B. WOODLAND, MS, MD,
Chairperson

(Editor’s Note: See 52 Pa.B. 1079 (February 12, 2022), for IRRC’s approval order.)

Fiscal Note: Fiscal Note 16A-4941 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 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter A. BASIC DEFINITIONS AND INFORMATION

§ 16.1. Definitions.

The following words and terms, when used in this chapter and Chapters 17 and 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Board—The State Board of Medicine.

Board-regulated practitioner—A medical doctor, mid-wife, physician assistant, drugless therapist, respiratory therapist, athletic trainer, acupuncturist, practitioner of Oriental medicine, genetic counselor, behavior specialist, perfusionist, prosthetist, orthotist, pedorthist, orthotic fitter or an applicant for a license or certificate that the Board may issue.

Category 1 activities—Continuing medical education activities approved for AMA PRA Category 1 credit.

* * * * *

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.12. General qualifications for licenses and certificates.

To qualify for a license or certificate issued by the Board, an applicant shall establish that the following criteria are satisfied:

- (1) The applicant is of legal age.
- (2) The applicant is of good moral character.
- (3) The applicant is not intemperately using alcohol or habitually using narcotics or other habit-forming drugs.

(3.1) The applicant has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(4) The applicant has not been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144) or of an offense

under the statutes of another jurisdiction which, if committed in this Commonwealth, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, unless the following apply:

(i) At least 10 years have elapsed from the date of conviction.

(ii) The applicant satisfactorily demonstrates to the Board that he has made significant progress in personal rehabilitation since the conviction so that licensure or certification of the applicant is not expected to create a substantial risk of harm to the health and safety of patients or the public or substantial risk of further criminal violations.

(iii) The applicant otherwise satisfies the qualifications contained in the act, this chapter and Chapters 17 and 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors).

§ 16.15. Biennial registration; inactive status and unregistered status.

(a) A person licensed, certified or registered by the Board, shall register biennially to retain the right to engage in practice unless specifically exempted within this section. Initial registration shall automatically occur when the license, certificate or registration is issued.

(b) The following licenses, certificates and registration are not subject to biennial registration:

- (1) Institutional license.
- (2) Graduate license.
- (3) Temporary license.
- (4) Interim limited license.

(5) Registration as a physician assistant supervisor of a physician assistant.

(c) Registration for a biennium expires December 31 of every even-numbered year. Application for biennial registration shall be made upon forms supplied by the Board. The forms shall be filed with the Board with the required registration fee prior to the expiration of the previous biennial registration.

(c.1) A licensee or certificate holder applying for biennial registration shall, as a condition of biennial registration, complete at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(d) Biennial registration forms and other forms or literature to be distributed by the Board will be forwarded to the last mailing address given the Board by the licensee, registrant or certificate holder. If the mailing address of record is changed, the Board shall be notified, in writing, within 15 days after making the address change. Failure of the Board to send, or of the individual to receive, a biennial registration application, does not relieve the individual of the biennial registration responsibility.

* * * * *

§ 16.18. Volunteer license.

* * * * *

(b) *License.* A volunteer license may be issued to a Board-regulated practitioner of the Board for whom the Board has received verification from the course provider that the applicant has completed at least 3 hours of approved training in child abuse recognition and report-

ing in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement) and who documents to the satisfaction of the Board that the applicant will practice without personal remuneration in approved clinics and meets one of the following:

(1) Holds a currently renewed, active, unrestricted license, registration or certificate in this Commonwealth and retires from active practice at the time the applicant applies for a volunteer license.

(2) Retires from active practice in this Commonwealth in possession of an unrestricted license which was allowed to lapse by not renewing it.

(c) *Applications.* An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice exclusively as follows:

- (i) Without personal remuneration for professional services.
- (ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(3) A certification statement confirming that the applicant has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a).

(d) *Validity of license.* A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period, the volunteer license holder shall notify the Board of any change in clinic or volunteer status within 30 days of the date of a change, or at the time of renewal, whichever occurs first.

(e) *Renewal of license.* A volunteer license shall be renewed biennially on forms provided by the Board. In accordance with section 6(c) or (d) of the Volunteer Health Services Act (35 P.S. § 449.46), a volunteer license holder shall comply with the applicable continuing education requirements, including at least 2 hours of training in approved child abuse recognition and reporting in accordance with § 16.108(b). The applicant shall be exempt from payment of the biennial renewal fee of § 16.13 (relating to licensure, certification, examination and registration fees), and is exempt from the requirements with regard to the maintenance of liability insurance coverage under section 711 of the MCARE Act (40 P.S. § 1303.711) as provided in section 9 of the Volunteer Health Services Act (35 P.S. § 449.49).

* * * * *

§ 16.19. Continuing medical education.

* * * * *

(b) Proof of completion of 100 credit hours of continuing medical education in the preceding biennial period, including at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement), will be required for licensure renewal for medical doctors.

* * * * *

Subchapter G. MINIMUM STANDARDS OF PRACTICE—CHILD ABUSE REPORTING

§ 16.101. Definitions.

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

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—The Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—Intentionally, knowingly or recklessly doing any of the following:

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed;

(II) has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors;

(III) has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions); or

(IV) has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all Board-regulated practitioners.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—An individual who has committed child abuse as defined in this section. The following apply:

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) An individual 14 years of age or older who is a person responsible for the child's welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption of the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person responsible for the child's welfare who is 18 years of age or older.

(E) An individual 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

- (i) A youth camp or program.
- (ii) A recreational camp or program.
- (iii) A sports or athletic program.
- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical neglect—Any of the following that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 16.102. Suspected child abuse—mandated reporting requirements.

(a) *General rule.*

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), all Board-regulated practitioners are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this subsection shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Whenever a Board-regulated practitioner is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that Board-regulated practitioner shall report

immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.* A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this paragraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (relating to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* A written or electronic report of suspected child abuse, shall include the following information, if known:

(1) The names and addresses of the child, the child's parents or any other person responsible for the child's welfare.

(2) Where the suspected abuse occurred.

(3) The age and sex of each subject of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(5) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(6) Family composition.

(7) The source of the report.

(8) The name, telephone number and e-mail address of the person making the report.

(9) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(10) Other information required by Federal law or regulation.

(11) Other information which the Department of Human Services may require by regulation.

§ 16.103. Photographs, medical tests and X-rays of child subject to report.

A Board-regulated practitioner may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or within 48 hours after an electronic report is made under § 16.102(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request. Medical

summaries or reports of the photographs, X-rays and relevant medical tests shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6490(a)(9) or (10) (relating to release of information in confidential reports).

§ 16.104. Suspected death as a result of child abuse—mandated reporting requirement.

A Board-regulated practitioner who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 16.105. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a Board-regulated practitioner who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the Board-regulated practitioner's actions. For the purpose of any civil or criminal proceeding, the good faith of the Board-regulated practitioner shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a Board-regulated practitioner's actions under §§ 16.102—16.104 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 16.106. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 16.102—16.104 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over any client confidentiality, ethical principles or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. Additionally, under 23 Pa.C.S. § 6313(e) (relating to reporting procedure), notwithstanding any other provision of law to the contrary, a mandated reporter who makes a report of suspected child abuse does not violate the Mental Health Procedures Act (50 P.S. §§ 7101—7503), by releasing information necessary to complete the report.

§ 16.107. Noncompliance.

(a) *Disciplinary action.* A Board-regulated practitioner who willfully fails to comply with the reporting requirements in §§ 16.102—16.104 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 41 of the act (63 P.S. § 422.41).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties), a Board-regulated practitioner who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 16.108. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license shall have completed at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 16.109 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensees seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal, at least 2 hours of approved continuing education in child abuse recognition and reporting requirements, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 16.109. The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course within the applicable biennial renewal period or the licensee has obtained an exemption under subsection (c). If a licensee holds more than one license issued by the Board, or holds

a license issued by another licensing board within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating all of the following:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(2) The applicant or licensee submits documentation demonstrating all of the following:

(i) The applicant or licensee has already completed child abuse recognition training required under 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant or licensee should not be subject to the training or continuing education requirement. The Board will not grant an exemption based solely upon proof that children are not part of the applicant's or licensee's practice. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license, as applicable. If an exemption is denied, the Board will e mail the applicant or licensee a discrepancy notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption.

§ 16.109. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of

Human Services, Office of Children, Youth and Families and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include all of the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) The course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which shall include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the individual, entity or organization in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

CHAPTER 17. STATE BOARD OF MEDICINE— MEDICAL DOCTORS

Subchapter A. LICENSURE OF MEDICAL DOCTORS

§ 17.1. License without restriction.

(a) Except as provided in § 17.2 (relating to license without restriction—endorsement), to secure a license without restriction an applicant shall:

* * * * *

(5) Satisfy the general qualifications for a license specified in § 16.12 (relating to general qualifications for licenses and certificates), including having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108 (relating to child abuse recognition and reporting—mandatory training requirement).

