

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		
<p>(1) Agency Environmental Protection</p>		
<p>(2) Agency Number: Identification Number: #7-478</p>		<p>IRRC Number: #2980</p>
<p>(3) PA Code Cite: 25 Pa. Code Chapter 127, Subchapter I</p>		
<p>(4) Short Title: Air Quality Title V Fee Amendment</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Michele Tate, 717-783-8727, mtate@pa.gov Secondary Contact: Vince Brisini, 717-772-2725, ybrisini@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The final rulemaking amends the Title V annual emission fee codified in § 127.705 (relating to emission fees) of Chapter 127, Subchapter I (relating to plan approval and operating permit fees). An adequate fee must result in the collection and retention of revenue sufficient to cover the costs of administering the air quality permit program as required under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). To meet these obligations, the final rulemaking increases the Title V annual emission fee paid by the owner or operator of a Title V facility to \$85 per ton of “regulated pollutant” for up to 4,000 tons of each regulated pollutant beginning with emissions occurring in calendar year 2013, payable by September 1, 2014. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton of regulated pollutant for up to 4,000 tons of emissions of each regulated pollutant. The revised Title V annual emission fee is an increase of \$27.50 per ton of regulated pollutant from the 2013 assessed annual fee. For Title V annual emission fee purposes, the term “regulated pollutant,” as defined in section 502 of the Clean Air Act (CAA) (42 U.S.C.A. § 7661a), 40 CFR § 70.2 (relating to definitions), and § 127.705(d), means a volatile organic compound, each pollutant regulated under sections 111 and 112 of the CAA (42 U.S.C.A. §§ 7411 and 7412), and each pollutant for which a National Ambient Air Quality Standard (NAAQS) has been promulgated, except that carbon monoxide shall be excluded from this reference. Minor clarifying amendments are made for § 127.701 (relating to general provisions).</p> <p>If published in the <i>Pennsylvania Bulletin</i> as final rulemaking, the final-form regulation will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP) and as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs).</p>		

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Title V annual emission fee amendment final rulemaking is authorized under section 6.3 of the APCA. Section 6.3(a) authorizes the Environmental Quality Board (Board) to establish fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process and operating permit program required by Title V of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7661-7661f), other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Small Business Compliance Advisory Committee (SBCAC) and Office of Small Business Ombudsman.

Section 6.3(c) of the APCA provides that the Board shall establish by regulation a permanent annual air emission fee as required for regulated pollutants by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)) to cover the reasonable direct and indirect costs of administering the operating permit program required by Title V of the CAA, other related requirements of the CAA and the reasonable indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Programs including the SBCAC and the Office of Small Business Ombudsman. The emission fee will not apply to emissions of more than 4,000 tons of any regulated pollutant.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Section 110(a)(2)(E)(i) of the CAA (42 U.S.C.A. § 7410(a)(2)(E)(i)) requires necessary assurances that the Commonwealth will have adequate personnel, funding, and authority under State (and as appropriate local) law to carry out the implementation of the SIP.

Section 502(b) of the CAA requires the Commonwealth to adopt rules that the owner or operator of all sources subject to the requirement to obtain a permit under Title V of the CAA pay an annual fee sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V. Implementing regulations in 40 CFR § 70.9 (relating to fee determination and certification) provide that the State program shall require that the owners or operators of Title V sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:

(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(iv) Implementing and enforcing the terms of any Part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(v) Emissions and ambient monitoring;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions; and

(viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the CAA (42 U.S.C.A. § 7661f) in determining and meeting their obligations under this part.

Section 6.3 of the APCA authorizes the Board to establish fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process, operating permit program required by Title V of the CAA, other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, SBCAC and Office of Small Business Ombudsman.

There are no relevant court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Title V annual emission fees are payable by the owners and operators of facilities in this Commonwealth that are classified as major sources of air pollution under section 501 of the CAA (42 U.S.C.A. § 7661) and are subject to the permitting provisions of Title V of the CAA. Section 502(b) of the CAA required the EPA to adopt rules establishing the minimum elements of Title V operating permit programs including a requirement that the owner or operator of all sources subject to the requirements obtain a permit under Title V of the CAA and pay an annual emission fee to state and local agencies sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V of the CAA.

On July 30, 1996, the EPA granted full approval of Pennsylvania's Title V Operating Permits Program in accordance with Title V of the CAA and implementing regulations in 40 CFR Part 70. See 61 FR 39597 (July 30, 1996). Pursuant to 40 CFR § 70.9(a) and (b) (relating to fee determination and certification), the State program must "require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs." The fee schedule must result in the collection and retention of revenues sufficient to cover the Title V permit program costs.

The Commonwealth has established a uniform Title V annual emission fee, which is imposed statewide. The local air pollution control agencies in Allegheny and Philadelphia Counties collect the Title V annual emission fee revenue for affected sources under their jurisdictions.

The amendment to the existing Title V annual emission fee is designed to cover all reasonable costs required to develop and administer the Title V permit requirements. These reasonable costs include the cost for certain activities related to major facility operations, including the review and processing of plan approvals and operating permits; emissions and ambient air monitoring; preparing applicable regulations and guidance; modeling, analyses and demonstrations; and preparing emission inventories and tracking

emissions. Direct and indirect program costs include personnel costs; operating expenses such as telecommunications, electricity, travel, auto supplies and fuel; and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers.

To meet these obligations, the final rulemaking increases the Title V annual emission fee paid by the owner or operator of a Title V facility to \$85 per ton of “regulated pollutant” for emissions of up to 4,000 tons of each regulated pollutant beginning with emission fees payable by September 1, 2014, for emissions occurring in calendar year 2013. The initial Title V annual emission fee, established at 24 Pa.B. 5899, November 26, 1994, was \$37 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(e), the emission fee imposed under § 127.705(a) has been increased in each year after November 26, 1994, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. Under the existing regulatory framework, the Title V annual emission fee has not been revised since 1994. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant. In order to collect fees sufficient to cover Title V program costs, the increase to the Title V annual emission fee is an increase of \$27.50 per ton of emissions of each regulated pollutant from the 2013 assessed annual emission fee.

