

# PROPOSED RULEMAKING

## ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]

### Practice and Procedure

The Environmental Hearing Board (Board) proposes to revise Chapter 1021 (relating to practice and procedures) by adding new procedural rules to read as set forth in Annex A.

The proposed procedural rules have the following objectives:

(1) To provide the regulated community, the Department of Environmental Protection (Department) and other potential litigants with more specific guidance on how to represent their interests before the Board.

(2) To improve the rules of practice and procedure before the Board.

#### I. *Statutory Authority for Proposed Rulemaking*

The Board has the authority under section 5 of the Environmental Hearing Board Act (act) (35 P. S. § 7515) to adopt regulations pertaining to practice and procedure before the Board.

#### II. *Description of Proposed Rulemaking*

The proposed rulemaking modifies provisions of the rules to improve practice and procedure before the Board. The proposed rulemaking is based on the recommendations of the Board Rules Committee, a nine member advisory committee created by section 5 of the act to make recommendations to the Board on its rules of practice and procedure. The Board may promulgate proposed regulations based in whole or in part on the recommendations of the Rules Committee.

This summary provides a description of: (1) the existing rules of practice and procedure when relevant to proposed rulemaking; (2) the Board's proposed rulemaking; and (3) how the proposal differs from the Rules Committee's recommendations.

Where the recommendations of the Rules Committee were not in proper legislative style and format, they have been modified to conform to those requirements. Similarly, where recommendations did not contain proper cross references to 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) (General Rules), references to those rules have been added.

The proposed rulemaking can be divided into four categories: 1) reorganization of the Board's existing rules of practice and procedure; 2) adoption of a new rule; 3) substantive amendments to existing rules; and 4) changes limited to superseding the General Rules. Substantive amendments or additions were made as follows: definitions (§ 1021.2); withdrawal of appearance (new rule added at § 1021.23); filing (existing § 1021.30, proposed § 1021.31); service by a party (existing § 1021.32, proposed § 1021.33); date of service (existing § 1021.33, proposed § 1021.34); number of copies (existing § 1021.35, proposed § 1021.36); docket (existing § 1021.41, proposed § 1021.38); motions—general (existing § 1021.70, proposed § 1021.91); procedural motions (existing § 1021.71, proposed § 1021.92); reconsideration

of interlocutory orders (existing § 1021.123, proposed § 1021.151); reconsideration of final orders (existing § 1021.124, proposed § 1021.152); composition of the certified record on appeal to Commonwealth Court (existing § 1021.171, proposed § 1021.201). The rule on discovery (existing § 1021.111, proposed § 1021.102) was amended only for the purpose of superseding the General Rules.

A major feature of the substantive changes to the rules are amendments permitting counsel for the parties to elect to file and serve their legal documents through the Board's website. This system has been the subject of a pilot program of existing cases pending with the Board. The pilot project has been successful and has been greeted with enthusiasm by counsel participating in this pilot program. The Board anticipates that this will be of great convenience to litigants, will result in some cost savings to them and will reduce the volume of paper that otherwise would have to be filed with the Board and served on other parties. The proposed rules on electronic filing comply in all material respects with Pa.R.C.P. No. 205.4 authorizing lower courts to implement electronic filing and service.

#### 1. *Reorganization of rules*

The Board adopted the Rules Committee's proposal to reorganize the rules of practice and procedure in an effort to make the rules more user-friendly for practitioners and the public. The rules have been reorganized as set forth in Annex A. No rules have been deleted; they have simply been renumbered in the order in which they become relevant in a proceeding before the Board. Where text has been amended, this is shown in bold in Annex A.

The proposed reorganization of the rules is demonstrated by the cross reference table that appears before Annex A. The Board will seek to have the table published in the *Pennsylvania Bulletin* and codified in the *Pennsylvania Code* as an annex to the rules so that there will be a ready reference table showing how the rules have been reorganized for at least the first 5 years after the reorganized rules have been published as final regulations.

Additionally, the Board intends to have the reorganized rules published with a unified table of contents, rather than a separate table of contents by subchapter, to facilitate the location of applicable rules. The Board has discussed this proposal with personnel at the Legislative Reference Bureau, who have indicated they would not object to this format.

#### 2. *Definitions*

The Board proposes amending its rule on definitions (§ 1021.2) to add the following definitions: "electronic filing," "filing attorney," "legal document," "registered attorney" and "registration statement." These definitions are necessitated by the Board's proposed rule on electronic filing.

#### 3. *Withdrawal of Appearance*

The Board rules currently have no provision governing the withdrawal of appearance by counsel. Proposed rule § 1021.23 sets forth the procedures to be followed in the case of an attorney seeking to withdraw an appearance in a matter before the Board. Section 1021.23(a) parallels Pa.R.C.P. No. 1012(b) by requiring that an attorney seek leave to withdraw unless another attorney has entered an

appearance and the change of parties does not delay any stage of the litigation. Section 1021.23(b) sets forth the factors the Board will consider in ruling on a motion to withdraw, as follows: the reasons why withdrawal is being sought; any prejudice that may result to the litigants; any delay in resolution of the case that would result from withdrawal; and the effect of withdrawal on the efficient administration of justice. When withdrawal will result in the party being unrepresented in the proceeding, § 1021.23(c) requires the withdrawing counsel to provide the Board with the name of a contact person for future service.

#### 4. *Filing, Service and Docket*

The Board proposes amending its rules on filing (existing § 1021.30, proposed § 1021.31), service by a party (existing § 1021.32, proposed § 1021.33), date of service (existing § 1021.33, proposed § 1021.34) and docket (existing § 1021.41, proposed § 1021.38) to allow for electronic filing and service. In the fall of 2000, the Board initiated a pilot project to allow parties to file documents electronically through its website. Instructions and guidelines for the pilot project appear on the Board's website at [www.ehb.verilaw.com](http://www.ehb.verilaw.com). The pilot project has demonstrated that electronic filing and service provides a benefit to the practicing bar as an elective means of filing and service. As a result, the Board now intends to adopt amendments to its rules of practice and procedure to allow all parties the option of electronic filing and service.

The Board proposes to amend its rule on filing (existing § 1021.30, proposed § 1021.31) to allow the electronic filing of "legal documents" not exceeding 50 pages in length. The term "legal document" has been defined in the proposed amendment to § 1021.2 to include "a motion, answer or other paper filed in a proceeding before the Board other than a notice of appeal or complaint that is original process naming defendant or defendants." Exhibits to legal documents may be filed and served either electronically or by hard copy in accordance with the rules on filing and service.

The Board proposes to amend its rule on service by parties (existing § 1021.32, proposed § 1021.33) to allow the service of legal documents electronically. The rule also permits an attorney who has registered to file and receive service electronically to withdraw a registration statement for purposes of a specific case if the attorney chooses not to receive service electronically in that case.

The Board proposes to amend its rule on date of service (existing § 1021.33, proposed § 1021.34) to state that the date of service for electronically transmitted documents shall be the date on which the document is transmitted electronically. This would permit the filing of documents up to midnight of the date required for filing. When exhibits to an electronically filed document are served by mail, 3 days shall be added to the time for responding to the document.

The Board proposes to amend its rule on docket (existing § 1021.41, proposed § 1021.38) to state that the Board will maintain a docket on its website and will accept filings of legal documents by electronic transmission from attorneys who have filed a registration statement. The docket will register the date of filings and the time of filing if made electronically. When a document is filed electronically, the Board will electronically transmit a message to all registered attorneys in the proceeding. The official copy of an electronically filed document shall be that appearing on the Board's website.

#### 5. *Number of copies*

The Board's current rule on number of copies (existing § 1021.35, proposed § 1021.36) requires that multiple copies of a motion be filed but does not require multiple copies of supporting memoranda of law, responses or replies. It also does not require multiple copies of notices of appeal and complaints. Except in the case of documents filed electronically, the proposed rule will require that an original and two copies of the following documents shall be filed with the Board: notices of appeal, complaints, answers, posthearing briefs and dispositive motions and related memoranda, responses and replies. The proposed rulemaking will only require that an original and one copy of the following documents shall be filed with the Board: petitions for supersedeas and any related responses, prehearing memoranda, nondispositive motions and petitions (other than motions for stays, extensions and continuances of procedural deadlines) and related memoranda, responses and replies. The proposed rule will require an original of all other documents.

The Rules Committee also considered whether the rule should address the service of courtesy copies on individual judges, for example, when the document must be filed in Harrisburg but the presiding judge is in Pittsburgh. The Rules Committee determined that this should not be incorporated into the rule since each judge had different requirements with regard to courtesy copies.

#### 6. *Motions*

The Board proposes to amend its current rules on motions—general (existing § 1021.70, proposed § 1021.91) and procedural motions (existing § 1021.71, proposed § 1021.92) to require that proposed orders be attached to motions, responses and requests for extensions or continuances.

#### 7. *Discovery*

Subsection (e) of the Board's current rule on discovery (existing § 1021.111, proposed § 1021.102) states that the rules supplement 1 Pa. Code §§ 35.145—35.152 of the General Rules relating to depositions. Under these sections of the General Rules, depositions may only be taken with notice to and the approval of the agency or presiding officer. Because the Board does not require parties to notify or obtain approval prior to the taking of a deposition, the Rules Committee was asked to consider whether subsection (e) of the Board's discovery rule should be amended to state that it supersedes rather than supplements the General Rules. Both the Rules Committee and the Board voted to approve the recommended change.

#### 8. *Reconsideration*

The Board's rules on reconsideration of interlocutory and final orders (existing §§ 1021.123 and 1021.124, proposed §§ 1021.151 and 1021.152) have been amended to state that a party may file a memorandum of law in support of a petition for reconsideration or response to a petition for reconsideration. This proposed amendment was made in recognition of the fact that parties have a very short time period (10 days) in which to prepare a petition for reconsideration, so that they may dispense with the necessity of preparing a supporting brief.

#### 9. *Certified Record on Appeal to Commonwealth Court*

The Board rule on composition of certified record on appeal to the Commonwealth Court (existing § 1021.171, proposed § 1021.201) has been amended to correct a typographical error. The reference to "Pa.R.C.P. 1951" in subsection (a) of the rule has been corrected to read "Pa.R.A.P. 1951." This change will properly designate the

application of the Pennsylvania Rules of Appellate Procedure rather than the erroneous designation of the Pennsylvania Rules of Civil Procedure.

The Board concurred with the recommendations previously set forth.