(b) An applicant who is a graduate of an unaccredited medical college shall submit a complete application and shall, in addition to satisfying the requirements in subsection (a), submit a diploma and transcript verified by a medical college listed in the International Medical Education Directory and chartered and recognized by the country in which it is situated for the provision of medical doctor education. The transcript must identify the successful completion of the equivalent of 4 academic years of medical education including 2 academic years in the study of the arts and sciences of medicine generally recognized by the medical education community in the United States and 2 academic years of clinical study of the practice of medicine as generally recognized by the medical education community in the United States.

§ 17.2. Licensure without restriction—endorsement.

* * * * *

(e) The Board may, in lieu of the examination requirement provided for in subsection (c), consider whether the applicant has a significant history in the practice of medicine, has recognized professional and academic achievement and credentials and has obtained certification by a Board recognized specialty certification body.

(f) An applicant for a license by endorsement shall satisfy the requirements in § 16.12 (relating to general qualifications for licenses and certificates), including having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108 (relating to child abuse recognition and reporting—mandatory training requirement).

§ 17.3. Institutional license.

(a) An institutional license authorizes a qualified person to teach and practice medicine for a period of time specified by the Board, not exceeding 3 years, in one of the medical colleges, its affiliates, or community hospitals within this Commonwealth. To qualify for an institutional license, an applicant shall satisfy the requirements listed in § 16.12 (relating to general qualifications for licenses and certificates), including having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108 (relating to child abuse recognition and reporting—mandatory training requirement), and one of the following:

(1) Be a graduate of an unaccredited medical college who has attained through professional growth and teaching experience the status of teacher.

(2) Have achieved outstanding medical skills in a particular area of medicine and wish to practice, demonstrate or teach in that area, but not otherwise be licensed to do so.

* * * * *

§ 17.4. Extraterritorial license.

(a) An extraterritorial license authorizes a medical doctor who possesses a license to practice medicine and surgery without restriction or an equivalent license, in a state adjoining this Commonwealth, to practice medicine and surgery in this Commonwealth.

(b) An extraterritorial license will be issued under the following circumstances:

(1) The applicant shall satisfy the following:

* * * * *

(v) Satisfy the qualifications listed in § 16.12 (relating to general qualifications for licenses and certificates), including having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108 (relating to child abuse recognition and reporting—mandatory training requirement).

(2) The licensing authority of the adjoining state shall reciprocate by extending the same privileges to medical doctors licensed in this Commonwealth.

* * * * *

§ 17.5. Graduate license.

(a) A graduate license authorizes the licensee to participate in a year of graduate medical training within the complex of the hospital to which the licensee is assigned, and a satellite facility or other training location utilized in the graduate training program.

* * * * *

(c) Additional requirements for securing a graduate license are that the applicant shall satisfy the following:

* * * * *

(3) Satisfy the requirements in § 16.12 (relating to general qualifications for licenses and certificates), including having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108 (relating to child abuse recognition and reporting—mandatory training requirement).

(d) To participate in graduate medical training at a second-year level under the authority of a graduate license, the licensee shall first secure a passing score on FLEX I or Part I of the National Boards or Step 1 of the USMLE plus Part II of the National Boards or Step 2 of the USMLE; a passing score on a licensing examination acceptable to the Board as set forth in § 17.1(a)(1)(iii), (viii) and (ix) (relating to license without restriction), or, hold a license to practice medicine without restriction in this Commonwealth or an equivalent license granted by another state, territory or possession of the United States or the Dominion of Canada.

* * * * *

§ 17.6. Temporary license.

(a) A temporary license will be issued to an applicant who holds the equivalent of a license without restriction granted by the licensing authority of another state, territory or possession of the United States, or another country, and who satisfies the requirements in § 16.12 (relating to general qualifications for licenses and certificates), including having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108 (relating to child abuse

recognition and reporting—mandatory training requirement), to permit one of the following:

(1) The teaching and demonstration of advanced medical and surgical techniques.

(2) Participation in a medical or surgical procedure necessary for the well-being of a specified patient.

(3) The practice of medicine and surgery in a camp or resort for no more than 3 months.

(4) Attending to the medical and surgical needs of a person visiting this Commonwealth for a brief period of time.

(5) The short-term replacement of a doctor of medicine employed by the Federal government in a National Health Service Corps Clinic, under Project U.S.A. arrangements.

* * * * *

§ 17.7. Interim limited license.

(a) A person who holds a graduate license is limited to providing medical services embraced within the graduate medical training program in which the person is participating unless that person also holds an interim limited license or other license issued by the Board, other than a graduate license.

* * * * *

(c) To qualify for an interim limited license, an applicant shall satisfy the following:

(1) Be a graduate of an accredited medical college.

* * * * *

(8) Satisfy the qualifications listed in § 16.12 (relating to general qualifications for licenses and certificates), including having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108 (relating to child abuse recognition and reporting—mandatory training requirement).

(9) Be evaluated by the Board as having received ample education and training to perform the specified medical services.

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter A. LICENSURE AND REGULATION OF MIDWIFE ACTIVITIES

§ 18.2. Licensure requirements.

The Board will grant a nurse-midwife license to an applicant who meets the following requirements. The applicant shall:

(1) Be licensed as a registered nurse in this Commonwealth.

(2) Satisfy the licensure requirements in § 16.12 (relating to general qualifications for licenses and certificates), including the completion of at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(3) Have successfully completed a midwife program.

(4) Have obtained one of the following:

(i) A passing grade on a midwife examination. The Board accepts the passing grade on the certifying examination of the ACNM or AMCB as determined by the ACNM or AMCB or successor organization as recognized by the Board.

(ii) Certification as a midwife by the American College of Nurse-Midwives (ACNM) before the ACNM certification examination was first administered in 1971. To be eligible for renewal of a nurse-midwife license, the nurse-midwife shall maintain National certification available to the profession and recognized by the Board.

(5) Submit an application for a nurse-midwife license accompanied by the required fee. For the fee amount, see § 16.13 (relating to licensure, certification, examination and registration fees).

§ 18.3. Biennial registration requirements.

(a) A nurse-midwife license shall be registered biennially. The procedure for the biennial registration of a nurse-midwife license is in § 16.15 (relating to biennial registration; inactive status and unregistered status).

(b) As a condition of biennial license renewal, a nurse-midwife shall complete the continuing education requirement in section 12.1 of the Professional Nursing Law (63 P.S. § 222), including at least 2 hours of approved continuing education in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement). In the case of a nurse-midwife who has prescriptive authority under the act, the continuing education required by the Professional Nursing Law (63 P.S. §§ 211—225.5) must include at least 16 hours in pharmacology completed each biennium.

(c) The fees for the biennial renewal of a nurse-midwife license and prescriptive authority are set forth in § 16.13 (relating to licensure, certification, examination and registration fees).

Subchapter B. LICENSURE AND PRACTICE OF ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE

§ 18.13. Requirements for licensure as an acupuncturist.

(a) The Board will license as an acupuncturist a person who satisfies the following requirements:

(1) Has successfully completed an acupuncture educational program which includes a course in needle sterilization techniques.

(2) Has obtained a passing grade on an acupuncture examination or has been certified by NCCAOM. If the examination was not taken in English, but is otherwise acceptable and a passing score was secured, the Board will accept the examination result if the applicant has also secured a score of 550 on the test of English as a Foreign Language (TOEFL).

(3) Has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(b) The Board will license as an acupuncturist a medical doctor who satisfies the following requirements:

(1) Has successfully completed 200 hours of training in acupuncture medical programs including examinations required by those programs.

(2) Submits an application to register as an acupuncturist accompanied by the required fee. For the fee amount, see § 16.13 (relating to licensure, certification, examination and registration fees).

* * * * *

§ 18.14. Biennial registration requirements.

(a) Acupuncturists and practitioners of Oriental medicine shall register biennially and submit the appropriate registration fee to engage in the practice of acupuncture for the biennial period.

(b) Procedures for biennial registration of acupuncturists and practitioners of Oriental medicine are outlined in § 16.15 (relating to biennial registration; inactive status and unregistered status).

(c) The biennial registration fee is set forth in § 16.13 (relating to licensure, certification, examination and registration fees).

(d) As a condition of biennial registration, acupuncturists and practitioners of Oriental medicine shall complete at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

Subchapter D. PHYSICIAN ASSISTANTS

LICENSURE OF PHYSICIAN ASSISTANTS AND REGISTRATION OF SUPERVISING PHYSICIANS

§ 18.141. Criteria for licensure as a physician assistant.

The Board will approve for licensure as a physician assistant an applicant who:

(1) Satisfies the licensure requirements in § 16.12 (relating to general qualifications for licenses and certificates) including the completion of at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(2) Has graduated from a physician assistant program recognized by the Board.

(3) Has submitted a completed application together with the required fee, under § 16.13 (relating to licensure, certification, examination and registration fees).

(4) Has passed the physician assistant examination.

§ 18.145. Biennial registration requirements; renewal of physician assistant license.