Title V annual emission fee revenues collected are no longer sufficient to cover program costs. Installation of air pollution control technology over the past two decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants, and the conversion at many major facilities from burning coal or oil to burning natural gas in order to comply with the requirements to attain and maintain the NAAQS has resulted in the decreased emission of regulated pollutants that are subject to the annual emission fee, and revenues collected have been decreasing as a result. The increase to the Title V annual emission fee considers the impact on collected Title V annual emission fee revenues from the retirement of certain sources and the announced retirement of sources, including certain electric generating units. The decline in interest rates paid on savings account balances has also affected the funds as the investments earn less interest in the current economy compared to the early years of the program.

As shown in Table 1, the projected Title V Major Emission Facilities Account ending balance for fiscal year (FY) 2014-2015 under the current fee structure, \$3.073 million, will not be sufficient to cover program costs for the Department during FY 2015-2016. Deficits in the Department’s Title V Major Emission Facilities Account of \$7.235 million, \$19.406 million, \$32.001 million, and \$45.028 million are currently projected for the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 fiscal years, respectively. (Source: Attachment 1 - Comparative Financial Statement; Clean Air Fund; Major Emissions without Fee Increase; Title V only.)

Table 1
Title V Annual Emission Fee Revenue Projected to Fiscal Year (FY) 2018-2019,
without an increase to the Title V Annual Emission Fee,
in \$ thousands

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
	ACTUAL	ACTUAL	REBUDG ET	PLAN YR.1	PLAN YR.2	PLAN YR.3	PLAN YR.4	PLAN YR.5
Beginning Balance	25,460	22,804	20,404	12,674	3,073	(7,235)	(19,406)	(32,001)
Title V Revenue	16,847	15,612	13,000	10,300	10,000	9,000	9,000	9,000
Interest on Title V Funds	552	452	600	448	448	0	0	0
Total Title V Funds Available	42,859	38,868	34,404	23,422	13,521	1,765	(10,406)	(23,001)
Total Title V Expenditures	20,055	18,464	21,330	20,349	20,756	21,171	21,595	22,027
Ending Balance Title V Fund	22,804	20,404	12,674	3,073	(7,235)	(19,406)	(32,001)	(45,028)

The final rulemaking establishes a new Title V annual emission fee of \$85 per ton for emissions of up to 4,000 tons of regulated pollutant, from which future increases based on the Consumer Price Index will be calculated. The increased Title V annual emission fee revenue will be used to adequately fund the Commonwealth's air quality Title V permit programs as authorized by the APCA. Revenue to the Department from the fee increase will be used solely to address the projected deficits in the Title V Major Emission Facilities Account in the Clean Air Fund.

The final Title V annual emission fee of \$85 per ton of emissions for up to 4,000 tons of each regulated pollutant will result in projected increased revenue to the Department of \$5.1 million in the Title V Account for fiscal years 2014-2015 and 2015-2016, and \$3.5 million for fiscal years 2016-2017, 2017-2018, and 2018-2019, when the fee is imposed beginning with emissions occurring in calendar year 2013 and payable by September 1, 2014. (Fee projections may be further reduced if additional facilities close or curtail operations.) An increase in the Title V annual emission fee to \$85 per ton of emissions for up to 4,000 tons of each regulated pollutant will provide projected increased emission fee revenue of approximately \$570,000 and \$167,000 for the Title V programs in Allegheny County and Philadelphia County, respectively.

However, as shown in Table 2, despite the projected increased revenues from the fee increase, the projected Title V Major Emission Facilities Account ending balance for FY 2015-2016, \$2.951 million, will not be sufficient to cover program costs for the Department during FY 2016-2017. Deficits in the Department's Title V Major Emission Facilities Account of \$5.720 million, \$14.815 million and \$24.342 million are projected for the 2016-2017, 2017-2018 and 2018-2019 fiscal years, respectively, after implementation of the Title V annual emission fee increase. (Source: Attachment 2 - Comparative Financial Statement; Clean Air Fund; Major Emissions with Fee Increase; Title V only.) These anticipated deficits necessitate further remedies to ensure the solvency of the program. Sources of sustainable adequate program funding need to be reevaluated quickly to preclude the air quality permit program operating with a deficit, as shown in Tables 1 and 2.

Table 2
 Title V Annual Emission Fee Revenue Projected to FY 2017-2018,
 with a \$27.50/ton increase to the Title V Annual Emission Fee from
 \$57.50/ton in FY 2012-2013 to \$85/ton in FY 2014-2015,
 in \$ thousands

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
	ACTUAL	ACTUAL	REBUDG ET	PLAN YR.1	PLAN YR.2	PLAN YR.3	PLAN YR.4	PLAN YR.5
Beginning Balance	25,460	22,804	20,404	12,674	8,166	2,951	(5,720)	(14,815)
Title V Revenue	16,847	15,612	13,000	15,393	15,093	12,500	12,500	12,500
Interest on Title V Funds	552	452	600	448	448	0	0	0
Total Title V Funds Available	42,859	38,868	34,004	28,515	23,707	15,451	6,780	(2,315)
Total Title V Expenditures	20,055	18,464	21,330	20,349	20,756	21,171	21,595	22,027
Ending Balance Title V Fund	22,804	20,404	12,674	8,166	2,951	(5,720)	(14,815)	(24,342)

Failure to adjust the Title V emission fee structure to adequately cover program costs may cause significant reductions in the Title V staffing complement and technical services. Reduced staffing will cause delays in processing and issuing plan approvals for Title V facilities and Title V operating permits, potentially resulting in delays for industry to implement new or improved processes and loss of revenue to industry, loss of jobs for the community, and loss of tax revenue for the Commonwealth. New or modified sources of air pollution at Title V facilities cannot be constructed without a plan approval. The installation of air pollution control equipment requires Department approval of a plan approval application prior to the installation. In addition, fewer staff to conduct inspections, to respond to complaints, and to pursue enforcement actions will result in less oversight of industry compliance or noncompliance and in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth. As part of its evaluation of EPA Region 3's oversight of Pennsylvania's Title V Program, the EPA Office of Inspector General is currently collecting data regarding the adequacy of Pennsylvania's Title V fee revenue.