III. *Fiscal Impact of the Proposed Rulemaking*

The proposed amendments will have no measurable fiscal impact on the Commonwealth, political subdivisions or the private sector. The amendments may have a favorable economic impact in that they may eliminate potential litigation over existing uncertainties in Board procedures, authority and requirements. Further, the amendments providing for electronic filing may result in an overall reduction in the use of paper because they will permit parties to file legal documents electronically.

IV. *Paperwork Requirements for Proposed Rulemaking*

The proposed rulemaking will not require the Board to modify its standard orders.

V. *Public Meeting on Proposed Rules*

Under 65 Pa.C.S. § 704 (relating to open meetings), a quorum of the members of the Board voted to adopt the proposed rules at a public meeting held on May 9, 2001, at the Board's Harrisburg office, Hearing Room 2, Second Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

VI. *Government Reviews of Proposed Rulemaking*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 25, 2001, the Board submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Senate and House Standing Committees on Environmental Resources and Energy. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1 "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion of the proposed rulemaking. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed rulemaking, by the Board, the General Assembly and the Governor of objections raised.

VII. *Public Comment Regarding Proposed Rulemaking*

The Board invites interested persons to submit written comments, suggestions or objections regarding the proposed rulemaking to William T. Phillipy, IV, Secretary, Environmental Hearing Board, 2nd Floor, Rachel Carson State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, within 30 days of this publication.

GEORGE J. MILLER,  
*Chairperson*

**Fiscal Note:** 106-6. No fiscal impact; (8) recommends adoption.

*(Editor's Note:* The following is printed as an aid to the reader. For historical purposes, it will be codified when the proposal is adopted.)

**CROSS REFERENCE OF  
CURRENT SECTION NUMBERS  
TO PROPOSED SECTION NUMBERS**

<i>Current Section Number</i>	<i>Proposed Section Number</i>
1021.1	1021.1
1021.2	1021.2
1021.3	1021.3
1021.4	1021.4
1021.11	...
1021.15	1021.11
1021.17	1021.12
1021.21	...
1021.22	1021.21
1021.23	1021.22
1021.24	1021.24
1021.30	1021.31
1021.31	1021.32
1021.32	1021.33
1021.33	1021.34
1021.34	1021.35
1021.35	1021.36
1021.36	1021.37
1021.41	1021.38
1021.51	1021.51
1021.52	1021.52
1021.53	1021.53
1021.54	1021.83
1021.56	1021.71
1021.57	1021.72
1021.58	1021.73
1021.61	...
1021.62	1021.81
1021.64	...
1021.65	...
1021.66	...
1021.70	1021.91
1021.71	1021.92
1021.72	1021.93
1021.73	1021.94
1021.74	1021.95
1021.76	1021.61
1021.77	1021.62
1021.78	1021.63
1021.79	1021.64
1021.80	1021.82
1021.81	1021.101
1021.82	1021.104
1021.83	1021.105
1021.84	1021.106
1021.85	1021.111
1021.86	1021.116
1021.87	1021.113
1021.88	1021.121
1021.89	1021.117
1021.90	1021.126
1021.92	1021.132
1021.94	1021.112
1021.96	1021.114
1021.98	1021.115
1021.99	1021.107
1021.101	1021.122
1021.104	1021.118
1021.107	1021.123
1021.108	1021.124
1021.109	1021.125
1021.111	1021.102
1021.114	1021.103
1021.116	1021.131
1021.117	1021.25

<i>Current Section Number</i>	<i>Proposed Section Number</i>
1021.118	1021.134
1021.120	1021.141
1021.122	1021.133
1021.123	1021.151
1021.124	1021.152
1021.125	1021.161
1021.131	1021.171
1021.132	1021.172
1021.133	1021.173
1021.134	1021.174
1021.141	1021.181
1021.142	1021.182
1021.143	1021.183
1021.144	1021.184
1021.151	1021.191
1021.161	1021.54
1021.162	1021.55
1021.171	1021.201

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART IX. ENVIRONMENTAL HEARING BOARD**  
**CHAPTER 1021. PRACTICE AND PROCEDURES**

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1021.2. Definitions.  
1021.3. Amendments to rules.  
1021.4. Construction and application of rules.

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**BY STATUTE OTHER THAN THE COSTS ACT**

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**[ Subchapter A. ] PRELIMINARY PROVISIONS**

**GENERAL**

**§ 1021.2. Definitions.**

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

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**Electronic filing**—The electronic transmission of legal documents by means of a computer or device, other than by facsimile transmission, in the format of Word Perfect for Windows or Microsoft Word for Windows or such other format as the Board may permit.

**Filing attorney**—A registered attorney who files a legal document by means of electronic filing on behalf of a client whom the attorney represents in a proceeding before the Board.

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**Legal document**—A motion, answer or other paper filed in a proceeding before the Board other than a notice of appeal or a complaint that is original process naming a defendant or defendants. A subpoena or a bond or check issued to secure payment of a penalty is not a legal document; the original of the documents excluded from this definition must be filed or served.

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**Registered attorney**—An attorney admitted to practice in this Commonwealth, or other counsel permitted by Board order to represent a party for purposes of a particular proceeding, who has filed an electronic filing registration statement with the Board and to whom the Board has issued a password authorizing filing and service through the Board's website.

**Registration statement**—A statement made on professional or organizational letterhead requesting the use of the Board's website for electronic filing containing such information as the Board may require.

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**TIME**

§ [ 1021.15 ] 1021.11. Effective dates of Board adjudications and preliminary orders.

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§ [ 1021.17 ] 1021.12. Extensions of time.

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**REPRESENTATION BEFORE THE BOARD**

§ [ 1021.22 ] 1021.21. Representation.

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§ [ 1021.23 ] 1021.22. Notice of appearance.

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§ 1021.23. Withdrawal of appearance.

(a) An attorney's appearance for a party may be withdrawn without leave of the Board if another attorney has entered or simultaneously enters an appearance for the party and the change of attorneys does not delay any stage of the litigation.

(b) In ruling on a motion for withdrawal of appearance under other circumstances, the Board will consider the following factors: the reasons why withdrawal is requested; any prejudice withdrawal may cause to the litigants; delay in resolution of the case which would result from withdrawal; and the effect of withdrawal on the efficient administration of justice.

(c) In the event withdrawal of counsel will result in an unrepresented party before the Board, counsel seeking to withdraw shall provide the Board with a single contact person for future service in all proceedings.

§ [ 1021.117 ] 1021.25. Amicus curiae.

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**[ Subchapter B. ] DOCUMENTARY FILINGS  
FILING AND SERVICE OF DOCUMENTS**

§ [ 1021.30 ] 1021.31. Filing.

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(c) Documents may be filed by personal delivery, by mail or by facsimile. Legal documents, as defined in § 1021.2 (relating to definitions), may be filed electronically in accordance with this chapter. When a document is filed by facsimile, the original shall be deposited in the mail on the same day. If a document exceeds ten pages, the facsimile shall consist of the first five pages and last five pages of the document and the certificate of service. [ A filing received after the close of the business day at 4:30 p.m. Eastern Time shall be deemed to be filed on the following business day. ]

(d) Legal documents may be filed with the Board electronically through the Board's website by a filing attorney unless provided otherwise by Board order. A legal document filed electronically shall be deemed the equivalent of the original document subject to the following conditions:

(1) The electronic filing of a legal document constitutes a certification by the filing attorney that the original hard copy was properly signed and, where applicable, verified.

(2) An executed hard copy of the legal document, with required verifications, shall be maintained by the filing attorney and produced at the request of the Board or any other party within 14 days of the request.

(e) In filing legal documents electronically, a filing attorney shall be responsible for the following:

(1) An objective description of the legal document consistent with the title placed on the legal document as required by the Board's website.

(2) Any delay, disruption or interruption of the electronic signals and readability of the legal document.

(3) Any risk that a legal document may not be properly or timely filed with the Board.

(f) Hard copy of any electronically filed legal document which exceeds 50 pages in length must also be filed with the Board in accordance with subsections (a) and (c) and § 1021.36 (relating to number of copies). Exhibits to legal documents may be filed and served either electronically or by hard copy in accordance with the sections in this chapter relating to filing and service. If these requirements are met by hard copy of exhibits, they must be sent to the Board by mail or express delivery and, in the case of requests for expedited disposition, service shall mean actual receipt by the opposing party as required by § 1021.33(b) (relating to service by a party).

(g) Documents filed by United States mail, hand or other delivery services after the close of the business day at 4:30 p.m. Eastern Time shall be deemed to be filed on the following business day. Documents filed electronically, including by facsimile, shall be deemed filed on the day received by the Board.

§ [ 1021.31 ] 1021.32. Service by the Board.

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§ [ 1021.32 ] 1021.33. Service by a party.

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(c) Service of legal documents may be made electronically on a registered attorney by any other registered attorney. The filing of a registration statement constitutes a certification that the registered attorney will accept electronic service of any legal document from any other registered attorney. A registered attorney may withdraw his registration statement for purposes of a specific case if he chooses not to receive electronic service in that case by filing an amendment to the filing party's registration statement.

(d) Subsections (a) [ and (b) ]—(c) supersede 1 Pa. Code § 33.32 (relating to service by a participant).

§ [ 1021.33 ] 1021.34. Date of service.

(a) The date of service shall be the date the document served is mailed, [ or ] delivered in person or transmitted electronically. When service of the document, or hard copy of exhibits to a legal document filed electronically, is by mail, 3 days shall be added to the time required by this chapter for responding to the document.

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§ [ 1021.34 ] 1021.35. Certificate of service.

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§ [ 1021.35 ] 1021.36. Number of copies.

(a) [ Unless ] Except in the case of electronically filed documents, including exhibits, and unless otherwise ordered by the Board, the following number of copies shall be filed with the Board:

(1) [ Dispositive motions and post-hearing briefs—three copies. ] One original and two copies of each of the following:

- (i) Notices of appeal.
- (ii) Complaints.
- (iii) Answers.
- (iv) Posthearing briefs.
- (v) Dispositive motions and related memoranda, responses and replies.

(2) [ Prehearing memoranda, petitions for supersedeas and all motions, other than motions for stays, extensions and continuances of procedural deadlines—two copies. ] One original and one copy of each of the following:

- (i) Petitions for supersedeas and any related responses.
- (ii) Prehearing memoranda.

(iii) Nondispositive motions and petitions (other than motions for stays, extensions and continuances of procedural deadlines), and related memoranda, responses and replies.

(3) [ Other documents—one copy. ] One original of other documents.

(b) One copy of [ briefs and other ] all documents submitted to the Board shall be served on the other parties to the proceeding.

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§ [ 1021.36 ] 1021.37. Publication of notice.

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[ DOCKET ]

§ [ 1021.41 ] 1021.38. Docket.