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(c) To be eligible for renewal of a physician assistant license, the physician assistant shall complete continuing medical education as required by the NCCPA, including at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement), and maintain National certification by completing current recertification mechanisms available to the profession, identified on the NCCPA's web site as recognized by the Board. The Board recognizes certification through the NCCPA and its successor organizations and certification through any other National organization for which the Board publishes recognition of the organization's certification of physician assistants on the Board's web site.

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Subchapter F. RESPIRATORY THERAPISTS

§ 18.307. Criteria for licensure as a respiratory therapist.

The Board will approve for licensure as a respiratory therapist an applicant who:

(1) Submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

(i) Has graduated from a respiratory care program approved by the CoARC and passed the entry level credentialing examination as determined by the NBRC.

(ii) Holds a valid license, certificate or registration as a respiratory therapist in another state, territory or the District of Columbia which has been issued based on requirements substantially the same as those required by the Commonwealth, including the examination requirement.

(2) Has paid the appropriate fee in a form acceptable to the Board.

(3) Has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 18.309a. Requirement of continuing education.

(a) The following continuing education requirements shall be completed each biennial cycle:

(1) An applicant for biennial renewal or reactivation of licensure is required to complete, during the 2 years preceding the application for renewal or reactivation, a minimum of 30 hours of continuing education as set forth in section 36.1(f)(2) of the act (63 P.S. § 422.36a(f)(2)).

* * * * *

(4) One continuing education hour shall be completed in medical ethics, 1 continuing education hour shall be completed in patient safety and at least 2 hours shall be completed in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(5) Credit will not be given for continuing education in basic life support, including basic cardiac life support and cardiopulmonary resuscitation. In any given biennial renewal period, a licensee may receive credit for no more than 8 continuing education hours in advanced life support, including advanced cardiac life support, neonatal advanced life support/neonatal resuscitation and pediatric advanced life support.

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Subchapter H. ATHLETIC TRAINERS

§ 18.504. Application for licensure.

(a) The applicant shall submit the following on forms supplied by the Board:

(1) A completed application and the fee set forth in § 16.13 (relating to licensure, certification, examination and registration fees).

(2) Verification of professional education in athletic training in accordance with § 18.505 (relating to educational requirements).

(3) Documentation of passage of the National examination in accordance with § 18.506 (relating to examination requirement).

(4) Documentation of practice as an athletic trainer, if licensed or certified in another jurisdiction, and verification as to whether there has been disciplinary action taken in that jurisdiction.

(5) Verification of having completed at least 3 hours of approved training in child abuse recognition and report-

ing in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(b) To qualify for licensure, an applicant shall be at least 20 years of age and may not be addicted to alcohol or hallucinogenic, narcotic or other drugs which tend to impair judgment or coordination.

§ 18.511. Continuing education.

(a) Beginning with the biennial period commencing on the next biennial renewal period following July 14, 2007, athletic trainers shall complete the continuing education requirements prescribed by the BOC.

(a.1) Applicants for renewal of a license shall, as a condition of biennial renewal, complete at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(b) Applicants for renewal of a license shall provide a signed statement verifying that the continuing education requirement has been met.

(c) Proof of completion of the required continuing education shall be retained for at least 2 years after completion.

Subchapter I. BEHAVIOR SPECIALISTS

§ 18.523. Application for licensure as behavior specialist.

(a) An applicant for licensure as a behavior specialist shall submit, on forms made available by the Board, a completed application, including all necessary supporting documents, for licensure as a behavior specialist and pay the fee in § 16.13(i) (relating to licensure, certification, examination and registration fees) for application for licensure as a behavior specialist.

(1) Among the supporting documents, the applicant shall submit, or cause to be submitted, to the Board:

(i) A criminal history record information report completed by the Pennsylvania State Police or the state police for each state in which the applicant currently resides or works and has resided or worked during the previous 10 years completed no more than 90 days prior to the date the application is received in the Board office.

(ii) A child abuse history clearance completed by the Department of Public Welfare or equivalent agency for each state in which the applicant currently resides or works and has resided or worked during the previous 10 years completed no more than 90 days prior to the date the application is received in the Board office.

(iii) A Federal Bureau of Investigation criminal justice information services criminal record completed no more than 90 days prior to the date the application is received in the Board office.

(iv) Verification of having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(2) The applicant shall provide updates to documents in possession of the Board for more than 6 months while the application remains pending.

* * * * *

§ 18.525. Renewal of licensure as behavior specialist.

(a) A license issued under this subchapter expires on December 31 of the even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last address on file with the Board.

(c) To retain licensure as a behavior specialist, the licensee shall renew the license in the manner prescribed by the Board and pay the required biennial renewal fee specified in § 16.13(i) (relating to licensure, certification, examination and registration fees) prior to the expiration of the current biennium.

(d) To renew licensure as a behavior specialist, the licensee shall apply on forms made available by the Board, fully answer all questions and pay the current renewal fee specified in § 16.13(i).

(e) As a condition of biennial renewal, a licensee shall complete at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

Subchapter J. PERFUSIONISTS

§ 18.603. Application for perfusionist license.

(a) An applicant for a license to practice as a perfusionist shall submit, or cause to be submitted, on forms made available by the Board, a completed application, including the necessary supporting documents, for a license to practice as a perfusionist and pay the fee in § 16.13(l) (relating to licensure, certification, examination and registration fees) for application for a perfusionist license.

(b) The Board may issue a license to practice as a perfusionist to an applicant who:

(1) Demonstrates that the applicant holds a current certification by a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board.

(2) Demonstrates that the applicant has graduated from an accredited perfusion program approved by the Board.

(3) Demonstrates that the applicant is at least 18 years of age and of good moral character.

(4) Demonstrates that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act (63 P.S. § 422.13c(k)).

(4.1) Demonstrates that the applicant has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(5) Otherwise complies with this subchapter.

(c) The Board may deny an application for licensure as a perfusionist upon the grounds for disciplinary action in § 18.609 (relating to disciplinary action for licensed perfusionists).

§ 18.610. Continuing education for licensed perfusionists.

(a) *Credit hour requirements.* A licensed perfusionist shall satisfy the following continuing education credit hour requirements.

(1) As a condition for biennial registration, a licensee shall complete at least 30 hours of continuing education applicable to the practice of perfusion, including at least 10 hours of category I continuing education, and at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement). A licensee is not required to complete continuing education during the biennium in which the licensee is first licensed.

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Subchapter K. GENETIC COUNSELORS

§ 18.703. Application for genetic counselor license.

(a) An applicant for a license to practice as a genetic counselor shall submit, on forms made available by the Board, a completed application for a license to practice as a genetic counselor, including the necessary supporting documents, and pay the application fee in § 16.13(m) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a genetic counselor to an applicant who demonstrates that the applicant:

(1) Is at least 21 years of age and of good moral character, as required under section 13.4(e)(1) and (2) of the act (63 P.S. § 422.13d(e)(1) and (2)).

* * * * *

(4) Has obtained professional liability insurance, or is exempt from the requirement to obtain professional liability insurance, as set forth in § 18.710 (relating to professional liability insurance coverage for genetic counselors).

(5) Has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(c) The Board may deny an application for licensure as a genetic counselor upon the grounds for disciplinary action in § 18.708 (relating to disciplinary action for applicants and genetic counselors).

§ 18.704. Application for genetic counselor license by uncertified persons.

(a) An applicant for a license to practice as a genetic counselor who has never passed the ABGC or ABMG certification examination shall submit, on forms made available by the Board, a completed application for a license to practice as a genetic counselor, including the necessary supporting documents, and pay the application fee in § 16.13(m) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a genetic counselor to an uncertified applicant who:

(1) Submits an application to the Board, along with the required supporting documentation, by February 20, 2015.

* * * * *

(5) Demonstrates that the applicant has obtained professional liability insurance, or is exempt from the requirement to obtain professional liability insurance, as set forth in § 18.710 (relating to professional liability insurance coverage for genetic counselors).

(6) Demonstrates that the applicant has completed at least 3 hours of approved training in child abuse recogni-

tion and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 18.709. Continuing education for genetic counselors.

(a) Credit hour requirements. A genetic counselor shall satisfy the following continuing education credit hour requirements:

(1) As a condition for biennial registration, a genetic counselor shall complete at least 30 hours of continuing education applicable to the practice of genetic counseling, including at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement). Credit will not be given for a course in office management or practice building. A genetic counselor is not required to complete continuing education during the biennium in which the genetic counselor was first licensed if licensure occurred within 3 years of completion of the degree.

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Subchapter L. PROSTHETISTS, ORTHOTISTS, PEDORTHISTS AND ORTHOTIC FITTERS
QUALIFICATIONS FOR LICENSURE AS A PROSTHETIST

§ 18.814. Prosthetist license.

(a) An applicant for a license to practice as a prosthetist shall submit, on forms made available by the Board, a completed application for licensure, including the necessary supporting documents and pay the application fee in § 16.13(n) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a prosthetist to an applicant who:

(1) Is of good moral character.