Decreased revenues will also impact the Commonwealth's air monitoring network, which provides the data to substantiate the Commonwealth's progress in attaining and maintaining the NAAQS instituted by the EPA under the CAA. Decreased revenues may also impact the Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of services available to small businesses. This could potentially lead to fewer viable small businesses and slow the economic recovery of the Commonwealth by reducing the numbers of available jobs. Further, a failure to attain and maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could trigger mandatory sanctions by the EPA including 2-to-1 emission offsets for major new or modified stationary sources and loss of federal highway funds in accordance with section 179 of the Clean Air Act.

In accordance with 40 CFR § 70.10(b) and (c) (relating to Federal oversight and sanctions), the EPA may withdraw approval of a Title V Permit Program, in whole or in part, if the EPA finds that a State or local

agency has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a notice of deficiency (NOD). The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Permit Program in this Commonwealth that would be administered and enforced by the EPA. In this instance, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA (42 U.S.C.A. § 7509) if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration). The increase in the Title V annual emission fee avoids the issuance of a Federal Title V Permit Program NOD; Federal oversight and mandatory CAA sanctions will also be avoided. The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA (42 U.S.C.A. §§ 7403 and 7405).

Retaining sufficient staff (including permitting, monitoring, enforcement, source testing and legal personnel) to support the Title V permitting program is a critical component of improving air quality within this Commonwealth and assuring compliance with the health- and welfare-based NAAQS. The benefits to Commonwealth residents of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining the NAAQS. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from \$8.3 billion to \$18 billion on a national basis. See Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million. The projected costs of increased Title V annual emission fees ranging from \$5,830,000 in fiscal year 2014-2015 to \$4,237,000 in fiscal year 2018-2019 to regulated industry Commonwealth-wide pale by comparison. The Department is not stating that these estimated monetized health benefits would all be the result of implementing the increase to the Title V annual emission fee, but the EPA estimates are indicative of the benefits to Commonwealth residents of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth.

Adequate funding assures the regulated industry that their plan approval applications and permits will be reviewed in a timely manner, sustaining their profitable business and maintaining jobs. The Small Business Stationary Source Technical and Environmental Compliance Assistance Program benefits due to the continuance of grants and support services available to the owners and operators of small businesses, which will maintain jobs and lead to creation of new jobs. Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment will benefit the agricultural and tourism industries, both of which provide many jobs. All of these situations will increase tax revenues to the Commonwealth.

The increase to the Title V annual emission fee assures the residents of this Commonwealth that the Commonwealth's air pollution control program is adequately funded for the next few years. The anticipated increased revenues will allow the Department and County agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth; take action, when necessary, to reduce emissions to achieve healthful air quality; and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

The final rulemaking does not establish a fee structure for carbon dioxide and other greenhouse gases (GHG) including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.

On June 3, 2010, the EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). See 75 FR 31514. As the Tailoring Rule relates to the applicability of Title V annual emission fees for a “regulated pollutant” as defined in section 502 of the CAA, the EPA did not mandate revisions to state and local Title V programs to account for these emissions. See 75 FR 31514, 31585. The EPA reasoned that it would be difficult to apply this fee to GHGs, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. See 75 FR 31514, 31585. However, the EPA did commit to addressing this issue in a future rulemaking and to work with states to develop a workable fee approach. See 75 FR 31514, 31586. The EPA has not yet proposed a fee schedule under the CAA for GHG emissions. Consequently, the Board is not, at this time, imposing Title V emission fees for GHG emissions from major stationary sources in this Commonwealth.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Companion Federal regulations do not exist for the final rulemaking. However, section 502(b)(3)(B) of the CAA (42 U.S.C.A. § 7661a(b)(3)(B)) and its implementing regulations in 40 CFR Part 70 (relating to State operating permit programs) establish the statutory and regulatory framework for Title V annual emission fee programs. If the EPA Administrator determines that the permitting authority is not adequately administering and enforcing an approved Title V annual emission fee program, the Administrator may directly collect reasonable fees from the owners and operators of Title V sources.

In accordance with 40 CFR § 70.10(b) and (c), the EPA may withdraw approval of a Title V Permit Program, in whole or in part, if the EPA finds that a State or local agency has not taken “significant action to assure adequate administration and enforcement of the program” within 90 days after the issuance of a NOD. The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Permit Program that would be administered and enforced in this Commonwealth by the EPA. In this instance, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration). The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA.

The increase in the Title V annual emission fee avoids the issuance of a Federal Title V Permit Program NOD; Federal oversight and mandatory and discretionary CAA sanctions will also be avoided.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania’s ability to compete with other states?

The final Title V emission fee is similar to those in other states and does not place the Commonwealth at a competitive disadvantage. In some cases, the Commonwealth is very competitive and may be able to draw new industry on the basis of having a lower Title V annual emission fee than nearby states. This could serve to increase total Title V fee revenue to the Commonwealth if there are more sources subject to the annual emission fee.

All states are required by the CAA to collect Title V annual emission fees and to adjust the fees based on the Consumer Price Index. Several nearby states have already taken action to address the issue of declining