(a) The Board will maintain a docket of proceedings and a proceeding as initiated shall be assigned an appropriate designation. The Board will maintain the docket on its website available to all members of the public and will accept filings of legal documents by electronic transmission from registered attorneys.

(b) The docket will register the date of all filings as well as the time of the filing if the filing is made electronically. When a document is filed electronically, the Board will transmit electronically a status message to all registered attorneys in the proceeding when the document is filed.

(c) The Board will maintain a complete official file on all proceedings consisting of both electronic and hard copy filings. The official copy of an electronically filed document or Board order shall be that appearing on the Board's website.

[ (c) ] (d) The [ docket and the ] electronic docket will be available on the Board's website and the hard copy portion of the official file shall be available for inspection and copying by the public during the office hours of the Board insofar as consistent with the proper discharge of the duties of the Board.

[ (d) ] (e) Subsections (a)—[ (c) ] (d) supersede 1 Pa. Code § 33.51 (relating to docket).

[ Subchapter C. ] FORMAL PROCEEDINGS  
APPEALS

§ [ 1021.161 ] 1021.54. Prepayment of penalties.

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§ [ 1021.162 ] 1021.55. Hearing on inability to prepay penalty.

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SUPERSEDEAS

§ [ 1021.76 ] 1021.61. General.

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§ [ 1021.77 ] 1021.62. Contents of petition for supersedeas.

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§ [ 1021.78 ] 1021.63. Circumstances affecting grant or denial.

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§ [ 1021.79 ] 1021.64. Temporary supersedeas.

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**SPECIAL ACTIONS**

§ [ 1021.56 ] 1021.71. Complaints filed by the Department.  
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§ [ 1021.57 ] 1021.72. Answers to complaints filed by the Department.  
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§ [ 1021.58 ] 1021.73. Procedure after an answer is filed.  
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**CONSOLIDATION, INTERVENTION AND SUBSTITUTION OF PARTIES**

§ [ 1021.62 ] 1021.81. Intervention.  
\* \* \* \* \*

§ [ 1021.80 ] 1021.82. Consolidation.  
\* \* \* \* \*

§ [ 1021.54 ] 1021.83. Substitution of parties.  
\* \* \* \* \*

**MOTIONS**

§ [ 1021.70 ] 1021.91. General.  
\* \* \* \* \*

(b) Motions and responses shall be in writing, [ and be ] signed by a party or its attorney and shall be accompanied by a proposed order.  
\* \* \* \* \*

§ [ 1021.71 ] 1021.92. Procedural motions.  
\* \* \* \* \*

(e) Requests for extensions or continuances, whether in letter or motion form, shall [ contain a specific date for the extension or continuance ] be accompanied by a proposed order.  
\* \* \* \* \*

§ [ 1021.72 ] 1021.93. Discovery motions.  
\* \* \* \* \*

§ [ 1021.73 ] 1021.94. Dispositive motions.  
\* \* \* \* \*

§ [ 1021.74 ] 1021.95. Miscellaneous motions.  
\* \* \* \* \*

**PREHEARING PROCEDURES AND PREHEARING CONFERENCES**

§ [ 1021.81 ] 1021.101. Prehearing procedure.  
\* \* \* \* \*

§ [ 1021.111 ] 1021.102. Discovery.  
\* \* \* \* \*

(e) Subsections (a)—(d) [ supplement ] supersede 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

§ [ 1021.114 ] 1021.103. Subpoenas.  
\* \* \* \* \*

§ [ 1021.82 ] 1021.104. Prehearing memorandum.  
\* \* \* \* \*

§ [ 1021.83 ] 1021.105. Prehearing conferences.  
\* \* \* \* \*

§ [ 1021.84 ] 1021.106. Voluntary mediation.  
\* \* \* \* \*

§ [ 1021.99 ] 1021.107. Authority delegated to hearing examiners.  
\* \* \* \* \*

**HEARINGS**

§ [ 1021.85 ] 1021.111. Initiation of hearings.  
\* \* \* \* \*

§ [ 1021.94 ] 1021.112. Waiver of hearings.  
\* \* \* \* \*

§ [ 1021.87 ] 1021.113. Continuance of hearings.  
\* \* \* \* \*

§ [ 1021.96 ] 1021.114. Venue of hearings.  
\* \* \* \* \*

§ [ 1021.98 ] 1021.115. View of premises.  
\* \* \* \* \*

§ [ 1021.86 ] 1021.116. Conduct of hearings.  
\* \* \* \* \*

§ [ 1021.89 ] 1021.117. Presentation by the parties.  
\* \* \* \* \*

§ [ 1021.104 ] 1021.118. Transcript.  
\* \* \* \* \*

**EVIDENCE**

§ [ 1021.88 ] 1021.121. Motions in limine.  
\* \* \* \* \*

§ [ 1021.101 ] 1021.122. Burden of proceeding and burden of proof.  
\* \* \* \* \*

§ [ 1021.107 ] 1021.123. Evidence.  
\* \* \* \* \*

§ [ 1021.108 ] 1021.124. Written testimony.  
\* \* \* \* \*

§ [ 1021.109 ] 1021.125. Official notice of facts.  
\* \* \* \* \*

§ [ 1021.90 ] 1021.126. Limiting number of witnesses and additional evidence.  
\* \* \* \* \*

**POSTHEARING PROCEDURES**

§ [ 1021.116 ] 1021.131. Posthearing briefs.  
\* \* \* \* \*

§ [ 1021.92 ] 1021.132. Oral argument after hearing.  
\* \* \* \* \*

§ [ 1021.122 ] 1021.133. Reopening of record prior to adjudication.  
\* \* \* \* \*

§ [ 1021.118 ] 1021.134. Adjudications.

\* \* \* \* \*

TERMINATION OF PROCEEDINGS

§ [ 1021.120 ] 1021.141. Termination of proceedings.

\* \* \* \* \*

RECONSIDERATION

§ [ 1021.123 ] 1021.151. Reconsideration of interlocutory orders.

(a) A petition for reconsideration of an interlocutory order or ruling shall be filed within 10 days of the order or ruling. The petition must demonstrate that extraordinary circumstances justify consideration of the matter by the Board. A party may file a memorandum of law at the time the motion or response is filed.

\* \* \* \* \*

§ [ 1021.124 ] 1021.152. Reconsideration of final orders.

(a) A petition for reconsideration of a final order shall be filed within 10 days of the date of the final order. A party may file a memorandum of law at the time the motion or response is filed. Reconsideration is within the discretion of the Board and will be granted only for compelling and persuasive reasons. These reasons may include the following:

\* \* \* \* \*

SANCTIONS

§ [ 1021.125 ] 1021.161. Sanctions.

\* \* \* \* \*

ATTORNEY FEES AND COSTS AUTHORIZED BY THE COSTS ACT

§ [ 1021.131 ] 1021.171. Scope.

\* \* \* \* \*

§ [ 1021.132 ] 1021.172. Application for fees and expenses.

\* \* \* \* \*

§ [ 1021.133 ] 1021.173. Response to application.

\* \* \* \* \*

§ [ 1021.134 ] 1021.174. Disposition of application.

\* \* \* \* \*

ATTORNEY FEES AND COSTS AUTHORIZED BY STATUTE OTHER THAN THE COSTS ACT

§ [ 1021.141 ] 1021.181. Scope.

\* \* \* \* \*

§ [ 1021.142 ] 1021.182. Application for costs and fees.

\* \* \* \* \*

§ [ 1021.143 ] 1021.183. Response to application.

\* \* \* \* \*

§ [ 1021.144 ] 1021.184. Disposition of application.

\* \* \* \* \*

ATTORNEY FEES AND COSTS UNDER MORE THAN ONE STATUTE

§ [ 1021.151 ] 1021.191. Application for counsel fees under more than one statute.

\* \* \* \* \*

APPELLATE MATTERS

§ [ 1021.171 ] 1021.201. Composition of the [ Certified Record on Appeal ] certified record on appeal to Commonwealth Court.

(a) Unless the parties file a stipulation with the Board providing otherwise, within 20 days of the filing of the petition for review, the Board shall certify the record in accordance with [ Pa.R.C.P. ] Pa.R.A.P. 1951 (relating to record below in proceedings on petition for review) and the record shall consist of:

\* \* \* \* \*

[Pa.B. Doc. No. 01-2012. Filed for public inspection November 9, 2001, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Consumer Products

The Environmental Quality Board (Board) proposes to establish Subchapter B (relating to consumer products) in Chapter 130 (relating to standards for products) to read as set forth in Annex A.

The proposed regulations add definitions for terms that are used for the substantive sections of Chapter 130. Section 130.201 (relating to applicability) will apply to any person who sells, supplies, offers for sale or manufacturers consumer products for use in this Commonwealth. Sections 130.211—130.464 establish, among other things, standards and exemptions for products.

This notice is given under Board order at its meeting of September 18, 2001.

A. Effective Date

The proposed regulations will be effective upon publication in the Pennsylvania Bulletin as final-form rule-making.

B. Contact Persons

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663; or Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. Statutory Authority

The proposed regulations are being made under the authority of section 5 of the Air Pollution Control Act (35 P. S. § 4005) which grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.



#### *D. Background and Purpose*

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The United States Environmental Protection Agency (EPA) has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments such as asthma. Further, although 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 ambient ozone while engaged in an activity that involves physical exertion. Though symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address the ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of the proposed regulations is to reduce the volatile organic compounds (VOC) emitted from consumer products. The proposed regulations are part of the Commonwealth's strategy to achieve and maintain the ozone standard throughout this Commonwealth. The proposed regulations expand upon the Federal consumer products rule, which became effective in December 1998. The Federal rule regulates 24 product categories representing 48% of the consumer products inventory Nationally and reduces VOC emissions from that inventory by 20%. To capture additional emission reductions from these products, the Commonwealth is proposing to adopt these regulations. The Commonwealth has used the California Air Resources Board (CARB) regulations and the Ozone Transport Commission model rule and background material as a starting point and reviewed those documents, including specific emission reductions, for applicability in this Commonwealth. As a result, the proposed regulations include most, if not all, of the product categories covered in California, with limits effective at a later date than California. To maximize consistency, emission limits for specific product categories are identical to those used in California.

The proposed rulemaking regulates 45 consumer product categories and approximately 80 different types of products, and requires more stringent VOC content limits than the Federal rule. Some of the limits are currently in effect in California and are known to be technologically feasible. Other limits in California have future effective dates. The proposed compliance date for the Commonwealth limits is January 1, 2005. Manufacturers would ensure compliance with the limits by reformulating products and substituting products with compliant products that are already on the market.