* * * * *

(5) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter). An applicant shall demonstrate this requirement by submitting proof of professional liability insurance coverage through self-insurance, a personally purchased insurance policy or insurance provided by the applicant’s employer in accordance with § 18.864.

(6) Has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(c) The Board may deny an application for licensure as a prosthetist upon the grounds for disciplinary action in section 41 of the act (63 § 422.41), § 16.61 or § 18.853 (relating to unprofessional and immoral conduct) or other applicable law, such as 18 Pa.C.S. § 9124 (relating to use of records by licensing agencies).

(d) An individual holding an active, unsuspended prosthetist license may use the title “prosthetist.”

QUALIFICATIONS FOR LICENSURE AS AN ORTHOTIST

§ 18.824. Orthotist license.

(a) An applicant for a license to practice as an orthotist shall submit, on forms made available by the Board, a completed application for licensure, including the neces-

sary supporting documents, and pay the application fee in § 16.13(o) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as an orthotist to an applicant who:

(1) Is of good moral character.

* * * * *

(5) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter). An applicant shall demonstrate this requirement by submitting proof of professional liability insurance coverage through self-insurance, a personally purchased insurance policy or insurance provided by the applicant’s employer in accordance with § 18.864.

(6) Has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(c) The Board may deny an application for licensure as an orthotist upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41), § 16.61 or § 18.853 (relating to unprofessional and immoral conduct) or other applicable law, such as 18 Pa.C.S. § 9124 (relating to use of records by licensing agencies).

(d) An individual holding an active, unsuspended orthotist license may use the title “orthotist.”

QUALIFICATIONS FOR LICENSURE AS A PEDORTHIST

§ 18.833. Pedorthist license.

(a) An applicant for a license to practice as a pedorthist shall submit, on forms made available by the Board, a completed application for licensure, including the necessary supporting documents, and pay the application fee in § 16.13(p) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a pedorthist to an applicant who:

(1) Is of good moral character.

* * * * *

(5) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter). An applicant shall demonstrate this requirement by submitting proof of professional liability insurance coverage through self-insurance, a personally purchased insurance policy or insurance provided by the applicant’s employer in accordance with § 18.864.

(6) Has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(c) The Board may deny an application for licensure as a pedorthist upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41), § 16.61 or § 18.853 (relating to unprofessional and immoral conduct) or other applicable law, such as 18 Pa.C.S. § 9124 (relating to use of records by licensing agencies).

(d) An individual holding an active, unsuspended pedorthist license may use the title “pedorthist.”

QUALIFICATIONS FOR LICENSURE AS AN ORTHOTIC FITTER

§ 18.843. Orthotic fitter license.

(a) An applicant for a license to practice as an orthotic fitter shall submit, on forms made available by the Board, a completed application for licensure, including the necessary supporting documents, and pay the application fee in § 16.13(q) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as an orthotic fitter to an applicant who:

- (1) Is of good moral character.

* * * * *

(5) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter). An applicant shall demonstrate this requirement by submitting proof of professional liability insurance coverage through self-insurance, a personally purchased insurance policy or insurance provided by the applicant’s employer in accordance with § 18.864.

(6) Has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(c) The Board may deny an application for licensure as an orthotic fitter upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41), § 16.61 or § 18.853 (relating to unprofessional and immoral conduct) or other applicable law, such as 18 Pa.C.S. § 9124 (relating to use of records by licensing agencies).

(d) An individual holding an active, unsuspended orthotic fitter license may use the title “orthotic fitter.”

BIENNIAL RENEWAL AND REACTIVATION

§ 18.862. Continuing education.

(a) *Credit hour requirements.* A licensed prosthetist, orthotist, pedorthist or orthotic fitter shall satisfy the following continuing education credit hour requirements:

(1) As a condition for biennial renewal, a prosthetist shall complete at least 24 hours of ABC-approved or BOC-approved continuing education applicable to the practice of prosthetics and an orthotist shall complete at least 24 hours of ABC-approved or BOC-approved continuing education applicable to the practice of orthotics. At least 2 of the required 24 hours shall be completed in approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(2) As a condition for biennial renewal, a pedorthist shall complete at least 13 hours of ABC-approved or BOC-approved continuing education applicable to the practice of pedorthics and an orthotic fitter shall complete at least 13 hours of ABC-approved or BOC-approved continuing education applicable to the practice of orthotic fitting. At least 2 of the required 13 hours shall be completed in approved training in child abuse recognition and reporting in accordance with § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(3) Credit for continuing education will not be given for courses in office management or practice building.

* * * * *

[Pa.B. Doc. No. 22-486. Filed for public inspection March 25, 2022, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Child Abuse Reporting Requirements

The State Board of Nursing (Board) amends §§ 21.28, 21.29, 21.131, 21.155, 21.156, 21.271, 21.331, 21.501—21.507, 21.603, 21.605, 21.721, 21.723, 21.724, 21.811, 21.812 and 21.822; and adds §§ 21.20, 21.150, 21.508 and 21.509 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 2.1(k) of the Professional Nursing Law (63 P.S. § 222.1(k)) and section 17.6 of the Practical Nurse Law (63 P.S. § 667.6) set forth the Board’s general rulemaking authority. Under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) (CPSL), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees of the Board.

Background and Purpose

Beginning in 2014, and continuing through 2019, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on all health-related boards to require training in child abuse recognition and reporting. Section 2 of Act 31 provides that these training requirements apply to all persons applying for a license or certificate, or applying for renewal of a license or certificate, on or after January 1, 2015. The Board implemented the training requirements as mandated at the beginning of 2015 and subsequently proposed this rulemaking to update the Board’s existing regulations on the subject of child abuse reporting to be consistent with the CPSL, as amended.

The proposed rulemaking was published at 51 Pa.B. 558 (January 30, 2021) for 30 days of public comment, but no public comments were received. The Independent Regulatory Review Commission (IRRC) submitted comments on March 31, 2021. The House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. The following represents a summary of IRRC’s comments and the Board’s response, and a description of the amendments made to this final-form rulemaking.

Summary of IRRC’s Comments and the Board’s Response

Initially, IRRC points out that the proposed rulemaking did not amend the application and continuing education requirements in Subchapters C and H (relating to certi-

fied registered nurse practitioners; and clinical nurse specialists). IRRC acknowledged that these certifications are held by individuals who are licensed registered nurses and asks the Board to explain how the child abuse recognition and reporting training and continuing education requirements in 23 Pa.C.S. § 6383(b)(3)(i) and (ii) are implemented for these certifications. Further, IRRC asked the Board to consider clarifying these subchapters by either adding the child abuse recognition and reporting requirements or cross-references to the applicable registered nurse regulations.

The mandatory training requirements under the CPSL are applicable to all licenses and certificates issued by the Board. So, if a licensed registered nurse subsequently applies for a certificate as a certified registered nurse practitioner or as a clinical nurse specialist, the registered nurse is required to have completed at least 3 hours of approved training in child abuse recognition and reporting as a condition of certification. If the registered nurse's education profile in the Pennsylvania Licensing System (PALS) contains evidence of at least 3 hours of approved training, as reported by approved course providers, the certificate would be issued. If not, the individual would need to complete the required training. Often, an applicant will apply for both credentials simultaneously, such as when the individual is already licensed as a registered nurse/certified as a certified registered nurse practitioner from another state. That individual would only need to complete 3 hours of approved training, not 6, which would be applied to both credentials. As for the continuing education that is required as a condition of biennial renewal, when a Board-regulated practitioner takes an approved course and that attendance/participation is reported by the approved provider, it is applied to all licenses and certificates held by the individual. Thus, if an individual holds both a registered nurse license and a certificate as a certified registered nurse practitioner, both of which expire on the same date under § 21.331(a) (relating to biennial renewal of certification), that individual would not need to take the course twice or apply for an exemption.

This would also apply across licensure Boards within the Bureau of Professional and Occupational Affairs (Bureau) that also require this training. For example, a registered nurse license issued by the Board is a prerequisite to obtaining a license as a nurse-midwife from the State Board of Medicine. When an individual holding both licenses takes an approved course, the report from the approved provider received by the Bureau is applied to both licenses. When the licensee applies for biennial renewal, the PALS system then "looks back" 24 months from the applicable expiration date of the license to determine whether the individual completed an approved course of at least 2 hours in child abuse recognition and reporting during the relevant biennial licensure cycle. If so, the license is renewed. Provided the course was completed within the 2-year biennial renewal cycle for each license/certificate held by the individual, there is no need to repeat the course or obtain an exemption from either board. However, because different boards have different biennial renewal cycles, it is incumbent upon the licensee to make sure that they complete the training at a time when the biennial renewal periods overlap, or risk having to take the course again.