revenues due to declining emissions of regulated pollutants. Connecticut, Maryland, New York and New Jersey no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2013, Connecticut imposed a fee of \$301.09 per ton of emissions of regulated pollutants based on an “Inventory Stabilization Factor,” upwards from a fee of \$283.46 per ton imposed in 2012 and with no cap on the amount of emissions of regulated pollutants subject to this fee. The Connecticut fee is adjusted periodically to ensure that collected Title V annual emission fee revenue is adequate for at least 2 years of permit program operating costs. In 2012, New York assessed a Title V annual emission fee ranging from \$45 per ton of regulated pollutant for emissions of less than 1,000 tons per year to \$65 per ton for emissions of more than 5,000 tons per year; the fee is applied to emissions of up to 7,000 tons of any regulated pollutant. The New York Title V emission fee for 2013 has not changed from 2012 levels. The state of New Jersey imposes a Title V annual emission fee in 2013 of \$112.07 per ton with no cap on emissions, upwards from \$106.67 per ton in 2012. Maryland recently established a revised annual emission fee of \$55.70 per ton with no cap on the amount of emissions of regulated pollutants subject to this fee plus an annual fee of \$200 per Title V facility. West Virginia recently revised its Title V annual emission fee to \$31.87 per ton of emissions of regulated pollutant with a 4,000 ton cap. Virginia’s Title V annual emission fee in 2013 is \$58.88 per ton of emissions of regulated pollutant (4,000 ton cap), upwards from the 2012 fee of \$57.90 per ton; further, in 2012 Virginia established additional Title V facility fees including yearly maintenance fees ranging from \$1,500 to \$10,000 and Title V Permit application and Title V Permit renewal fees of \$20,000 and \$10,000, respectively, to spread the impact of the increased costs of maintaining the Title V Permit Program across more of the affected permittees.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The final rulemaking amends existing provisions in 25 Pa. Code §§ 127.701 and 127.705. Regulations of other Commonwealth agencies are not impacted.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) in the development of the proposed rulemaking. At its September 12, 2012, meeting, the AQTAC voted 16-2-1 to concur with the Department’s recommendation to advance the proposed rulemaking to the Board for consideration at its November 20, 2012, meeting.

The Department also conferred with the Citizens Advisory Council (CAC) Air Committee on October 3, 2012, concerning the proposed rulemaking. An overview of the proposal was presented to the SBCAC on October 24, 2012.

The Department presented the draft final-form regulation to the AQTAC on June 13, 2013, for action. The AQTAC, by a majority vote, concurred with the Department’s recommendation to advance the final rulemaking to the Board for consideration at its August 20, 2013, meeting. The final draft rulemaking was discussed with the CAC on July 16, 2013. The SBCAC was also consulted on July 24, 2013.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The owners and operators of approximately 560 Title V facilities in this Commonwealth (including facilities in Allegheny and Philadelphia Counties) are affected by the revised Title V annual emission fee for emissions of up to 4,000 tons of each regulated pollutant. The number of affected facilities was determined by review of the Department's database of Title V-permitted facilities. The categories of Title V facilities include electric power generation under the Acid Rain program (40 CFR Parts 72 through 78), refining, municipal waste combustors, commercial and industrial solid waste incinerators, Portland cement manufacturing, ferrous and nonferrous metal smelting, glass manufacturing, and other industrial sectors that meet the definition of a major source of air pollution as defined in the CAA and the APCA. The owners/operators of the Title V facilities are required to pay the specified Title V annual emissions fee based on their actual emissions each calendar year of regulated pollutants up to 4,000 tons of emissions of each regulated pollutant.

The Department reviewed its database of Title V-permitted facilities to determine how many, and which, potentially meet the definition of small business specified in Section 3 of the Regulatory Review Act, as "in accordance with the size standards described by the United States Small Business Administration's (SBA) Small Business Size Regulations under 13 CFR Chapter 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation." Given the large number of facilities affected by this regulation, there is no precise method to determine how many meet the specified definition of "small business." However, the SBA has a method by which the Department can determine with a reasonable degree of certainty whether a source is a small business – the SBA Dynamic Small Business Search database.

The SBA Dynamic Small Business Search database contains information about small businesses that have registered with the SBA. It is the Department's understanding that this self-certifying database incorporates the small business criteria contained in 13 CFR Chapter 1, Part 121, such as Standard Industrial Classification Code and number of employees, when the owners/operators of the companies register. Registration in this database benefits small businesses because the database assists government contracting officers in determining whether a company is eligible to apply for government contracts as a small business. Therefore, there is a high likelihood that a business that qualifies as a small business will be registered in the database. The SBA does not, however, maintain a definitive listing of small businesses.

The Department reviewed the SBA Dynamic Small Business Search database to determine which of the 560 Title V companies, if any, are registered as small businesses with the SBA. In addition, the Department reviewed other data sources including the U. S. Department of Energy, Energy Information Agency database on electric generating to determine whether electric generating units in Pennsylvania meet the definition of small business. The Department also reviewed information available on individual company internet sites for information that could identify a company as a small business. Based on these reviews, the Department estimates that 65 of the 560 facilities potentially meet the definition of small business as defined by the Small Business Administration.

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

The owners and operators of approximately 560 Title V facilities in this Commonwealth (including affected facilities in Allegheny and Philadelphia Counties) are subject to the revised Title V annual emission fee in the final rulemaking on emissions of up to 4,000 tons of each regulated pollutant. (See the response in No. 15 for a description of the types of companies.) Approximately 65 of these facilities may meet the definition of small business under the SBA size regulations.

As required under Title V of the CAA and 40 CFR Part 70 these Title V facilities are defined as major sources due to the amount of emissions of regulated pollutants reported on an annual basis and the owners and operators must pay the Title V annual emission fee imposed by § 129.705(a).

The owners and operators of Title V facilities in this Commonwealth have been paying permanent Title V annual emission fees since the Board promulgated the emission fee schedule in November 1994 (24 Pa.B. 5899, November 26, 1994). Interim annual air emission fees were established by the General Assembly in the July 1992 amendments to the APCA (Act of July 9, 1992, P.L. 460, No. 95).

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The financial impact on the owners and operators of Title V facilities regulated by the Department, collectively, will be additional annual emission fee costs of approximately \$5.1 million per year for fiscal years 2014-2015 and 2015-2016; additional annual emission fee costs in fiscal years 2016-2017, 2017-2018 and 2018-2019 for these owners and operators are expected to be about \$3.5 million per year due to decreasing amounts of emissions of regulated pollutants as major sources install additional controls, convert to burning natural gas (a cleaner energy source) instead of coal or oil, or shut down certain facilities. Costs to the owners and operators of Title V facilities regulated by the County agencies are expected to be about \$570,000 and \$167,000 in FY 2014-2015 in Allegheny County and Philadelphia County, respectively.

In 2012, the owners or operators of Title V facilities under the Department's jurisdiction that have been identified as potentially small businesses paid \$1.6 million in Title V annual emission fees for emissions of regulated pollutants during the 2011 calendar year. With the proposed fee increase and assuming no change in their emissions profile, these owners or operators are projected to pay \$2.4 million collectively in emission fees in 2014 for emissions during the 2013 calendar year.