Manufacturers producing consumer products would be responsible for developing and distributing compliant products for sale at the retail and wholesale levels. In addition, any person who sells, supplies or offers for sale consumer products would also be held accountable. Consumers would not be affected by this rule in that they should not notice any changes in product performance or quality, and cost increases per consumer for these products will be negligible.

If compliance with the VOC contents becomes problematic, flexibility options are provided for in the proposed regulations. These options include an innovative product exemption, variances, exemptions and alternative control plan.

The proposed regulations contain requirements for charcoal lighter materials, aerosol adhesives, floor wax

strippers and automotive windshield washer fluids. They also contain administrative requirements for labeling and reporting. There is a reporting requirement so that manufacturers may be required to submit information to the Commonwealth upon request.

A CARB test method would be primarily used to demonstrate compliance. Enforcement with the product VOC content limits and other requirements would be done by the Commonwealth.

Because the Commonwealth, in conjunction with other northeastern states, has met over the past 18 months with representatives of the various National consumer product manufacturers in related industries, and has gathered their support for the proposed regulations, it is important that the proposed regulations be implemented consistently and uniformly as negotiated. Any deviation from the proposed regulations by altering the limits set forth in the regulations may hinder the ability of manufacturers to comply with the regulations.

The Department of Environmental Protection (Department) worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of these proposed regulations. At its May 24, 2001, meeting, AQTAC recommended adoption of the proposed regulations. In addition, AQTAC recommended that the Department continue aggressive efforts with other states to support National standards for these products.

#### *E. Summary of Regulatory Requirements*

Subchapter B includes the following definitions of terms that will be used in the substantive provisions of the proposed regulations. The definitions include: "ACP—Alternative Control Plan," "ACP agreement," "ACP emissions," "ACP limit," "ACP product," "ACP reformulation or ACP reformulated," "ACP standard," "ACP VOC standard," "ASTM," "adhesive," "adhesive remover," "aerosol adhesive," "aerosol cooking spray," "aerosol product," "agricultural use," "air freshener," "all other carbon-containing compounds," "all other forms," "antimicrobial hand or body cleaner or soap," "antiperspirant," "architectural coating," "astringent/toner," "automotive brake cleaner," "automotive hard paste wax," "automotive instant detailer," "automotive rubbing or polishing compound," "automotive wax, polish, sealant or glaze," "automotive windshield washer fluid," "bathroom and tile cleaner," "bug and tar remover," "carburetor or fuel-injection air intake cleaners," "carpet and upholstery cleaner," "charcoal lighter material," "colorant," "compliance period," "construction, panel and floor covering adhesive," "consumer," "consumer product," "contact adhesive," "container/packaging," "contact person," "crawling bug insecticide," "date-code," "deodorant," "device," "disinfectant," "distributor," "double-phase aerosol air freshener," "dry cleaning fluid," "dusting aid," "electronic cleaner," "enforceable sales," "enforceable sales record," "engine degreaser," "fabric protectant," "facial cleaner or soap," "fat wood," "flea and tick insecticide," "flexible flooring material," "floor polish or wax," "floor seam sealer," "floor wax stripper," "flying bug insecticide," "fragrance," "furniture maintenance product," "furniture coating," "gel," "general purpose adhesive," "general purpose cleaner," "general purpose degreaser," "general-use hand or body cleaner or soap," "glass cleaner," "gross Pennsylvania sales," "HVOC—high volatility organic compound," "hair mousse," "hair shine," "hair styling gel," "hair spray," "heavy-duty hand cleaner or soap," "herbicide," "household product," "insecticide," "insecticide fogger," "institutional product or industrial and institutional (I&I) product," "LVP content," "LVP-VOC," "label," "laundry prewash,"

“laundry starch product,” “lawn and garden insecticide,” “liquid,” “lubricant,” “MVOC—medium volatility organic compound,” “manufacturer,” “medicated astringent/medicated toner,” “metal polish/cleaner,” “missing data days,” “mist spray adhesive,” “multi-purpose dry lubricant,” “multi-purpose lubricant,” “multi-purpose solvent,” “nail polish,” “nail polish remover,” “nonaerosol product,” “noncarbon containing compound,” “nonresilient flooring,” “nonselective terrestrial herbicide,” “one-product business,” “oven cleaner,” “paint,” “paint remover or stripper,” “penetrant,” “pesticide,” “Pennsylvania sales,” “plasticizer,” “pre-ACP VOC content,” “principal display panel or panels,” “product brand name,” “product category,” “product line,” “propellant,” “pump spray,” “reconcile or reconciliation,” “reconciliation of shortfalls plan,” “responsible party,” “responsible ACP party,” “restricted materials,” “retailer,” “retail outlet,” “roll-on product,” “rubber and vinyl protectant,” “rubbing alcohol,” “sealant and caulking compound,” “semisolid,” “shaving cream,” “shortfall,” “silicone-based multi-purpose lubricant,” “single-phase aerosol air freshener,” “solid,” “special purpose spray adhesive,” “spot remover,” “spray buff product,” “stick product,” “structural waterproof adhesive,” “surplus reduction,” “surplus trading,” “TMHE—total maximum historical emissions,” “Table B compound,” “terrestrial,” “tire sealant and inflation,” “Type A propellant,” “Type B propellant,” “Type C propellant,” “undercoating,” “usage directions,” “VOC content,” “wasp and hornet insecticide,” “waterproofing,” “wax,” “web spray adhesive,” “wood floor wax” and “working day.”

Section 130.211 (relating to table of standards) sets forth the percentage of VOC by weight, which cannot be exceeded for consumer products that are sold, supplied, offered for sale or manufactured for sale in this Commonwealth. Sections 130.212—130.216 contain other regulatory requirements that relate specifically to certain products like charcoal lighter materials, aerosol adhesives and products containing ozone depleting compounds. Sections 130.331—130.337 set forth the general exemption requirements for products for shipment and use outside of this Commonwealth and exemptions for specific consumer products like antiperspirants and deodorants, insecticides, fungicides, rodenticides and air fresheners. Sections 130.351 and 130.352 (relating to innovative products exemption; and request for exemption) set forth exemptions for products that are considered innovative in order to advance and encourage new technologies. Sections 130.371—130.373 (relating to code-dating; most restrictive limit; and additional labeling requirements for aerosol adhesives) set forth code-dating and additional labeling requirements for consumer products that are subject to this subsection. Sections 130.391 and 130.392 (relating to required reporting of information to Department; and confidentiality) set forth general reporting requirements, special reporting requirements, reporting requirements for ozone depleting compounds and confidentiality requirements. Sections 130.411—130.414 set forth the procedures that a manufacturer may use to apply for and be granted a variance for certain products that would otherwise be subject to regulation. Section 130.431 (relating to testing for compliance) sets forth the test methods that will be used to ensure that the products are in compliance with this subchapter. Sections 130.451—130.464 set forth alternative methods of compliance for consumer products and administrative and other applicable requirements.

The proposed regulations, if approved, will be submitted to the EPA as an amendment to the State Implementation Plan.

#### *F. Benefits and Costs*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulations.

##### *Benefits*

Overall, the citizens of this Commonwealth will benefit from these proposed regulations because they will result in improved air quality by reducing ozone precursor emissions and encourage new technologies and practices, which will reduce emissions. The proposed regulations will also result in reduced levels of hazardous air pollutants throughout this Commonwealth. In addition, the proposed regulations will reduce citizen exposure to a variety of solvents, including hazardous air pollutants that are used in a variety of consumer products.

##### *Compliance Costs*

Under these proposed regulations, it is estimated that the reduction of VOC content of the affected consumer products will cost approximately \$800 per ton of emissions reduced based on annual emission reductions of approximately 6,000 tons or 1 pound per person. This equates to an estimated annual cost increase of \$4.8 million annually, or 30¢—40¢ per Commonwealth consumer.

##### *Compliance Assistance Plan*

The Department plans to educate and assist the public and the regulated community in understanding the newly-revised requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

##### *Paperwork Requirements*

The proposed regulations will not increase the paperwork that is already generated during the normal course of business operations.

#### *G. Sunset Review*

The proposed regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the proposed amendments effectively fulfill the goals for which they were intended.

#### *H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 26, 2001, the Department submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis form prepared by the Department in compliance with Executive Order 1996-1, “Regulatory Review and Promulgation.” A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed regulations, it will notify the Department within 10 days following the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed regulations to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of these regulations, by the Department, the General Assembly and the Governor of objections raised.

*I. Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulations to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by January 16, 2002. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by January 16, 2002. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the proposed regulation will be considered.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by January 16, 2002.

*J. Public Hearings*

The Board will hold three public hearings for the purpose of accepting comments on the proposed regulations. The hearings will be held at 2 p.m. as follows:

December 11, 2001, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA.

December 13, 2001, Department of Environmental Protection, Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA.

December 17, 2001, Department of Environmental Protection, Southeast Regional Office, Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA.

Persons wishing to present testimony at a hearing are requested to contact Debra Failor, Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aide, service or other accommodation in order to participate should contact Debra Failor at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

DAVID E. HESS,  
*Chairperson*

**Fiscal Note:** 7-370. No fiscal impact; (8) recommends adoption.

*(Editor's Note: The following text is new and is printed in regular type to enhance readability.)*

**Annex A**

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

**Subpart C. PROTECTION OF NATURAL  
RESOURCES**

**ARTICLE III. AIR RESOURCES**

**CHAPTER 130. STANDARDS FOR PRODUCTS**

**Subchapter B. CONSUMER PRODUCTS**

**GENERAL PROVISIONS**

- Sec.  
130.201. Applicability.  
130.202. Definitions.

**STANDARDS**

- 130.211. Table of standards.  
130.212. Products diluted prior to use.  
130.213. Products registered under FIFRA.  
130.214. Requirements for charcoal lighter materials.  
130.215. Requirements for aerosol adhesives.  
130.216. Requirements for floor wax strippers.

**EXEMPTIONS**

- 130.331. Products for shipment and use outside this Commonwealth.  
130.332. Antiperspirants and deodorants.  
130.333. LVP-VOC.  
130.334. Insecticides, fungicides and rodenticides.  
130.335. Air fresheners.  
130.336. Adhesives.  
130.337. Bait station insecticides.

**INNOVATIVE PRODUCTS**

- 130.351. Innovative products exemption.  
130.352. Request for exemption.

**ADMINISTRATIVE REQUIREMENTS**

- 130.371. Code-dating.  
130.372. Most restrictive limit.  
130.373. Additional labeling requirements for aerosol adhesives.

**REPORTING REQUIREMENTS**

- 130.391. Required reporting of information to Department.  
130.392. Confidentiality.