In response to this inquiry by IRRC, the Board makes a number of amendments to this final-form rulemaking. First, the Board clarifies in § 21.508(b) (relating to child abuse recognition and reporting—mandatory training requirements) that if a licensee holds more than one license

or certificate issued by the Board, or holds a license issued by another licensing board within the Bureau that required mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both credentials. In addition, the Board adds references to the mandatory training requirements for certified registered nurse practitioners and clinical nurse specialists in Subchapters C and H, as suggested by IRRC. Specifically, the Board adds to §§ 21.171, 21.811 and 21.812 (relating to certification requirements; qualifications for initial certification; and qualifications for certification by endorsement; additional certification) the requirement that an applicant for initial certification shall have completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a); and adds to §§ 21.331 and 21.822 (relating to biennial renewal of certification) the requirement to have completed at least 2 hours of approved training as a condition of biennial renewal in accordance with § 21.508(b).

Next, IRRC points out that §§ 21.20, 21.28(f), 21.131(d) and (e), 21.150, 21.155(f) and 21.723(b)(3) require an applicant or licensee to "submit proof of completion" of the required training, while it is the approved course provider that reports participation/attendance electronically to the Bureau. IRRC asked the Board to revise these sections to clarify that the approved course provider electronically reports proof of attendance/completion. In response, the Board amends each of these sections to aid clarity. Each section is amended in this final-form rulemaking to require the applicants to "complete" the required training or "cause to be submitted" the proof of completion of the mandated reporter training. In addition, the Board amends § 21.508(a) to clarify that the Board will not issue a license or certificate unless the Bureau has received a report from an approved course provider documenting the attendance/participation by the applicant, or the applicant has obtained an exemption from the Board.

Pertaining to § 21.501 (relating to definitions), IRRC offered two comments. First, IRRC commented that subparagraphs (i)(D) and (ii)(D) of the definition of "perpetrator" would be clearer if the specifically-defined term "person responsible for the child's welfare" were used. In response, the Board amends these subparagraphs to use the defined term. IRRC's second comment noted that the definition of "serious physical neglect" does not include the phrase "when committed by a perpetrator" as specified in the definition of this term in 23 Pa.C.S. § 6303 (relating to definitions). IRRC asked the Board to revise the definition to include the omitted language. Initially, the Board had omitted the language because the Board did not want to dissuade individuals from making a report of suspected child abuse if they did not know who was responsible for the "serious physical neglect" or imply that they had a duty to determine whether that individual would be considered "a perpetrator" under the CPSL. However, the Board adds the omitted language as requested by IRRC. In addition, amendments made in response to IRRC's next comment provide additional clarity that a mandated reporter is not required to identify the person responsible for the child abuse to make a report.

Next, IRRC notes that § 21.502(a) (relating to suspected child abuse—mandated reporting requirements) requires a Board-regulated practitioner to report suspected child abuse when there is reasonable cause to suspect that a child is a victim of child abuse under a set of circumstances derived from 23 Pa.C.S. § 6311(b)(1)

(relating to persons required to report suspected child abuse), but that the provisions of 23 Pa.C.S. § 6311(b)(2) and (3) have been omitted. These provisions provide that the responsibility to report suspected child abuse exists even when certain information is unknown. Specifically, they provide that:

“(2) Nothing in this subsection shall require a child to come before the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this subsection shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.”

The Board agrees that the omitted language does clarify the scope of the duty to report and has been added to § 21.502, which necessitated some re-numbering of the section.

With regard to § 21.503 (relating to photographs, medical tests and X-rays of child subject to report), IRRC noted that under 23 Pa.C.S. § 6314 (relating to photographs, medical tests and X-rays of child subject to report), these types of materials “shall be made available to law enforcement officials in the course of investigating cases.” However, this requirement was not included in the proposed rulemaking. For consistency, IRRC suggested that the Board should add the statutory requirement to make these materials available to law enforcement officials. The Board agrees and adds the omitted language to this final-form rulemaking.

Next, IRRC offered a number of comments pertaining to § 21.508. First, IRRC notes that subsection (a), which requires an individual applying for initial licensure to complete at least 3 hours of training in child abuse recognition and reporting requirements, does not address the documentation and reporting of completion of training as required under 23 Pa.C.S. § 6383(b)(3)(i). IRRC asked the Board to revise this subsection to include the implementation procedures for submission of proof of training by an approved course provider. The Board amends this section to clarify that applicants for an initial license or certificate shall have completed the required training, which has been approved by the Department of Human Services and the Bureau. Further, the Board adds the requirement that the applicant shall certify on the application that the training has been completed, and that the Board will not issue a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption from the Board.

IRRC also noted that subsection (b) indicates that the Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course or the licensee has obtained an exemption under subsection (c). However, IRRC pointed out that § 21.131(b) (relating to continuing education) provides that a registered nurse “will not be required to meet the continuing education requirement on the first renewal immediately following licensure.” IRRC asked the Board to explain how it will implement the child abuse recognition and reporting continuing education requirements for registered nurse’s who are exempt from continuing education following initial licensure.

There is no exception provided by the CPSL that would excuse a registered nurse from complying with the mandated reporter training requirements the first time they renew. However, as a practical matter, the PALS system

was programmed to “look back” 24 months to determine if a licensee applying for renewal has completed an approved course of at least 2 hours. If so, the license would be renewed. If not, the licensee would receive a discrepancy notice. Since an applicant is required to complete at least 3 hours of training as a condition of licensure, if the subsequent renewal occurs within 2 years of the date of completion of that course, the PALS system would renew the registered nurse’s license without requiring an additional 2 hours of approved training. However, it would depend on when the initial training was completed as compared to the expiration date of the individual’s license. If the first renewal would fall beyond the 24-month look-back period from the date the licensee completed the initial training, then the licensee would need to complete the additional 2 hours. The Board believes this comports with the statutory intent that a licensee be required to complete at least 2 hours of training in child abuse recognition and reporting during each biennial licensure cycle. In response to IRRC’s comment, the Board amends § 21.131(b) to clarify that the exception does not apply to the mandatory continuing education in child abuse recognition and reporting. The Board also notes that licensed practical nurses currently have no continuing education requirements at all, but are required to complete the mandatory training in child abuse recognition and reporting as a condition of renewal and would likewise not be exempt during their first renewal after initial licensure.

With regard to § 21.508(c), which provides for circumstances in which the Board may grant an exemption from the mandatory training requirements, IRRC raised three concerns. First, the standards for documentation and evaluation are vague. Second, this subsection does not specify if the exemption is limited to one biennial renewal period. Third, the process for notification of approval or denial is not stated. IRRC asked the Board to explain the standards for sufficient documentation and the evaluation process for reviewing a request for exemption, including if there is a time frame for completion of training prior to applying for an exemption. IRRC also asked the Board to consider clarifying this subsection to state the time period of the exemption and the process for notifying applicants and licensees.

In response to IRRC’s comments, the Board makes a number of amendments to subsection (c). First, the Board clarifies that for purposes of licensure renewal, comparable training in child abuse recognition and reporting completed as required either under the Public School Code of 1949 (24 P.S. §§ 1-101—27-2702) or under 23 Pa.C.S. § 6383(c) for individuals subject to regulation by the Department of Human Services must have been completed during the relevant biennial renewal period. Next, the Board amends paragraph (3) to clarify the standards for review of other exemption requests. It is difficult to specify what documentation might be “acceptable to the Board,” because it would depend on the reason for the exemption request. For example, it may include documentation that the licensee is an approved trainer in the area of child abuse recognition and reporting. Another example might be a licensee who volunteers as a Court-appointed Special Advocate for children who are victims of abuse or neglect. These individuals are required to complete at least 30 hours of pre-service training and 12 hours of annual in-service training. See 37 Pa. Code § 200.221 (relating to training). In this case acceptable documentation may consist of proof of having completed the annual in-service training. Generally, the Board evaluates these requests to determine whether training in the area of child abuse recognition and reporting would

be duplicative of other training the individual has completed or is unnecessary under the circumstances. In addition, the Board would not find it sufficient for an applicant or licensee to simply state that they do not include children in their practice, due to the expanded scope of the duty to report set forth in section 6311(b) of the CPSL which no longer requires the mandated reporter to come into contact with the child in the course of their employment, occupation or practice of a profession.

The Board adds new subsection (d) to clarify that exemptions granted under subsection (c) are only applicable for the biennial renewal period for which the exemption is requested. This, too, the Board believes is consistent with the statutory intent that a mandated reporter be required to complete at least 2 hours of approved training every 2 years or obtain an exemption from the Board. The Board explains the process for notifying applicants/licensees of the grant or denial of an exemption request in subsection (d). If an exemption is granted, the license or certificate will be issued or renewed. If an exemption is denied, the applicant or licensee will receive a discrepancy notice by e-mail notifying them of the need to complete an approved course, or to submit additional documentation in support of their request for an exemption.

With regard to § 21.721 (relating to qualifications for licensure), IRRC pointed out that because the approved course providers electronically report participation/attendance to the Bureau, subsection (c) should be revised to delete the word “submit.” The Board agrees and makes this correction. In addition, IRRC pointed out a number of miscellaneous clarity issues resulting from typographical and other errors in §§ 21.501, 21.502, 21.507(b)(4), 21.603(b) and 21.605, as well as in the Regulatory Analysis Form. These are corrected in this final-form rulemaking.