The overall net economic impact of increased Title V annual emission fee revenue on individuals, small businesses, businesses, and labor communities is positive. Although industry does incur increased fees, the revenue generated by the rulemaking assures continued air quality permit program operations. Retaining sufficient staff to support the Title V permitting program is a critical component of improving air quality and assuring compliance with the NAAQS. The benefits of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining the NAAQS. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from \$8.3 billion to \$18 billion on a national basis. See Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million.

The projected costs of increased Title V annual emission fees ranging from \$5,830,000 in fiscal year 2014-2015 to \$4,237,000 in fiscal year 2018-2019 to regulated industry Commonwealth-wide pale by comparison.

The Department is not stating that these estimated monetized health benefits would all be the result of increasing the Title V annual emission fee to \$85 per ton for emissions of up to 4,000 tons of each regulated pollutant, but the EPA estimates are indicative of the benefits of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth. Adequate funding will assure the regulated industry that their plan approval applications and permits will be reviewed in a timely manner, sustaining their profitable business and maintaining jobs. The Small Business Stationary Source Technical

and Environmental Compliance Assistance Program benefits due to the continuance of grants and support services available to the owners and operators of small businesses, which will maintain jobs and lead to creation of new jobs.

Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment benefits the agricultural and tourism industries, both of which provide many jobs. All of these situations will increase tax revenues to the Commonwealth.

Sustaining the activities and resources of the Title V Permit Program provides the tools to attain and maintain the NAAQS, satisfy the Commonwealth's obligations under the CAA, and avoid the imposition of punitive actions by the EPA including the loss of Federal highway funds (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration). Maintaining the program benefits the citizens and environment of the Commonwealth by maintaining the gains in healthful air quality that have been made since the mid-90s through reductions of emissions of regulated air pollutants from major sources.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Revenues from the increase to the Title V annual emission fee will be used to cover the direct and indirect costs of administering the Commonwealth's air pollution control program. Direct and indirect program costs include personnel costs for carrying out program activities including processing of permits and facility inspections, operating expenses such as telecommunications, electricity, travel, auto supplies and fuel, and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles, and trailers.

Title V annual emission fee revenues collected are no longer sufficient to cover program costs. Installation of control technology over the past two decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants, and the conversion at many major facilities from burning coal or oil to burning natural gas in order to comply with the requirements to attain and maintain the NAAQS has resulted in the decreased emission of regulated air pollutants that are subject to the annual emission fee, and revenues collected have been decreasing as a result. The increase to the Title V annual emission fee includes the impact from the retirement or deactivation of certain stationary sources and the announced retirement or deactivation of sources, including certain electric generating units, on collected Title V annual emission fee revenues. The decline in interest rates paid on account balances in the Clean Air Fund has also affected the funds as the investments earn less interest in the current economy compared to the early years of the program.

The increased revenues will allow the Department and the approved local air pollution control agencies in Allegheny and Philadelphia Counties to maintain current staffing levels for the next few years for the air quality Title V permit review and inspection programs and continue providing adequate oversight of the air pollution sources in this Commonwealth. Anticipated funding deficits, however, necessitate further remedies to ensure the future solvency of the program. Sources of sustainable adequate program funding need to be reevaluated within the next 5 years, or the program will be operating with a deficit. However, the \$85 per ton Title V annual emission fee will support the Title V permitting program over the next few years while the Department completes a reanalysis of the air quality permitting and operating fee structures.

Retaining sufficient staff (including permitting, monitoring, enforcement, source testing and legal personnel) to support the Title V permitting program is a critical component of improving air quality within this Commonwealth and assuring compliance with the health- and welfare-based NAAQS. The benefits to

Commonwealth residents of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining ambient air quality standards. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from \$8.3 billion to \$18 billion on a national basis. See Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million. The projected costs of increased Title V annual emission fees ranging from \$5,830,000 in fiscal year 2014-2015 to \$4,237,000 in fiscal year 2018-2019 to regulated industry Commonwealth-wide pale by comparison. The Department is not stating that these estimated monetized health benefits would all be the result of increasing the Title V annual emission fee, but the EPA estimates are indicative of the benefits to Commonwealth residents of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth.

Failure to adjust the emission fee structure to adequately cover program costs could cause significant reductions in the Title V staffing complement and technical services. Reduced staffing will cause delays in processing and issuing plan approvals for Title V facilities and Title V operating permits, potentially resulting in delays for industry to implement new or improved processes and consequent loss of revenue to industry, loss of jobs for the community, and loss of tax revenue for the Commonwealth. New or modified sources of air pollution at Title V facilities cannot be constructed without a plan approval. The installation of air pollution control equipment requires Department approval of a plan approval application prior to the installation. Further, fewer staff to conduct inspections, respond to complaints, and pursue enforcement actions will result in less oversight of industry compliance or noncompliance and in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth. Failure to attain and maintain healthful air quality goals and to provide continued protection of the environment and the public health and welfare of the citizens of this Commonwealth could lead to healthy residents leaving the Commonwealth and a declining number of employable residents. This will make it difficult for industry and businesses to sustain their operations, leading to a loss of industry, jobs, and tax revenue.

Decreased revenues and further reductions in the complement will also impact the Commonwealth's network of air monitors, which provides the data to substantiate the Commonwealth's progress in attaining and maintaining the NAAQS instituted by the EPA under the CAA. Decreased revenues could also impact the Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of support services available to support compliance assistance for the owners and operators of small businesses. This could potentially lead to fewer viable small businesses and slow the economic recovery of the Commonwealth by reducing the numbers of available jobs. Further, a failure to attain and maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could trigger mandatory sanctions by the EPA.

In accordance with 40 CFR § 70.10(b) and (c), the EPA may withdraw approval of a Title V Permit Program, in whole or in part, if the EPA finds that a State or local agency has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a NOD. The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Permit Program in this Commonwealth that would be administered and enforced by the EPA. In such instances, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration).

The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA. The increase in the Title V annual emission fee avoids the issuance of a Federal Title V Permit Program NOD for the next few years; Federal oversight and mandatory and discretionary CAA sanctions will also be avoided.