**VARIANCES**

- 130.411. Application for variance.  
130.412. Variance orders.  
130.413. Termination of variance.  
130.414. Modification of variance.

**TEST METHODS**

- 130.431. Testing for compliance.

**ACP FOR CONSUMER PRODUCTS**

- 130.451. Alternative methods of compliance.  
130.452. Exemption.  
130.453. Request for exemption.  
130.454. Recordkeeping and availability of requested information.  
130.455. Surplus reductions and surplus trading.  
130.456. Limited-use surplus reduction credits for early reformulations of ACP products.  
130.457. Reconciliation of shortfalls.  
130.458. Notification of modifications to an ACP by the responsible ACP party.  
130.459. Modifications that require Department preapproval.  
130.460. Other modifications.  
130.461. Modification of an ACP by the Department.  
130.462. Cancellation of an ACP.  
130.463. Treatment of information.  
130.464. Other applicable requirements.

**GENERAL PROVISIONS**

**§ 130.201. Applicability.**

Except as provided in §§ 130.331—130.337 (relating to exemptions), this subchapter applies to a person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2005, for use in this Commonwealth.

**§ 130.202. Definitions.**

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

*ACP—Alternative Control Plan*—An emissions averaging program approved by the Department under this subchapter.

*ACP agreement*—The document signed by the Department which includes the conditions and requirements of the ACP, and which allows manufacturers to sell ACP products in this Commonwealth under the requirements of this chapter.

*ACP emissions*—

(i) The sum of the VOC emissions from every ACP product subject to an ACP Agreement approving an ACP, during the compliance period specified in the ACP agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N$$

$$Emissions = \frac{(VOC\ Content) \times (Enforceable\ Sales)}{100}$$

where,

(ii) For all products except for charcoal lighter material products:

$$VOC\ Content = \frac{(B - C) \times 100}{A}$$

A = net weight of unit (excluding container and packaging)

B = total weight of all VOCs per unit, as defined in this section

C = total weight of all exempted VOCs per unit, as specified in this section

(iii) For charcoal lighter material products only:

$$VOC\ Content = \frac{(Certified\ Emissions \times 100)}{Certified\ Use\ Rate}$$

**Certified**

**Emissions** = the emissions level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

**Certified**

**Use Rate** = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

*ACP limit*—The maximum allowable ACP Emissions during the compliance period specified in an ACP Agreement approving an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \dots + (Limit)_N$$

where,

$$Limit = \frac{(ACP\ Standard) \times (Enforceable\ Sales)}{100}$$

**Enforceable**

**Sales** = the total amount of an ACP product sold for use in the state, during the applicable compliance period specified in the ACP Agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding container and packaging).

**ACP**

**Standard** = either the ACP product's Pre-ACP VOC Content, or the applicable VOC standard specified in § 130.211, whichever is less.

**Pre-ACP VOC**

**Content** = the lowest VOC content which the ACP product had between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the Commonwealth, based on either the data on the product obtained from the March 12, 1991 CARB Consumer Products Survey, or other accurate records available to the Department, whichever yields the lowest VOC content for the product.

1,2,...N = each product in an ACP up to the maximum N.

*ACP product*—A consumer product subject to the VOC standards specified in § 130.211 (relating to table of standards), except those products that have been exempted under §§ 130.331—130.337 (relating to exemptions), or exempted as innovative products under §§ 130.351—130.352 (relating to innovative products).

*ACP reformulation or ACP reformulated*—The process of reducing the VOC content of an ACP product, within the period that an ACP is in effect, to a level which is less than the current VOC content of the product.

*ACP standard*—The Pre-ACP VOC content of an ACP product or the applicable VOC standard specified in § 130.211, whichever is less.

*ACP VOC standard*—The maximum allowable VOC content for an ACP product, determined as follows:

(i) The applicable VOC Standard specified in § 130.211, for all ACP products except for charcoal lighter material.

(ii) For charcoal lighter material products only, the VOC Standard for the purposes of this section shall be calculated according to the following equation:

$$VOC\ Standard = \frac{(0.020\ pound\ CH_2\ per\ start \times 100)}{Certified\ Use\ Rate}$$

where,

0.020 = the certification emissions level for the Department-approved product, as specified in § 130.214.

**Certified**

**Use Rate** = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

*ASTM*—The American Society for Testing and Materials.

*Adhesive*—A product that is used to bond one surface to another by attachment. The term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or other product with an adhesive incorporated onto or in an inert substrate. The term does not include aerosol adhesives or units of product, less packaging, which consist of more than 1 gallon of the following materials:

- (i) Contact adhesive.
- (ii) Construction, panel and floor covering adhesive.
- (iii) General purpose adhesive.

*Adhesive remover*—A product designed exclusively for the removal of adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates.

*Aerosol adhesive*—An aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

*Aerosol cooking spray*—An aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

*Aerosol product*—A pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. The term does not include pump sprays.

*Agricultural use*—The use of a pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of an animal or plant crop. The term does not include the sale or use of pesticides in properly labeled packages or containers which are intended for the following uses:

- (i) *Home use*. Use in a household or its immediate environment.
- (ii) *Structural pest control*. A use requiring a license under the applicable state pesticide licensing requirement.
- (iii) *Industrial use*. Use in a manufacturing, mining or chemical process or use in the operation of factories, processing plants and similar sites.
- (iv) *Institutional use*. Use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums and office complexes.

*Air freshener*—A consumer product, including sprays, wicks, powders and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting or deodorizing the air.

- (i) The term does not include:
  - (A) Products that are used on the human body.
  - (B) Products that function primarily as cleaning products.

(C) Disinfectant products claiming to deodorize by killing germs on surfaces.

(D) Institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution.

(ii) The term includes spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution.

(iii) To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) does not constitute a claim of air freshening.

*All other carbon-containing compounds*—Compounds which contain at least one carbon atom and are not a "Table B" compound or a "LVP-VOC."

*All other forms*—Consumer product forms for which no form-specific VOC standard is specified in §§ 130.211—130.216. Unless specified otherwise by the applicable VOC standard, the term includes solids, liquids, wicks, powders, crystals and cloth or paper wipes (towelettes).

*Antimicrobial hand or body cleaner or soap*—

(i) A cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity. The term includes the following:

- (A) Antimicrobial hand or body washes/cleaners.
- (B) Foodhandler hand washes.
- (C) Healthcare personnel hand washes.
- (D) Preoperative skin preparations.
- (E) Surgical scrubs.

(ii) The term does not include the following:

- (A) Prescription drug products.
- (B) Antiperspirants.
- (C) Astringent/toner.
- (D) Deodorant.
- (E) Facial cleaner or soap.
- (F) General-use hand or body cleaner or soap.
- (G) Hand dishwashing detergent, including antimicrobial.
- (H) Heavy-duty hand cleaner or soap.
- (I) Medicated astringent/medicated toner.
- (J) Rubbing alcohol.

*Antiperspirant*—A product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.

*Architectural coating*—A coating applied to stationary structures and their appurtenances, to mobile homes, to pavements or to curbs.

*Astringent/toner*—A product not regulated as a drug by the United States Food and Drug Administration (FDA) that is applied to the skin for the purpose of cleaning or

tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include:

- (i) Hand, face or body cleaner or soap products.
- (ii) Medicated astringent/medicated toner.
- (iii) Cold cream.
- (iv) Lotion.
- (v) Antiperspirant.

*Automotive brake cleaner*—A cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

*Automotive hard paste wax*—An automotive wax or polish which is:

- (i) Designed to protect and improve the appearance of automotive paint surfaces.
- (ii) A solid at room temperature.
- (iii) 0% water by formulation.

*Automotive instant detailer*—A product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

*Automotive rubbing or polishing compound*—A product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

*Automotive wax, polish, sealant or glaze*—A product designed to seal out moisture, increase gloss or otherwise enhance a motor vehicle's painted surfaces.

- (i) The term includes products designed for:
  - (A) Use in autobody repair shops and drive-through car washes.
  - (B) Use by the general public.
- (ii) The term does not include:
  - (A) Automotive rubbing or polishing compounds.
  - (B) Automotive wash and wax products.
  - (C) Surfactant-containing car wash products.
  - (D) Products designed for use on unpainted surfaces such as bare metal, chrome, glass or plastic.

*Automotive windshield washer fluid*—A liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing or wetting the windshield. The term does not include fluids placed by the manufacturer in a new vehicle.

*Bathroom and tile cleaner*—A product designed to clean tile or surfaces in bathrooms. The term does not include products specifically designed to clean toilet bowls or toilet tanks.

*Bug and tar remover*—A product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

- (i) Biological-type residues such as insect carcasses and tree sap.
- (ii) Road grime, such as road tar, roadway paint markings and asphalt.

*Carburetor or fuel-injection air intake cleaners*—A product designed to remove fuel deposits, dirt or other contaminants from a carburetor, choke, throttle body of a

fuel-injection system or associated linkages. The term does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

*Carpet and upholstery cleaner*—A cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics.

(i) The term includes, but is not limited to, products that make fabric protectant claims.

(ii) The term does not include:

(A) General purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids.

(B) Products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

*Charcoal lighter material*—A combustible material designed to be applied on, incorporated in, added to or used with charcoal to enhance ignition. The term does not include the following:

- (i) Electrical starters and probes.
- (ii) Metallic cylinders using paper tinder.
- (iii) Natural gas.
- (iv) Propane.
- (v) Fat wood.

*Colorant*—A pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

*Compliance period*—The period of time, not to exceed 1 year, for which the ACP Limit and ACP Emissions are calculated and for which compliance with the ACP Limit is determined, as specified in the ACP agreement approving an ACP.

*Construction, panel and floor covering adhesive*—

(i) A one-component adhesive that is designed exclusively for the installation, remodeling, maintenance or repair of:

(A) Structural and building components that include, but are not limited to, the following:

- (I) Beams.
- (II) Trusses.
- (III) Studs
- (IV) Paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, predecorated hardboard or tileboard, and the like).

(V) Ceiling and acoustical tile.

(VI) Molding, fixtures, countertops or countertop laminates, cove or wall bases and flooring or subflooring.

(B) Floor or wall coverings that include, but are not limited to, the following:

- (I) Wood or simulated wood covering.
- (II) Carpet, carpet pad or cushion, vinyl-backed carpet.
- (III) Flexible flooring material.
- (IV) Nonresilient flooring material.
- (V) Mirror tiles and other types of tiles.
- (VI) Artificial grass.

(ii) The term does not include floor seam sealer.