Description of the Amendments to this Final-Form Rulemaking

The following is a description of the amendments made to this final-form rulemaking.

§§ 21.20 and 21.150 *Licensure by examination*

In response to comments from IRRC, the Board amends these sections to eliminate the requirement that an applicant for licensure “submit proof of completion of” the mandatory training in recognition of the fact that it is the approved course provider that actually submits the report to the Bureau. Instead, these sections will simply require an applicant to complete the required training.

§§ 21.28 and 21.155 *Licensure by endorsement*

A similar revision was made to these sections to clarify that an applicant for licensure by endorsement shall complete at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a), which now makes it clear that the Board will not issue the license unless the approved course provider has submitted the required report to the Bureau.

§ 21.131 *Continuing education*

In response to IRRC’s comments, subsection (b) is amended to make it clear that there is no exception to the mandatory continuing education in child abuse recognition and reporting for licensees who are renewing for the first time. In addition, subsections (d) and (e) are amended to clarify that a registered nurse seeking reinstatement or reactivation of a lapsed, inactive or suspended license would be required to submit, or cause to be submitted, documentation demonstrating the comple-

tion of 30 hours of continuing education, including at least 2 hours in approved training in child abuse recognition and reporting.

§ 21.156 *Renewal of license*

The Board amends subsection (b.1) to be consistent with other provisions by adding the term “approved” to make it clear that the 2 hours of training in child abuse recognition and reporting must be approved by the Department of Human Services and the Bureau.

§ 21.271 *Certification requirements*

In response to IRRC’s comments, the Board adds a cross-reference in subsections (a) and (b) to the mandatory training requirements in § 21.508(a) to make it clear that applicants for certification as a certified registered nurse practitioner must have completed at least 3 hours of approved training in child abuse recognition and reporting as a condition of certification.

§ 21.331 *Biennial renewal of certification*

Likewise, the Board amends this section to add a cross-reference to the requirement that a certified registered nurse practitioner complete at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(b) as a condition of renewal.

§ 21.501 *Definitions*

The Board amends the definition of the term “mandated reporter” to refer to this “subchapter” rather than “chapter.” The definition of “perpetrator” is amended to incorporate the specifically-defined term “person responsible for the child’s welfare,” and to correct a typographical error to refer to “birth or adoption to the child.” A typographical error is corrected in the definition of “recent act or failure to act” correcting the word “of” to read “or.” The Board adds the omitted phrase “when committed by a perpetrator” to the definition of “serious physical neglect.”

§ 21.502 *Suspected child abuse—mandated reporting requirements*

The Board amends subsection (a) to incorporate the provisions of 23 Pa.C.S. § 6311(b)(2) and (3) to clarify that “nothing in this subsection shall require a child to come before the mandated reporter” and that “nothing in this subsection shall require the mandated reporter to identify the person responsible for the child abuse” for the mandated reporter to make a report of suspected child abuse. In addition, the term “subparagraph” is corrected to read “paragraph” in subsection (c)(1).

§ 21.503 *Photographs, medical tests and X-rays of child subject to report*

As suggested by IRRC, the Board adds language clarifying that medical summaries or reports of the photographs, X-rays and relevant medical tests shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6490(a)(9) or (10) (relating to release of information in confidential reports).

§ 21.507 *Noncompliance*

The citation to the relevant section of the CPSL is corrected to read “23 Pa.C.S. § 6319” in paragraph (4).

§ 21.508 *Child abuse recognition and reporting—mandatory training requirement*

In response to IRRC’s comments, the Board makes substantial edits to this section. First, subsection (a), pertaining to the mandatory training in child abuse recog-

dition and reporting required for initial licensure or certification, the Board amends the language to clarify that an applicant shall have completed at least 3 hours of training which has been approved by the Department of Human Services and the Bureau, as set forth in § 21.509 (relating to child abuse recognition and reporting course approval process). In addition, the Board includes a requirement that the applicant shall certify on the application that the training has been completed or that the applicant has received an exemption from the Board. Finally, the Board adds a notice that the Board will not issue a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

Additionally, the Board amends subsection (b) to make it clear that licensees seeking renewal of a license or certificate issued by the Board are required to complete at least 2 hours of approved continuing education in child abuse recognition and reporting as a condition of renewal, and that the training must have been completed within the applicable biennial renewal period. The Board clarifies that if a licensee holds more than one license or certificate issued by the Board, or holds a license issued by another licensing board within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both credentials.

The Board amends subsection (c)(1) and (2) to clarify that, for purposes of licensure renewal, an exemption may be granted to individuals who have completed comparable training provided that the training must have been completed during the relevant biennial renewal period. Paragraph (3) is amended to provide that the Board may otherwise grant an exemption of the applicant or licensee submit documentation acceptable to the Board indicating that the completion of the mandated reporter training is duplicative or unnecessary under the circumstances, and that it is not enough that the applicant or licensee state that they do not include children in their practice.

Finally, the Board adds subsection (d) to provide that exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested and to set for the process by which the Board will notify applicants and licensees of the grant or denial of an exemption request.

§ 21.603 Applications

The Board corrects a typographical error in subsection (b) where the term “licensee” should have read “license.” In addition, for the sake of consistency, the Board clarifies that the training in child abuse recognition and reporting must be “approved.”

§ 21.605 Biennial renewal

The Board corrects the citation to section 6(c) of the Volunteer Health Services Act.

§§ 21.272 and 21.723 Qualifications for licensure; and license renewal

Both of these sections, pertaining to licensed dietitian-nutritionists, are amended to clarify the fact that the applicant/licensee shall complete the training or “cause to be submitted” proof to the Board of completion of the required training, in recognition of the fact that it is the approved course provider that submits the report of the applicant’s/licensee’s completion of the required training.

§§ 21.811 and 21.812 Qualifications for initial certification; and qualifications for certification by endorsement; additional certification

In response to IRRC’s comments, the Board adds a cross-reference to the mandatory training requirements in § 21.508(a) to make it clear that applicants for certification as a clinical nurse specialist must have completed at least 3 hours of approved training in child abuse recognition and reporting as a condition of certification.

§ 21.822 Biennial renewal of certification

Likewise, the Board amends this section to add a cross-reference to the requirement that a clinical nurse specialist complete at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(b) as a condition of renewal.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Registered nurses, dietitian-nutritionists, clinical nurse specialists, certified registered nurse practitioners and volunteer license holders are already required to complete mandatory continuing education, and as these 2 hours are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure/certification and licensed practical nurses would incur an additional requirement. Because there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved Act 31 training providers are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandatory reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

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) and (f) of the Regulatory Review Act (71 P.S. § 745.5(a) and (f)), on January 15, 2021, the Board submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 558, to IRRC and the Legislative Reference Bureau. The Board subsequently submitted the notice of proposed rulemaking to the Chairpersons of the HPLC and the SCP/PLC for review and comment on February 19, 2021, as required under section 5(f) of the Regulatory Review Act.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received on the regulation, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments received from IRRC. No public comments were received. The Board also received no comments from the HPLC or the SCP/PLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on November 30, 2021, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j)(2) of the Regulation Review Act, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC on January 25, 2022. Under section 5.1(e) of the Regulatory Review Act,

IRRC met on January 26, 2022, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Cynthia Miller, Board Administrator, State Board of Nursing, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-NURSE@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), referred to 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, but no comments were received.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 51 Pa.B. 558.

(4) This final-form rulemaking is necessary and appropriate for the administration of the CPSL (23 Pa.C.S. §§ 6301—6388).

Order

The Board, therefore, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21 are amended by amending §§ 21.28, 21.29, 21.131, 21.155, 21.156, 21.271, 21.331, 21.501—21.507, 21.603, 21.605, 21.721, 21.723, 21.724, 21.811, 21.812 and 21.822, and adding §§ 21.20, 21.150, 21.508 and 21.509 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC 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 upon publication in the *Pennsylvania Bulletin*.

KRISTIN MALADY, BSN, RN,
Chairperson

(Editor's Note: See 52 Pa.B. 1079 (February 12, 2022) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-5140 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 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES LICENSES

§ 21.20. Licensure by examination.

An applicant for licensure by examination shall comply with the requirements of § 21.23 (relating to application

for examination), pass the examination and complete at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 21.28. Licensure by endorsement.

* * * * *

(e) An applicant for licensure by endorsement shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant received a passing score on a Board-approved English proficiency examination unless the applicant has met this requirement in satisfaction of § 21.7(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

(f) An applicant for licensure by endorsement shall complete at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 21.29. Expiration and renewal of license.

* * * * *

(c) The applicant for license renewal may complete and submit an application online or may mail a completed application form to the Board's administrative office. When applying for licensure renewal, a registered nurse shall:

(1) Complete and submit the renewal application, including disclosing any license to practice nursing or any allied health profession in any other state, territory, possession or country.

(2) Pay the biennial renewal of licensure fee in § 21.5 (relating to fees).