Additionally, as part of its evaluation of EPA Region 3's oversight of Pennsylvania's Title V Program, the EPA Office of Inspector General is currently collecting data regarding the adequacy of Pennsylvania's Title V fee revenue.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The final rulemaking adjusts the Title V annual emission fee to be paid by the owners or operators of affected facilities to \$85 per ton for emissions of up to 4,000 tons of each regulated pollutant, payable September 1, 2014, on emissions of regulated pollutants occurring in calendar year 2013. The current Title V annual emission fee due September 1, 2013, for emissions that occurred in calendar year 2012 is \$57.50 per ton for emissions of up to 4,000 tons of each regulated pollutant. The revised fee is an increase of \$27.50 per ton of emission of regulated pollutant from the 2013 Title V annual emission fee assessed for 2012 emissions of regulated pollutants.

The financial impact on the owners and operators of Title V facilities regulated by the Department, collectively, is additional annual emission fee costs of approximately \$5.1 million per year for fiscal years 2014-2015 and 2015-2016; additional annual emission fee costs in fiscal years 2016-2017, 2017-2018 and 2018-2019 for these owners and operators are expected to be about \$3.5 million per year due to decreasing amounts of emissions of regulated pollutants as major sources continue to install additional air pollution controls, convert to burning natural gas (a cleaner energy source) instead of coal or oil, or shut down certain facilities in order to comply with the requirements to attain and maintain the NAAQS. Costs to the owners and operators of Title V facilities regulated by the approved local air pollution control agencies are expected to be about \$570,000 and \$167,000 in FY 2014-2015 in Allegheny County and Philadelphia County, respectively. The revised Title V annual emission fee is expected to result in total increased costs of \$5.8 million for the regulated community in emission fee payments to the three agencies in fiscal year 2014-2015.

The additional costs were estimated by reviewing past Title V annual emission fees paid and estimating future fee revenue using the revised fee and assuming emission rates at Title V facilities remain constant.

No new legal, accounting or consulting procedures would be required.

(20) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The final rulemaking is expected to impose no additional direct costs on local governments unless a local government owns or operates an air pollution facility that is permitted by the Department. The increase in costs would be consistent with the cost increases to private industry.

The approved Title V Programs for the local air pollution control agencies in Philadelphia and Allegheny Counties collect the Title V emission fees for sources under their jurisdictions. An increase in the Title V

annual emission fee will provide increased emission fee revenue of approximately \$570,000 and \$167,000 in Allegheny County and Philadelphia County, respectively.

(21) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs to state government. Pursuant to section 6.3(f) of the APCA (35 P.S. § 4006.3(f)), Title V emission fees are not payable by any State entity, instrumentality or political subdivision.

The final Title V annual emission fee of \$85 per ton for emissions of up to 4,000 tons of each regulated pollutant will result in projected increased revenue to the Department of approximately \$5.1 million in the Title V Account for fiscal years 2014-2015 and 2015-2016, and \$3.5 million for fiscal years 2016-2017, 2017-2018, and 2018-2019, if, beginning in 2014, the fee is imposed for emissions occurring in calendar year 2013. Both the CAA and the APCA and regulations adopted under the acts require that the fee be paid by September 1 each year for emissions of regulated pollutants from the preceding year. Consequently, the increased Title V annual emission fee will be payable by September 1, 2014, for 2013 emissions of regulated pollutants. An increase in the Title V annual emission fee will provide projected increased emission fee revenue of approximately \$570,000 and \$167,000 for the Title V programs in Allegheny County and Philadelphia County, respectively. The revised Title V annual emission fee is expected to result in total increased costs of \$5.8 million for the regulated community in emission fee payments to the three agencies in fiscal year 2014-2015.

The Department is authorized under § 127.706 (relating to Philadelphia County and Allegheny County financial assistance) to provide payment of a portion of the Title V annual emission fee revenue collected by the Department to the local air pollution control agencies in Philadelphia and Allegheny Counties. The Department has provided financial assistance to the Philadelphia County Air Management Services (AMS), including \$700,000 in FY 2012-2013. Based on the approved Clean Air Fund Spending Plan for fiscal year 2013-2014, the grant for AMS in FY 2013-2014 is expected to be \$700,000. Allegheny County has never requested financial assistance.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The final amendments do not add or change the existing reporting, recordkeeping, or other paperwork requirements for the regulated community.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year 13/14	FY+1 Year 14/15	FY+2 Year 15/16	FY+3 Year 16/17	FY+4 Year 17/18	FY+5 Year 18/19
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Savings	0.00	0.00	0.00	0.00	0.00	0.00
COSTS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	\$5,830,000	\$5,830,000	\$4,237,000	\$4,237,000	\$4,237,000
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Costs	0.00	\$5,830,000	\$5,830,000	\$4,237,000	\$4,237,000	\$4,237,000
REVENUE LOSSES:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Revenue Losses	0.00	0.00	0.00	0.00	0.00	0.00

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 2010-2011	FY-2 2011-2012	FY-1 2012-2013	Current FY 2013-2014
Environmental Program Management (161-10382)	\$28,881,000	\$27,755,000	\$23,663,000	\$26,297,000
Clean Air Fund Major Emission Facilities (215-20077)	\$20,565,000	\$20,055,000	\$17,545,000	\$21,330,000
Clean Air Fund Mobile and Area Facilities (233-20084)	\$5,620,000	\$2,710,000	\$7,420,000	\$8,610,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

The Department estimates that 65 of 560 Title V facilities may meet the definition of small business as defined by the Small Business Administration.

The owners and operators of approximately 560 Title V facilities which include the estimated 65 small businesses in this Commonwealth (including Allegheny and Philadelphia Counties) are affected by the revised Title V annual emission fee for emissions of up to 4,000 tons of each regulated pollutant. The number of affected facilities was determined by a review of the Department's database of Title V-permitted facilities. The categories of Title V facilities include electric power generation under the Acid Rain program (40 CFR Parts 72 through 78), refining, municipal waste combustors, commercial and industrial solid waste incinerators, Portland cement manufacturing, ferrous and nonferrous metal smelting, glass manufacturing, and other industrial sectors that meet the definition of a major source of air pollution as defined in the CAA and the APCA. The owners/operators of the Title V facilities are required to pay the specified Title V annual emission fee based on their actual emissions of regulated pollutants up to 4,000 tons of each regulated pollutant each calendar year.