*Consumer*—A person who purchases or acquires a consumer product for personal, family, household or institutional use. Persons acquiring a consumer product for resale are not “consumers” for that product.

*Consumer product*—

(i) A chemically formulated product used by household and institutional consumers including:

- (A) Detergents.
- (B) Cleaning compounds.
- (C) Polishes.
- (D) Floor finishes.
- (E) Cosmetics.
- (F) Personal care products.
- (G) Home, lawn and garden products.
- (H) Disinfectants.
- (I) Sanitizers.
- (J) Aerosol paints.
- (K) Automotive specialty products.

(ii) The term does not include other paint products, furniture coatings or architectural coatings.

*Contact adhesive*—

(i) An adhesive that:

(A) Is designed for application to both surfaces to be bonded together.

(B) Is allowed to dry before the two surfaces are placed in contact with each other.

(C) Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other.

(D) Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

(ii) The term does not include rubber cements that are primarily intended for use on paper substrates.

*Container/packaging*—The parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. The term includes an article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

*Contact person*—A representative that has been designated by the responsible ACP party for the purpose of reporting or maintaining information specified in the ACP agreement approving an ACP.

*Crawling bug insecticide*—An insecticide product that is designed for use against ants, cockroaches or other household crawling arthropods, including mites, silverfish or spiders. The term does not include products designed to be used exclusively on humans or animals, or house dust mite product. For the purposes of this definition only:

(i) *House dust mite*. Mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum

Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata and the family Pyroglyphidae.

(ii) *House dust mite product*. A product whose label, packaging or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches or other household crawling arthropods.

*Date-code*—The day, month and year on which the consumer product was manufactured, filled or packaged, or a code indicating such a date.

*Deodorant*—A product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

*Device*—An instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling or mitigating a pest or other form of plant or animal life (other than man and other than bacteria, virus or other microorganism on or in living man or other living animals). The term does not include equipment used for the application of pesticides when sold separately therefrom.

*Disinfectant*—

(i) A product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y).

(ii) The term does not include the following:

(A) Products designed solely for use on human or animals.

(B) Products designed for agricultural use.

(C) Products designed solely for use in swimming pools, therapeutic tubs or hot tubs.

(D) Products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners or metal polishes.

*Distributor*—A person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce. The term does not include manufacturers, retailers and consumers.

*Double-phase aerosol air freshener*—An aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

*Dry cleaning fluid*—

(i) A nonaqueous liquid product designed and labeled exclusively for use on:

(A) Fabrics which are labeled “for dry clean only,” such as clothing or drapery.

(B) “S-coded” fabrics.

(ii) The term includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer’s residence or work place.

(iii) The term does not include spot remover or carpet and upholstery cleaner.

(iv) For the purposes of this definition, S-coded fabric means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee.

*Dusting aid*—A product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. The term does not include products that consist entirely of compressed gases for use in electronic or other specialty areas.

*Electronic cleaner*—A product designed specifically for the removal of dirt, grease or grime from electrical equipment such as electric motors, circuit boards, electricity panels and generators.

*Enforceable sales*—The total amount of an ACP product sold for use in this Commonwealth during the applicable compliance period specified in the ACP agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

*Enforceable sales record*—A written, point-of-sale record or other Department-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in this Commonwealth during the applicable compliance period can be accurately documented. For the purposes of this subchapter, the term includes, but is not limited to, the following types of records:

(i) Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period.

(ii) Accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method which can be used to verify data comprising the summaries is submitted by the responsible ACP party and approved by the Department.

(iii) Other accurate product sales records approved by the Department as meeting the criteria specified in this definition.

*Engine degreaser*—A cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

*Fabric protectant*—A product designed to be applied to fabric substrates to protect the surface from soiling by dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. The term does not include waterproofers, products designed for use solely on leather or products designed for use solely on fabrics which are labeled "dry clean only" and sold in containers of 10 fluid ounces or less.

*Facial cleaner or soap*—A cleaner or soap designed primarily to clean the face. The term includes, but is not limited to, facial cleansing creams, gels, liquids, lotions and substrate-impregnated forms. The term does not include:

- (i) Prescription drug products.
- (ii) Antimicrobial hand or body cleaner or soap.
- (iii) Astringent/toner.
- (iv) General-use hand or body cleaner or soap.
- (v) Medicated astringent/medicated toner.
- (vi) Rubbing alcohol.

*Fat wood*—Pieces of wood kindling with high naturally-occurring levels of sap or resin which enhance ignition of the kindling. The term does not include kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

*Flea and tick insecticide*—An insecticide product that is designed for use against fleas, ticks, their larvae or their eggs. The term does not include products that are designed to be used exclusively on humans or animals and their bedding.

*Flexible flooring material*—Asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

*Floor polish or wax*—A wax, polish or other product designed to polish, protect or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. The term does not include:

- (i) Spray buff products.
- (ii) Products designed solely for the purpose of cleaning floors.
- (iii) Floor finish strippers.
- (iv) Products designed for unfinished wood floors.
- (v) Coatings subject to architectural coatings regulations.

*Floor seam sealer*—A product designed and labeled exclusively for bonding, fusing or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

*Floor wax stripper*—A product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. The term does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

*Flying bug insecticide*—An insecticide product that is designed for use against flying insects or other flying arthropods, including mosquitoes, moths or gnats. The term does not include:

- (i) Wasp and hornet insecticide.
- (ii) Products that are designed to be used exclusively on humans or animals.

(iii) A moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

*Fragrance*—A substance or complex mixture of aroma chemicals, natural essential oils and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

*Furniture maintenance product*—A wax, polish, conditioner or other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. The term does not include dusting aids, products designed solely for the purpose of cleaning and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

*Furniture coating*—A paint designed for application to room furnishings, including cabinets (kitchen, bath and vanity), tables, chairs, beds and sofas.

*Gel*—A colloid in which the dispersed phase has combined with the continuous phase to produce a semisolid material, such as jelly.



*General purpose adhesive*—A nonaerosol adhesive designed for use on a variety of substrates. The term does not include:

- (i) Contact adhesives.
- (ii) Construction, panel and floor covering adhesives.
- (iii) Adhesives designed exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers or vinyls).

(iv) Adhesives designed exclusively for use on one specific category of articles (that is, articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping or carpets).

*General purpose cleaner*—A product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. The term includes products designed for general floor cleaning, kitchen or countertop cleaning and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

*General purpose degreaser*—

(i) A product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(ii) The term does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish/cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are:

- (A) Sold exclusively to establishments that manufacture or construct goods or commodities.
- (B) Labeled "not for retail sale."
- (iii) Solvent cleaning tanks or related equipment including, but is not limited to:
  - (A) Cold cleaners.
  - (B) Vapor degreasers.
  - (C) Conveyorized degreasers.
  - (D) Film cleaning machines.
  - (E) Products designed to clean miscellaneous metallic parts by immersion in a container.

*General-use hand or body cleaner or soap*—A cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils.

(i) The term includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels and moisturizing cleaners or soaps.

- (ii) The term does not include:
  - (A) Prescription drug products.
  - (B) Antimicrobial hand or body cleaner or soap.
  - (C) Astringent/toner.
  - (D) Facial cleaner or soap.
  - (E) Hand dishwashing detergent, including antimicrobial.
  - (F) Heavy-duty hand cleaner or soap.
  - (G) Medicated astringent/medicated toner.
  - (H) Rubbing alcohol.

*Glass cleaner*—A cleaning product designed primarily for cleaning surfaces made of glass. The term does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

*Gross Pennsylvania sales*—The estimated total sales in this Commonwealth of an ACP product during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the Department will provide an accurate Pennsylvania sales estimate:

(i) Apportionment of National or regional sales of the ACP product to Pennsylvania sales, determined by multiplying the average National or regional sales of the product by the fraction of the National or regional population, respectively, that is represented by this Commonwealth's current population.

(ii) Another documented method which provides an accurate estimate of the total current Pennsylvania sales of the ACP product.

*HVOC—High volatility organic compound*—A volatile organic compound that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20°C.

*Hair mousse*—A hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

*Hair shine*—A product designed for the primary purpose of creating a shine when applied to the hair. The term includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. The term does not include:

- (i) Hair spray.
- (ii) Hair mousse.
- (iii) Hair styling gel or spray gel.
- (iv) Products whose primary purpose is to condition or hold the hair.

*Hair styling gel*—A high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

*Hair spray*—A consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

*Heavy-duty hand cleaner or soap*—A product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt or adhesives from the hand with or without the use of water. The term does not include:

- (i) Prescription drug products.
- (ii) Antimicrobial hand or body cleaner or soap.
- (iii) Astringent/toner.
- (iv) Facial cleaner or soap.
- (v) General-use hand or body cleaner or soap.
- (vi) Medicated astringent/medicated toner.
- (vii) Rubbing alcohol.

*Herbicide*—A pesticide product designed to kill or retard a plant's growth, but excludes products that are:

- (i) For agricultural use.
- (ii) Restricted materials that require a permit for use and possession.

*Household product*—A consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

*Insecticide*—A pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

- (i) For agricultural use.
- (ii) For a use which requires a structural pest control license under applicable laws or regulations of the Commonwealth.
- (iii) Restricted materials that require a permit for use and possession.

*Insecticide fogger*—An insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

*Institutional product or industrial and institutional (I&I) product*—

(i) A consumer product that is designed for use in the maintenance or operation of an establishment that:

(A) Manufactures, transports or sells goods or commodities, or provides services for profit.

(B) Is engaged in the nonprofit promotion of a particular public, educational or charitable cause.

(ii) Establishments include, but are not limited to, the following:

- (A) Government agencies.
- (B) Factories.
- (C) Schools.
- (D) Hospitals.
- (E) Sanitariums.
- (F) Prisons
- (G) Restaurants.
- (H) Hotels.
- (I) Stores.
- (J) Automobile service and parts centers.
- (K) Health clubs.
- (L) Theaters.
- (M) Transportation companies.

(iii) The term does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

*Lower vapor pressure (LVP) content*—The total weight, in pounds, of LVP compounds in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

*Lower vapor pressure (LVP)-VOC*—

(i) A chemical compound or mixture that contains at least one carbon atom and meets one of the following:

(A) Has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310.

(B) Is a chemical compound with more than 12 carbon atoms, or a chemical mixture comprised solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown.

(C) Is a chemical compound with a boiling point greater than 216°C, as determined by CARB Method 310.

(D) Is the weight percent of a chemical mixture that boils above 216°C, as determined by CARB Method 310.

(ii) For the purposes of this definition, chemical compound means a molecule of definite chemical formula and isomeric structure, and chemical mixture means a substance comprised of two or more chemical compounds.