(3) Verify that the registered nurse has complied with the continuing education requirements mandated by section 12.1 of the act (63 P.S. § 222) during the biennial period immediately preceding the application for renewal in accordance with §§ 21.131—21.134 (relating to continuing education). School nurses, who as certified educational specialists are required to obtain continuing professional education under the Public School Code of 1949 (24 P.S. §§ 1-101—27-2702), shall verify by signed statement that the school nurse has complied with the continuing education requirements for certification by the Department of Education.

(3.1) Ensure that the registered nurse has completed at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(4) Disclose any discipline imposed by a state licensing board on any nursing or allied health profession license or certificate in the previous biennial period and any criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition during the previous biennial period unless prior notification has been made under § 21.29a (relating to reporting of crimes and disciplinary action).

(d) When communicating with the Board, licensees shall identify themselves by full name, current address and license number.

CONTINUING EDUCATION

§ 21.131. Continuing education.

(a) Requirement of continuing education. A registered nurse seeking licensure renewal shall complete 30 hours of continuing education approved by the Board during the biennial period immediately preceding the application for renewal in accordance with section 12.1 of the act (63 P.S. § 222) and this subchapter. At least 2 of the 30 hours shall be completed in approved continuing education in child abuse recognition and reporting requirements in accordance with § 21.508(b) (relating to child abuse recognition and reporting—mandatory training requirement). The Board will not renew a license of a registered nurse who fails to verify compliance with the continuing education requirement. A registered nurse whose license is not renewed by the expiration of the biennial period may not engage in the practice of professional nursing until the continuing education requirements are satisfied and the license has been renewed, reinstated or reactivated.

(b) Exception. An applicant applying for initial licensure in this Commonwealth will not be required to meet the continuing education requirement on the first renewal immediately following licensure, except for the mandatory continuing education in child abuse recognition and reporting required under § 21.508(b).

* * * * *

(d) Reinstatement of lapsed license or reactivation of inactive license. A registered nurse seeking to reinstate a lapsed license or reactivate an inactive license shall file an application for reinstatement or reactivation and submit, or cause to be submitted, documentation to demonstrate that the licensee completed 30 hours of continuing education, including at least 2 hours in approved child abuse recognition and reporting in accordance with § 21.508(b), within the biennial period immediately preceding application.

(e) Reinstatement of suspended license. A registered nurse seeking to reinstate a suspended license shall submit, or cause to be submitted, documentation to demonstrate that the registered nurse completed 30 hours of continuing education, including at least 2 hours in approved child abuse recognition and reporting in accordance with § 21.508(b), within the biennial period immediately preceding application for reinstatement.

* * * * *

Subchapter B. PRACTICAL NURSES LICENSURE

§ 21.150. Licensure by examination.

An applicant for licensure by examination shall comply with the requirements of § 21.151 (relating to application for examination), pass the examination and complete at least 3 hours of training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 21.155. Licensure by endorsement.

* * * * *

(e) An applicant for licensure by endorsement shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant has received a passing score on a Board-approved English proficiency examination unless the applicant has previously met this requirement in satisfaction of § 21.149(b)(2) (relating to

temporary practice permits). The Board will make available a list of Board-approved English proficiency examination on its web site.

(f) An applicant for licensure by endorsement shall complete at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 21.156. Renewal of license.

* * * * *

(b) When applying for licensure renewal, a licensed practical nurse shall:

(1) Submit the renewal application, including disclosing a license to practice nursing or an allied health profession in any other state, territory, possession or country.

(2) Pay the biennial renewal of license fee in § 21.147(b) (relating to fees).

(3) Disclose discipline imposed by a state licensing board in the previous biennial period and criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition during the previous biennial period, unless prior notification has been made under § 21.156b (relating to reporting of crimes and disciplinary actions).

(b.1) Licensed practical nurses applying for renewal shall complete at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(c) When communicating with the Board, licensed practical nurses shall identify themselves by their full name, current address and license number.

Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS

CERTIFICATION REQUIREMENTS

§ 21.271. Certification requirements.

(a) Initial certification. An applicant for initial certification shall meet the following requirements:

(1) Registered nurse license. An applicant for certification shall hold a current, unrestricted license as a professional nurse in this Commonwealth.

(2) Education. An applicant for certification shall have completed an accredited, Board-approved master's or postmaster's nurse practitioner program or other Board-approved program that awarded an advanced degree or a course of study considered by the Board to be equivalent to that required for certification in this Commonwealth at the time the course was completed.

(3) National certification. An applicant for initial certification after February 7, 2005, shall hold current National certification in the specialty in which the professional nurse is seeking certification.

(4) Mandatory training in child abuse recognition and reporting. An applicant for initial certification shall have completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement) as a condition of certification.

(b) Certification by endorsement. An applicant for certification who holds a current, unrestricted license or certificate as a nurse practitioner from another state,

territory or possession of the United States or a foreign country, shall meet the certification requirements that were effective at the time the applicant was licensed or certified as a nurse practitioner by the other jurisdiction. Applicants who were initially licensed or certified by another state, territory or possession of the United States or a foreign country after February 7, 2005, shall hold current National certification in the specialty in which the nurse is seeking certification. Nurse practitioners applying for certification from a jurisdiction that does not designate the nurse practitioner's specialty will be required to present evidence satisfactory to the Board to demonstrate the nurse practitioner's specialty. An applicant for initial certification by endorsement shall have completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement) as a condition of certification.

(c) *Addition of a specialty.* A CRNP who holds an unrestricted certification to practice may apply for certification in an additional specialty. To be granted certification in an additional specialty, the CRNP shall meet the educational and National certification requirements for the specialty in which the CRNP is applying for certification.

MAINTENANCE OF CERTIFICATION

§ 21.331. Biennial renewal of certification.

* * * * *

(c) As a condition of biennial renewal, a CRNP shall:

- (1) Renew the CRNP's registered nurse license.
- (2) Verify completion of a minimum of 30 hours of Board-approved continuing education in the 2 years prior to renewal, including at least 2 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(b) (relating to child abuse recognition and reporting—mandatory training requirement). As a condition of biennial renewal of prescriptive authority approval, a CRNP shall complete a minimum of 16 of the 30 hours of Board-approved continuing education in pharmacology in the 2 years prior to renewal.
- (3) Demonstrate current National certification, if the CRNP was certified by the Board after February 7, 2005.
- (4) Pay the required biennial renewal fee set forth in § 21.253 (relating to fees).
- (5) Verify compliance with section 8.7 of the act (63 P.S. § 218.7) regarding liability coverage.
- (d) Any written communication with the Board must be typed or printed and include the CRNP's full name, including former names, the current address and certification number.

Subchapter E. CHILD ABUSE REPORTING REQUIREMENTS

§ 21.501. Definitions.

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

Acts—The Professional Nursing Law (63 P.S. §§ 211—225); and the Practical Nurse Law (63 P.S. §§ 651—667).

Board-regulated practitioner—A registered nurse (RN), licensed practical nurse (LPN), certified registered nurse practitioner (CRNP), clinical nurse specialist (CNS) or licensed dietitian-nutritionist (LDN).

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—

Intentionally, knowingly or recklessly doing any of the following:

- (i) Causing bodily injury to a child through any recent act or failure to act.
- (ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (iv) Causing sexual abuse or exploitation of a child through any act or failure to act.
- (v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (vii) Causing serious physical neglect of a child.
- (viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed;

(II) has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors;

(III) has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions); or

(IV) has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services, which operates a 24-hour a day Statewide toll-free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this subchapter, the term includes all Board-regulated practitioners.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—A person who has committed child abuse as defined in this section.

(i) This term includes only the following:

- (A) A parent of the child.
- (B) A spouse or former spouse of the child's parent.
- (C) A paramour or former paramour of the child's parent.
- (D) An individual 14 years of age or older who is a person responsible for the child's welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106—386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

- (A) A parent of the child.
- (B) A spouse or former spouse of the child's parent.
- (C) A paramour or former paramour of the child's parent.
- (D) A person responsible for the child's welfare who is 18 years of age or older.
- (E) An individual 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

Program, activity or service Any of the following in which children participate and which is sponsored by a school or a public or private organization:

- (i) A youth camp or program.
- (ii) A recreational camp or program.
- (iii) A sports or athletic program.
- (iv) A community or social outreach program.

(v) An enrichment or educational program.

(vi) A troop, club or similar organization.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.

(ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 21.502. Suspected child abuse—mandated reporting requirements.

(a) *General rule.*

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), all Board-regulated practitioners are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this subsection shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Whenever a Board-regulated practitioner is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that Board-regulated practitioner shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.*

A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this paragraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (relating to electronic reporting) through the Department of Human Services' Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* A written or electronic report of suspected child abuse, shall include the following information, if known:

(1) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(2) Where the suspected child abuse occurred.

(3) The age and sex of each subject of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(5) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(6) Family composition.

(7) The source of the report.

(8) The name, telephone number and e-mail address of the person making the report.

(9) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(9.1) Other information required by Federal law or regulation.

(10) Other information which the Department of Human Services may require by regulation.

§ 21.503. Photographs, medical tests and X-rays of child subject to report.