The owners and operators of Title V facilities in this Commonwealth have been paying permanent Title V annual emission fees since the Board promulgated the emission fee schedule in November 1994 (24 Pa.B. 5899, November 26, 1994). Interim annual air emission fees were established by the General Assembly in the July 1992 amendments to the APCA (Act of July 9, 1992, P.L. 460, No. 95).

Section 502 of the CAA defines what major facilities are subject to the Title V emission fees and section 507 defines what companies may be a small business. Small businesses as defined by the CAA are not subject to the Title V annual emission fee requirement and are not impacted by the not rulemaking.

(b) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

No changes to reporting, recordkeeping, or other administrative procedures are included as part of this final rulemaking. The owners and operators of subject facilities are familiar with the existing requirements for reporting and recordkeeping for their entity and have the professional and technical skills needed for continued compliance with these requirements.

(c) A statement of probable effect on impacted small businesses.

The potential impact on the owners and operators of small businesses collectively may be approximately \$778,000 in increased annual emission fee costs. While approximately 65 Title V facilities may meet the definition of small business under the SBA size regulations cited by the Regulatory Review Act, Act 76 of 2012, the owners and operators of these facilities have been subject on an ongoing basis to the Title V annual emission fee imposed by § 129.705(a) due to the amount of emissions of regulated pollutants reported on an annual basis; further, these facilities are classified as major sources of air pollution under section 501 of the CAA and are subject to the permitting provisions of Title V of the CAA. The owners or operators of Title V facilities that have been identified as potentially small businesses paid \$1.6 million in Title V annual emission fees in 2012 for emissions during the 2011 calendar year. With the fee increase and no change expected in their emissions profile, these owners or operators of air contamination sources qualifying as a small business under the SBA definition are projected to pay \$2.4 million in emission fees in 2014.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the

proposed regulation.

The least burdensome acceptable alternative has been selected. Section 6.3(d) of the APCA requires that the Board shall establish a permanent air emission fee which considers the size of the air contamination source, the resources necessary to process the application for plan approval or an operating permit, the complexity of the plan approval or operating permit, the quantity and type of emissions from the sources, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage, and other relevant factors. The Department considered these factors when it originally established the Title V fee program in 1994. Since that time the Department has used actual spending data to evaluate revising the emission fee for regulated pollutants.

The Title V fee structure was established in 1994. For this rulemaking, the Department reconsidered the section 6.3(d) factors along with analyzing actual spending data in revising the fee. Moreover, the Department analyzed alternative fee amounts and alternative compliance dates for the increased Title V annual emission fee. For example, the Department analyzed a wide range of fee amounts on a ton per year basis, but settled on \$85 per ton, which is the lowest amount that was considered to provide sufficient revenues to sustain the program for the next few years. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton. The Department believes that the \$27.50 per ton increase to \$85 is modest, but sufficient to cover the cost of the Title V program in the near term. Overall the increased fee revenue amounts to an additional \$5.1 million for the program, which is only sufficient to cover the costs of the program for the next few years. The Department considered establishing a broad permanent fee structure to include new source testing fees and additional permitting fees in addition to revising the Title V annual emission fee in this rulemaking, but decided to limit the amendment to a "transition" Title V annual emission fee at this time. The Department will need to imminently assess the overall permitting fee structure to ensure the long term financial viability of the program. (See Response 10 for further financial analysis of this issue.) Therefore, the Title V annual emission fee increase is the lowest possible level on a per-ton emissions basis and is expected to provide sufficient revenues for the next few years only. Accordingly, it is the least burdensome alternative for the near term, while producing adequate revenue for the program as required by the CAA. One option that the Department could not consider was exempting Title V facilities that qualify as small businesses from paying an annual emission fee. That is because section 502 of the CAA, and 40 CFR Part 70, requires that the owners/operators of all affected Title V sources pay an annual emission fee based on the tonnage of regulated pollutant.

In addition, the Department looked at a variety of alternative compliance dates for the implementation of the revised fee schedule. However, in light of declining Title V fee revenue due to the installation of air pollution controls or the deactivation or shutdown of major sources including electric generating units, the Department decided that the \$85 per ton emission fee will be assessed beginning in 2014 for emissions occurring in calendar year 2013. This fee will be payable by September 1, 2014.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Department has not developed any special provisions to meet particular needs of affected groups. The final amendments impact the owners or operators of Title V facilities subject to the air pollution control plan approval and permitting program. Minorities, elderly, small businesses, and farmers who are not owners or operators of a Title V facility are not affected by the final rulemaking.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The least burdensome acceptable alternative has been selected. Section 6.3(d) of the APCA requires that the Board shall establish a permanent air emission fee which considers the size of the air contamination source, the resources necessary to process the application for plan approval or an operating permit, the complexity of the plan approval or operating permit, the quantity and type of emissions from the sources, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage, and other relevant factors. The Department considered these factors when it originally established the Title V fee program in 1994. Since that time the Department has actual spending data to analyze in revising the fee.

The Title V fee structure was established in 1994. For this rulemaking, the Department reconsidered the section 6.3(d) factors along with analyzing actual spending data in revising the fee. Moreover, the Department analyzed alternative fee amounts and alternative compliance dates for the increased Title V annual emission fee. For example, the Department analyzed a wide range of fee amounts on a ton per year basis, but settled on \$85 per ton, which is the lowest amount that was considered to provide sufficient revenues to sustain the program for the next few years. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton. The Department believes that the \$27.50 per ton increase to \$85 is modest, but sufficient to cover the cost of the Title V program in the near term. Overall the increased fee revenue amounts to an additional \$5.1 million for the program, which is only sufficient to cover the costs of the program for the next few years. The Department considered establishing a broad permanent fee structure to include new source testing fees and additional permitting fees in addition to revising the Title V annual emission fee in this rulemaking, but decided to limit the amendment to a “transition” Title V annual emission fee at this time. The Department will need to imminently assess the overall permitting fee structure to ensure the long term financial viability of the program. (See Response 10 for further financial analysis on this issue.) Therefore, the Title V annual emission fee increase is the lowest possible level on a per-ton emissions basis, and is expected to provide sufficient revenues for the next few years only. Accordingly, it is the least burdensome alternative for the near term, while producing adequate revenue for the program as required by the CAA. One option that the Department could not consider was exempting Title V facilities that qualify as small businesses from paying an annual emission fee. That is because section 502 of the CAA, and 40 CFR Part 70, requires that the owners/operators of all affected Title V sources pay an annual emission fee based on the tonnage of regulated pollutant.