*Label*—Written, printed or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on or appearing upon a consumer product or consumer product package, for purposes of branding, identifying or giving information with respect to the product or to the contents of the package.

*Laundry prewash*—A product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance, or both.

*Laundry starch product*—A product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and which may also act to help ease ironing of the fabric. The term includes, but is not limited to, fabric finish, sizing and starch.

*Lawn and garden insecticide*—An insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

*Liquid*—A substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM D-4359-90. The term does not include powders or other materials that are composed entirely of solid particles.

*Lubricant*—A product designed to reduce friction, heat, noise or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. The term does not include:

(i) Automotive power steering fluids.

(ii) Products for use inside power generating motors, engines and turbines, and their associated power-transfer gearboxes.

(iii) Two cycle oils or other products designed to be added to fuels.

(iv) Products for use on the human body or animals.

(v) Products that are sold exclusively to establishments which manufacture or construct goods or commodities, and are labeled "not for retail sale."

*MVOC—Medium volatility organic compound*—A VOC that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

*Manufacturer*—A person who imports, manufactures, assembles, produces, packages, repackages or relabels a consumer product.

*Medicated astringent/medicated toner*—A product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores. The term

includes, but is not limited to, clarifiers and substrate-impregnated products. The term does not include:

- (i) Hand, face or body cleaner or soap products.
- (ii) Astringent/toner.
- (iii) Cold cream.
- (iv) Lotion.
- (v) Antiperspirants.
- (vi) Products that must be purchased with a doctor's prescription.

*Metal polish/cleanser*—A product designed primarily to improve the appearance of finished metal, metallic or metallized surfaces by physical or chemical action by removing or reducing stains, impurities or oxidation from surfaces or by making surfaces smooth and shiny. The term includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. The term does not include:

- (i) Automotive wax.
- (ii) Polish, sealant or glaze.
- (iii) Wheel cleaner.
- (iv) Paint remover or stripper.
- (v) Products designed and labeled exclusively for automotive and marine detailing.
- (vi) Products designed for use in degreasing tanks.

*Missing data days*—The number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data to the Department, as specified in the ACP Agreement approving an ACP.

*Mist spray adhesive*—An aerosol which is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

*Multipurpose dry lubricant*—A lubricant which is:

- (i) Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide (moly) or polytetrafluoroethylene or closely related fluoropolymer (Teflon) on surfaces.
- (ii) Designed for general purpose lubrication or for use in a wide variety of applications.

*Multipurpose lubricant*—A lubricant designed for general purpose lubrication or for use in a wide variety of applications. The term does not include:

- (i) Multipurpose dry lubricants.
- (ii) Penetrants.
- (iii) Silicone-based multi-purpose lubricants.

*Multipurpose solvent*—An organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. The term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. The term does not include solvents used in:

- (i) Cold cleaners.
- (ii) Vapor degreasers.
- (iii) Conveyorized degreasers.
- (iv) Film cleaning machines.

(v) Solvents that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

*Nail polish*—A clear or colored coating designed for application to the fingernails or toenails and including lacquers, enamels, acrylics, base coats and top coats.

*Nail polish remover*—A product designed to remove nail polish and coatings from fingernails or toenails.

*Nonaerosol product*—A consumer product that is not dispensed by a pressurized spray system.

*Noncarbon containing compound*—A compound that does not contain carbon atoms.

*Nonresilient flooring*—Flooring of a mineral content that is not flexible, including:

- (i) Terrazzo.
- (ii) Marble.
- (iii) Slate.
- (iv) Granite.
- (v) Brick.
- (vi) Stone.
- (vii) Ceramic tile.
- (viii) Concrete.

*Nonselective terrestrial herbicide*—A terrestrial herbicide product that is toxic to plants without regard to species.

*One-product business*—A responsible ACP party which sells, supplies, offers for sale or manufactures for use in this Commonwealth:

- (i) Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of §§ 130.211—130.216 (relating to standards).
- (ii) Only one distinct ACP product line subject to the requirements of §§ 130.211—130.216, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

*Oven cleaner*—A cleaning product designed to clean and to remove dried food deposits from oven walls.

*Paint*—A pigmented liquid or liquefiable or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

*Paint remover or stripper*—A product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. The term does not include:

- (i) Multipurpose solvents.
- (ii) Paint brush cleaners.
- (iii) Products designed and labeled exclusively to remove graffiti.
- (iv) Hand cleaner products that claim to remove paints and other related coatings from skin.

*Penetrant*—A lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation or other causes. The term does not

include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

*Pesticide*—A substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating a pest, or a substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant or plant regulator. The term does not include a substance, mixture of substances or device which the EPA does not consider to be a pesticide.

*Pennsylvania sales*—The sales (net pounds of product, less packaging and container, per year) in this Commonwealth for either the calendar year immediately prior to the year that the registration is due or, if that data is not available, a consecutive 12 month period commencing no earlier than 2 years prior to the due date of the registration. If direct sales data for this Commonwealth is not available, sales may be estimated by prorating National or regional sales data by population.

*Plasticizer*—A material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability or distensibility, and may be determined by using ASTM Method E260-91 or from product formulation data.

*Pre-ACP VOC Content*—The lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the Department based on either the data on the product obtained from the March 12, 1991, CARB Consumer Products Survey or other accurate records available to the Department, whichever yields the lowest VOC content for the product.

*Principal display panel or panels*—The parts of a label that is so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all of the principal display panels.

*Product brand name*—The name of the product exactly as it appears on the principal display panel of the product.

*Product category*—The applicable category that best describes the product as listed in this section.

*Product line*—A group of products of identical form and function belonging to the same product category.

*Propellant*—A liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

*Pump spray*—A packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

*Reconcile or reconciliation*—Providing sufficient VOC emission reductions to completely offset shortfalls generated under the ACP during an applicable compliance period.

*Reconciliation of shortfalls plan*—The plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the Department under § 130.458 (relating to notification of modification to an ACP by the responsible ACP party).

*Responsible party*—The company, firm or establishment which is listed on the product's label. If the label lists two companies, firms or establishments, the responsible party is the party which the product was manufactured for or distributed by, as noted on the label.

*Responsible ACP party*—The company, firm or establishment which is listed on the ACP product's label. If the label lists two or more companies, firms or establishments, the responsible ACP party is the party which the ACP product was manufactured for or distributed by, as noted on the label.

*Restricted materials*—Pesticides established as restricted materials under applicable laws or regulations of the Commonwealth.

*Retailer*—A person who sells, supplies or offers consumer products for sale directly to consumers.

*Retail outlet*—An establishment at which consumer products are sold, supplied or offered for sale directly to consumers.

*Roll-on product*—An antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

*Rubber and vinyl protectant*—A product designed to protect, preserve or renew vinyl, rubber and plastic on vehicles, tires, luggage, furniture and household products such as vinyl covers, clothing and accessories. The term does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

*Rubbing alcohol*—A product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

*Sealant and caulking compound*—A product with adhesive properties that is designed to fill, seal, waterproof or weatherproof gaps or joints between two surfaces.

(i) The term does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear/paintable/water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings.

(ii) The term also does not include units of product, less packaging, which weigh more than 1 pound and consist of more than 16 fluid ounces.

(iii) For the purposes of this definition only.

(A) "Removable caulking compounds" means a compound which temporarily seals windows or doors for 3 to 6 month time intervals.

(B) "Clear/paintable/water resistant caulking compounds" means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

*Semisolid*—A product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes and greases.

*Shaving cream*—An aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair.

*Shortfall*—The ACP Emissions minus the ACP Limit when the ACP Emissions were greater than the ACP Limit during a specified compliance period, expressed to the nearest pound of VOC. The term does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the Department.

*Silicone-based multi-purpose lubricant*—

(i) A lubricant which is:

(A) Designed and labeled to provide lubricity primarily through the use of silicone compounds, including polydimethylsiloxane.

(B) Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

(ii) The term does not include products designed and labeled exclusively to release manufactured products from molds.

*Single-phase aerosol air freshener*—An aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

*Solid*—A substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90.

*Special purpose spray adhesive*—

(i) An aerosol adhesive that meets one or more of the following definitions:

(A) *Mounting adhesive*. An aerosol adhesive designed to permanently mount photographs, artwork and other drawn or printed media to a backing (paper, board, cloth, and the like) without causing discoloration to the artwork.

(B) *Flexible vinyl adhesive*. An aerosol adhesive designed to bond flexible vinyl to substrates. Flexible vinyl means a nonrigid polyvinyl chloride plastic with at least 5%, by weight, of plasticizer content.

(C) *Polystyrene foam adhesive*. An aerosol adhesive designed to bond polystyrene foam to substrates.

(D) *Automobile headliner adhesive*. An aerosol adhesive designed to bond together layers in motor vehicle headliners.

(E) *Polyolefin adhesive*. An aerosol adhesive designed to bond polyolefins to substrates.

(F) *Laminate repair/edgebanding adhesive*. An aerosol adhesive designed for:

(I) The touch-up or repair of items laminated with high pressure laminates (for example—lifted edges, delaminates, and the like).

(II) The touch-up, repair or attachment of edgebanding materials, including other laminates, synthetic marble, veneers, wood molding and decorative metals.

(G) *High pressure laminate*. Sheet materials which consist of paper, fabric or other core material that have been laminated at temperatures exceeding 265°F, and at pressures between 1,000 and 1,400 psi.

(H) *Automotive engine compartment adhesive*. An aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200-275°F.

*Spot remover*—A product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery and clothing, that does not require subsequent laundering to achieve stain removal. The term does not include:

(i) Dry cleaning fluid.

(ii) Laundry prewash.

(iii) Carpet and upholstery cleaner.

(iv) Multi-purpose solvent.

*Spray buff product*—A product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

*Stick product*—An antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

*Structural waterproof adhesive*—An adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181 (Type 1, Grade A) and MIL-A-4605 (Type A, Grade A and Grade C). This definition is as per the Federal Consumer Products Regulation in 40 CFR 59 Subpart C.

*Surplus reduction*—The ACP limit minus the ACP emissions when the ACP Limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in § 130.456 (relating to alternative control plan (ACP) for consumer products), the term does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the Department.

*Surplus trading*—The buying, selling or transfer of surplus reductions between responsible ACP parties.

*TMHE—Total maximum historical emissions*—The total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP has failed to provide the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$(TMHE = MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

where,

$$MHE = \left( \frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \right) \times \text{Missing Data Days}$$

Highest

VOC Content = the maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for a portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC content data (for the entire compliance period), as specified in the ACP agreement.