A Board-regulated practitioner may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 21.502(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request. Medical summaries or reports of the photographs, X-rays and relevant medical tests shall be made available to law enforcement officials in the course of investigating cases

under 23 Pa.C.S. § 6490(a)(9) or (10) (relating to release of information in confidential reports).

§ 21.504. Suspected death as a result of child abuse—mandated reporting requirement.

A Board-regulated practitioner who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 21.505. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a Board-regulated practitioner who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the Board-regulated practitioner's actions. For the purpose of any civil or criminal proceeding, the good faith of the Board-regulated practitioner shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a Board-regulated practitioner's actions under §§ 21.502—21.504 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 21.506. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 25.502—25.504 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. Additionally, under 23 Pa.C.S. § 6313(e) (relating to reporting procedure), notwithstanding any other provision of law to the contrary, a mandated reporter who makes a report of suspected child abuse does not violate the Mental Health Procedures Act (50 P.S. §§ 7101—7503), by releasing information necessary to complete the report.

§ 21.507. Noncompliance.

(a) *Disciplinary action.* A Board-regulated practitioner who willfully fails to comply with the reporting requirements in §§ 25.502—25.504 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 14 of the Professional Nursing Law (63 P.S. § 224) and section 16 of the Practical Nurse Law (63 P.S. § 666).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties), a Board-regulated practitioner who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 21.508. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license or certificate shall have completed at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 21.509 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensees seeking renewal of a license or certificate issued by the Board shall complete, as a condition of biennial renewal, at least 2 hours of approved continuing education in child abuse recognition and reporting requirements, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 21.509 (relating to child abuse recognition and reporting course approval process). The Board will not renew a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course within the applicable 2-year biennial licensure cycle or the licensee has ob-

tained an exemption under subsection (c). If a licensee holds more than one license or certificate issued by the Board, or holds a license issued by another licensing board within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both credentials.

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating all of the following:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(2) The applicant or licensee submits documentation demonstrating all of the following:

(i) The applicant or licensee has already completed child abuse recognition training required under 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant or licensee should not be subject to the training or continuing education requirement. The Board will not grant an exemption based solely upon proof that children are not part of the applicant's or licensee's practice. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license/certificate, as applicable. If an exemption is denied, the Board will e-mail the applicant or licensee a discrepancy notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption.

§ 21.509. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education

and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include all of the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) Course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which shall include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the individual, entity or organization in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

Subchapter F. VOLUNTEER LICENSES**§ 21.603. Applications.**

(a) An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice nursing exclusively:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(b) An applicant for a volunteer license shall complete at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement) as a condition of issuance of a volunteer license.

§ 21.605. Biennial renewal.

A volunteer license shall be renewed biennially on forms provided by the Board. In accordance with section 6(c) of the Volunteer Health Services Act (35 P.S. § 449.46(c)), a volunteer license holder shall comply with the applicable continuing education requirements imposed by the Board, including at least 2 hours of training in approved child abuse recognition and reporting in accordance with § 21.508(b) (relating to child abuse recognition and reporting—mandatory training requirement). The applicant shall be exempt from payment of the biennial renewal fee of § 21.5, § 21.147 or § 21.253 (relating to fees), as applicable.

**Subchapter G. DIETITIAN-NUTRITIONISTS
LICENSURE REQUIREMENTS****§ 21.721. Qualifications for licensure.**

(a) An individual may apply for licensure as a dietitian-nutritionist by submitting a written application on forms provided by the Board and remitting the application fee set forth in § 21.705 (relating to fees).

(b) To obtain licensure, an applicant must meet the qualifications set forth in section 6(b)(1)—(4) of the act (63 P.S. § 216(b)(1)—(4)), which include:

(1) Evidencing good moral character.

(2) Receipt of a baccalaureate or higher degree from a Board-approved program or equivalent program as set forth in section 5(b) and (c) of the act (63 P.S. § 215(b) and (c)).

(3) Completion of a planned continuous preprofessional experience of at least 900 hours under appropriate supervision.

(4) Successful completion of one of the examinations specified in § 21.722 (relating to education and examination of applicants).

(c) To obtain licensure, an applicant shall complete at least 3 hours of training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 21.723. License renewal.

(a) A license issued under section 5(e) of the act (63 P.S. § 215(e)) or under this subchapter will be valid from the date of issuance through September 30, 2006, following the issuance of the license. Each subsequent license renewal will be valid for 2 years from October 1 through September 30.

(b) When applying for renewal of licensure, an LDN shall:

(1) Complete the renewal application, including disclosing a license to practice dietetics-nutrition in any other state, territory, possession or country.

(2) Pay the required fee as set forth in § 21.705 (relating to fees).

(3) Submit, or cause to be submitted, proof to the Board that the LDN has satisfactorily completed a minimum of 30 hours of CPE approved by the Board in accordance with § 21.724 (relating to continuing education) during the 2 calendar years immediately preceding the application for renewal. At least 2 of the required 30 hours shall be completed in approved training in child abuse recognition and reporting in accordance with § 21.508(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(4) Disclose any discipline imposed by a state licensing board in the previous biennial period or any criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition program during the previous biennial period unless prior notification has been made under § 21.723a (relating to reporting of crimes and disciplinary action).

§ 21.724. Continuing education.

(a) *Prior to renewal.* One hour of CPE credit will be given for each 50-minute clock hour of CPE activity. Each LDN shall complete 30 CPE credits during the 2 calendar years immediately preceding the application for license renewal. At least 2 of the 30 hours shall be completed in approved training in child abuse recognition and reporting in accordance with § 21.508(b) (relating to child abuse recognition and reporting—mandatory training requirement). If any activity overlaps two renewal periods, the date of completion of the activity determines the date in which the activity can be reported.

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**Subchapter H. CLINICAL NURSE SPECIALISTS
CERTIFICATION REQUIREMENTS****§ 21.811. Qualifications for initial certification.**

The Board may certify an applicant for initial certification who files an application on a form provided by the Board and pays the application fee in § 21.805 (relating to fees), in accordance with the following:

(1) *RN license.* The Board may certify an applicant who has a current, unrestricted license to practice professional nursing in this Commonwealth.

(2) *Education.* The Board may certify an applicant who has a master's degree, doctoral degree or post-master's degree or certificate in nursing from an educational program that meets the requirements of section 6.2(c)(1) of the act (63 P.S. § 216.2(c)(1)).

(3) *Alternative education.* An applicant for initial certification who completed an educational program in a related discipline previously recognized for National certification as a CNS may be granted certification from the

Board in the area of the applicant's current National certification from the American Nurses Association or the American Nurses Credentialing Center.

(4) *National certification or equivalence.*

(i) The Board may grant initial certification in a Board-designated specialty or other pertinent specialty to an applicant who demonstrates current National certification by examination.

(ii) The Board may grant initial certification without specialty to applicants who demonstrate that their educational program does not make them eligible to take a National certification examination and who demonstrate equivalence. For purposes of this section, the Board will determine equivalence on a case-by-case basis after considering the information submitted by the applicant that may include an official transcript, course descriptions, current curriculum vitae, work history in the CNS role, professional recommendations and additional advanced nursing education and certification examinations.

(5) *Mandatory training in child abuse recognition and reporting.* An applicant for initial certification shall have completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 21.812. Qualifications for certification by endorsement; additional certification.

(a) *Certification by endorsement.* An applicant for certification by the Board who holds an unrestricted license, certificate or authorization to practice as a CNS from another state, territory or possession of the United States or a foreign country, who met initial certification requirements equivalent to the Board's certification requirements and a current RN license in this Commonwealth may be granted certification by endorsement. An applicant for initial certification by endorsement shall have completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 21.508(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(b) *Additional certification.* A CNS who is already certified by the Board may apply for an additional certification. To be granted an additional certification, the CNS shall meet the educational and National certification requirements for the additional certification.

MAINTENANCE OF CERTIFICATION

§ 21.822. Biennial renewal of certification.

(a) The certification of a CNS will expire at the same time as the CNS's professional nursing license as provided in § 21.29 (relating to expiration and renewal of license).

(b) Notice of application for renewal will be forwarded biennially to each active CNS at the CNS's address of record with the Board prior to the expiration date of the current biennial period.

(c) As a condition of biennial renewal, a CNS shall hold a valid, unexpired and unrestricted professional nursing license.

(d) As a condition of biennial renewal, a CNS shall complete a minimum of 30 hours of Board-approved continuing education, in the 2 years prior to renewal as required under section 8.5(c)(2) of the act (63 P.S. § 218.5(c)(2)), unless the requirement is waived by the Board under § 21.823(b) (relating to CNS-level continuing education; waiver; sanctions) or the CNS's certification is on inactive status. At least 2 of the required 30 hours must be completed in approved training in child abuse recognition and reporting in accordance with § 21.508(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(e) The applicant shall remit the required renewal fee in § 21.805 (relating to fees) with the applicant's renewal application forms. Upon approval of the renewal application, the CNS will receive a certification for the current renewal period.

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