In addition, the Department looked at a variety of alternative compliance dates for the implementation of the revised fee schedule. However, in light of declining Title V fee revenue due to the installation of air pollution controls or the deactivation or shutdown of major sources including electric generating units, the Department decided that the \$85 per ton emission fee will be assessed beginning in 2014 for emissions occurring in calendar year 2013. This fee will be payable by September 1, 2014.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

(a) The establishment of less stringent compliance or reporting requirements for small businesses.

While some Title V facilities may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are

included in this final rulemaking. The owners and operators of Title V facilities are familiar with the existing requirements for reporting and recordkeeping for their entity and have the professional and technical skills needed for continued compliance with these requirements.

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

The Department requested comment on the implementation of the proposed fee revision. Two commentators recommended delaying the fee increase or phasing it in over several years.

No commentators addressed the impact of the proposed fee revision on small businesses. However, one commentator stated that the anticipated negative impact on the Department's small business assistance program due to loss of fees is not sufficient justification to increase Title V emission fees.

The Department did consider a delay and different years for the implementation of the Title V fee increase. However, assessing the revised fee on emissions of regulated pollutants occurring in calendar year 2013, due and payable by September 1, 2014, was chosen due to the projected budget deficit and anticipated retirement or deactivation of electric generating units that will have a significant negative impact on the Title V permitting program. Because of declining Title V emission fee revenue due to the installation of air pollution control technology on stationary sources and the retirement or curtailment of operations by major sources including coal-fired power plants, deficits of \$7.235 million and \$19.406 million in fiscal years 2015-2016 and 2016-2017, respectively, are projected for the Title V Major Emission Facilities Account if the Title V annual emission fee is not increased to \$85 per ton of emissions for each regulated pollutant beginning with fees payable in 2014 on emissions of regulated pollutants occurring in 2013.

Section 502 of the CAA defines what major facilities are subject to the Title V emission fees and section 507 defines what companies may be a small business. Small businesses as defined by the CAA are not subject to the Title V annual emission fee requirement and are not impacted by the not rulemaking.

(c) The consolidation or simplification of compliance or reporting requirements for small businesses.

The owners and operators of Title V facilities are familiar with the existing requirements for reporting and recordkeeping for their entity and have the professional and technical skills needed for continued compliance with these requirements.

(d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation.

The final rulemaking does not include design or operational standards.

(e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

While certain Title V facilities may meet the definition of small business under the SBA size definition cited by the Regulatory Review Act, Act 76 of 2012, the owners and operators of these facilities are subject to the Title V annual emission fee imposed by § 129.705(a) due to the amount of emissions of regulated air pollutants reported on an annual basis. This is because section 502 of the CAA, and 40 CFR Part 70, requires that the owners/operators of all affected Title V sources pay an annual emission fee based on the tonnage of regulated pollutant.

These owners and operators have been paying permanent Title V annual emission fees since the Board promulgated the emission fee schedule in November 1994 (24 Pa.B. 5899, November 26, 1994) and have experience with the annual emission fee as a cost of doing business. Interim annual air emission fees were established by the General Assembly in the July 1992 amendments to the APCA (Act of July 9, 1992, P.L. 460, No. 95).

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Declining revenue from collection of Title V annual emission fees for fiscal years 2010-2011, 2011-2012, and 2012-2013 is the basis for revising the existing Title V annual emission fee, which has been in place since November 26, 1994. While the CAA and the APCA and applicable regulations under the acts allow for the increase in the Title V annual emission fee on an annual basis using a formula based on the Consumer Price Index, the successive increases to the 1994 Title V annual emission fee of \$37 have not kept pace with the demands placed upon the air program in attaining and maintaining the NAAQS and for meeting the Commonwealth's obligations under the CAA. These demands include the processing of Title V plan approvals and operating permits, inspections, maintenance and servicing of the ambient air monitoring network, evaluation and processing of CEMS data, and source test protocol reviews and source test report reviews. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton for emissions of up to 4,000 tons of each regulated pollutant. The final revised Title V annual emission fee of \$85 per ton for emissions of up to 4,000 tons of each regulated pollutant, due September 1, 2014, on emissions occurring in calendar year 2013, is an increase of \$27.50 per ton of regulated pollutant from the 2013 assessed annual emission fee.

Comparative financial statements generated by the Department's Office of Budget using reported and projected Title V emissions and Title V emission fee revenue numbers and employee time data provided by the air program form the basis of the cost and savings analysis provided in this regulatory analysis form. One comparative financial statement provides projected revenue and costs without the revised Title V annual emission fee of \$85 for fiscal planning years 2014-2015 through 2018-2019 (Attachment 1); the other comparative financial statement provides projected revenue and costs with the revised Title V annual emission fee of \$85 for fiscal planning years 2014-2015 through 2018-2019.

The Department captures employee time data via the Cross Application Time Sheet reporting system that identifies staff activities which support the fee analysis. Costs associated with other program operational needs are posted into the Commonwealth's SAP Accounting System, which data also supports the fee analysis. This information is included in the Department's Basic Financial Statements that are prepared in conformity with generally accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB). The Commonwealth's Basic Financial Statements are jointly audited by the Department of the Auditor General and an independent public accounting firm.

(29) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments: April 8, 2013

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|---|--------------------------------|
| B. The date or dates on which public meetings or hearings will be held: | <u>March 5, 6, and 7, 2013</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>December 2013</u> |
| D. The expected effective date of the final-form regulation: | <u>Date of publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>September 1, 2014</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.