Highest Sales = the maximum 1-year gross Pennsylvania sales of the ACP product in the previous

5 years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for a portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual 1-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

**Missing Data** = the number of days in a compliance period for which the responsible days ACP party has failed to provide the required enforceable sales or VOC content data as specified in the ACP agreement approving an ACP.

1, 2, ..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required enforceable sales or VOC content data as specified in the ACP agreement approving an ACP.

**Table B compound**—A carbon-containing compound listed as an exception to the definition of VOC.

**Terrestrial**—To live on or grow from land.

**Tire sealant and inflation**—A pressurized product that is designed to temporarily inflate and seal a leaking tire.

**Type A propellant**—A compressed gas such as CO<sub>2</sub>, N<sub>2</sub>, N<sub>2</sub>O or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

**Type B propellant**—A halocarbon which is used as a propellant, including:

- (i) Chlorofluorocarbons (CFCs).
- (ii) Hydrochlorofluorocarbons (HCFCs).
- (iii) Hydrofluorocarbons (HFCs).

**Type C propellant**—A propellant which is not a Type A or Type B propellant, including propane, isobutane, n-butane and dimethyl ether (also known as dimethyl oxide).

**Undercoating**—An aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior or firewall of motor vehicles to prevent the formation of rust or to deaden sound. The term includes, but is not limited to, rubberized, mastic or asphaltic products.

**Usage directions**—The text or graphics on the product's principal display panel, label or accompanying literature that describes to the end user how and in what quantity the product is to be used.

**VOC content**—Except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined under § 130.431 (relating to testing for compliance).

For charcoal lighter material products only,

$$VOC\ Content = \frac{(Certified\ Emissions \times 100)}{Certified\ Use\ Rate}$$

**Certified Emissions** = the emissions level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Man-

agement District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

**Certified**

**Use Rate** = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

**Wasp and hornet insecticide**—An insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

**Waterproofer**—A product designed and labeled exclusively to repel water from fabric or leather substrates. The term does not include fabric protectants.

**Wax**—A material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high molecular weight polymers (plastics). The term includes:

- (i) Substances derived from the secretions of plants and animals such as carnuba wax and beeswax.
- (ii) Substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

**Web spray adhesive**—An aerosol adhesive which is not a mist spray or special purpose spray adhesive.

**Wood floor wax**—Wax-based products for use solely on wood floors.

**Working day**—A day between Monday through Friday, inclusive, except for days that are Federal holidays.

**STANDARDS**

**§ 130.211. Table of standards.**

Except as provided in §§ 130.331—130.337 (relating to exemptions), §§ 130.351—130.352 (relating to innovative products), §§ 130.411—130.414 (relating to variances) and §§ 130.451—130.464 (relating to ACP for consumer products), a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth a consumer product manufactured on or after January 1, 2005, which contains VOCs in excess of the limits specified in the following table of standards:

**Table of Standards  
(percent VOC by weight)**

<i>Product Category</i>	<i>Effective Date</i> 1/1/2005
Adhesives	
Aerosol:	
Mist Spray	65
Web Spray	55
Special Purpose Spray Adhesives:	
Mounting, Automotive Engine	
Compartment, and Flexible Vinyl	70
Polystyrene Foam and Automotive	
Headliner	65
Polyolefin and Laminate Repair	60
Edgebanding	80

<i>Product Category</i>	<i>Effective Date</i> <i>1/1/2005</i>	<i>Product Category</i>	<i>Effective Date</i> <i>1/1/2005</i>
Contact	15	Hair Styling Gels	6
Construction, Panel and Floor Covering	10	Heavy-Duty Hand Cleaner or Soap	8
General Purpose	15	Insecticides	
Structural Waterproof		Crawling Bug (Aerosol)	15
Air Fresheners		Crawling Bug (all other forms)	20
Single-Phase Aerosols	30	Flea and Tick	25
Double-Phase Aerosols	25	Flying Bug (Aerosol)	25
Liquids/Pump Sprays Solids/Gels	18	Flying Bug (all other forms)	35
Antiperspirants		Foggers	45
Aerosol	40 HVOC	Lawn and Garden (all other forms)	20
	10 MVOC	Lawn and Garden (Non-Aerosol)	3
Non-Aerosol	0 HVOC	Wasp and Hornet	40
	0 MVOC	Laundry Prewash	
Automotive Brake Cleaners	45	Aerosols / Solids	22
Automotive Rubbing or Polishing Compound	17	All Other Forms	5
Automotive Wax, Polish, Sealant or Glaze		Laundry Starch Products	5
Hard Paste Waxes	45	Metal Polishes / Cleansers	30
Instant Detailers	3	Multi-Purpose Lubricant (Excluding Solid or	50
All Other Forms	15	Semi-Solid Products)	
Automotive Windshield Washer Fluids	35	Nail Polish Remover	75
Bathroom and Tile Cleaners		Non-Selective Terrestrial Herbicide	
Aerosols	7	Non-Aerosols	3
All Other Forms	5	Oven Cleaners	
Bug and Tar Remover	40	Aerosols / Pump Sprays	8
Carburetor or Fuel-Injection Air Intake		Liquids	5
Cleaners	45	Paint Remover or Strippers	50
Carpet and Upholstery Cleaners		Penetrants	50
Aerosols	7	Rubber and Vinyl Protectants	
Non-Aerosols (Dilutables)	0.1	Non-Aerosols	3
Non-Aerosols (Ready-to-Use)	3.0	Aerosols	10
Charcoal Lighter Material	See	Sealants and Caulking Compounds	4
	§ 130.214	Shaving Creams	5
Cooking Spray Aerosols	18	Silicone-Based Multi-Purpose Lubricants	60
Deodorants		(Excluding Solid or Semi-Solid Products)	
Aerosol	0 HVOC	Spot Removers	
	10 MVOC	Aerosols	25
Non-Aerosol	0 HVOC	Non-Aerosols	8
	0 MVOC	Tire Sealants and Inflators	20
Dusting Aids		Undercoatings	
Aerosols	25	Aerosols	40
All Other Forms	7		
Engine Degreasers		<b>§ 130.212. Products diluted prior to use.</b>	
Aerosol	5	(a) For consumer products for which the label, packaging or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in § 130.211 (relating to table of standards) apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, minimum recommended dilution does not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.	
Non-Aerosol	5	(b) For consumer products for which the label, packaging or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in § 130.211 apply to the product only after the maximum recommended dilution has taken place.	
Fabric Protectants	60	<b>§ 130.213. Products registered under FIFRA.</b>	
Floor Polishes/Waxes		For those consumer products that are registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y), the effective date of the VOC standards specified in the Table of Standards is 1 year after the date specified in § 130.211 (relating to table of standards).	
Products for Flexible Flooring Materials	7		
Products for Nonresilient Flooring	10		
Wood Floor Wax	90		
Floor Wax Strippers			
Non-Aerosol	See		
	§ 130.216		
Furniture Maintenance Products			
Aerosols	17		
All Other Forms Except Solid or Paste	7		
General Purpose Cleaners			
Aerosols	10		
Non-Aerosols	4		
General Purpose Degreasers			
Aerosols and Non-Aerosols	50		
Glass Cleaners			
Aerosols	12		
Non-Aerosols	4		
Hair Mousses	6		
Hairshines	55		
Hairsprays	55		

**§ 130.214. Requirements for charcoal lighter materials.**

The following requirements apply to charcoal lighter material products as defined in § 130.202 (relating to definitions).

(1) *Regulatory standards.* A person may not sell, supply or offer for sale after January 1, 2005, a charcoal lighter material product unless at the time of the transaction:

(i) The manufacturer can demonstrate that the manufacturer has been issued a currently effective certification by the CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, Section 94509(h), of Title 17 of the CCR. This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming such a certification on this basis shall submit to the Department a copy of the certification decision (that is, the Executive Order), including all conditions established by CARB applicable to the certification.

(ii) The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification under paragraph (2).

(iii) The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP Agreement issued under paragraph (2).

(iv) The product usage directions for the charcoal lighter material are the same as those provided to the Commonwealth under paragraph (2)(iii).

(2) *Certification requirements.*

(i) A charcoal lighter material formulation will not be certified under this subsection unless the applicant for certification demonstrates to the Department's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (South Coast Air Quality Management District Rule 1174 Testing Protocol). The provisions relating to LVP-VOC in § 130.333 (relating to LVP-VOCs) do not apply to a charcoal lighter material subject to the requirements of this section and § 130.211 (relating to table of standards).

(ii) The Department may approve alternative test procedures which are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Test Protocol.

(iii) A manufacturer or distributor of charcoal lighter material may apply to the Department for certification of a charcoal lighter material formulation.

(3) *Notice of modifications.* For a charcoal lighter material for which certification has been granted the applicant for certification shall notify the Department in writing within 30 days of:

(i) A change in the usage directions.

(ii) A change in product formulation, test results or other information submitted under paragraph (2) which may result in VOC emissions greater than 0.020 pound of VOC per start.

(4) *Revocation of certification.* If the Department determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality

Management District Rule 1174 Testing Protocol and the statistical analysis procedures contained therein, the Department will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

**§ 130.215. Requirements for aerosol adhesives.**

(a) As specified in CCR Section 41712(h)(2), the standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial and commercial uses. Except as otherwise provided in §§ 130.331—130.337 (relating to exemptions); §§ 130.351 and 130.352 (relating to innovative products); and §§ 130.411—130.414 (relating to variances), a person may not sell, supply, offer for sale, use or manufacture for sale in this Commonwealth an aerosol adhesive which, at the time of sale, use or manufacture, contains VOCs in excess of the specified standard.

(b) For a special purpose spray adhesive:

(1) To qualify as a special purpose spray adhesive, the product shall meet one or more of the definitions specified in § 130.202 (relating to definitions), but if the product label indicates that the product is suitable for use on a substrate or application not listed in § 130.202, the product will be classified as either a "web spray adhesive" or a "mist spray adhesive."

(2) If a product meets more than one of the definitions specified in § 130.202 for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive, the VOC limit for the product shall be the lowest applicable VOC limit specified in § 130.211 (relating to table of standards).

(c) Aerosol adhesives shall comply with the labeling requirements specified in § 130.373 (relating to additional labeling requirements for aerosol adhesives).

**§ 130.216. Requirements for floor wax strippers.**

A person may not sell, supply, offer for sale or manufacture for use in this Commonwealth a floor wax stripper unless the following requirements are met:

(1) The label of each nonaerosol floor wax stripper shall specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3% by weight or less.

(2) If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper shall specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.

**EXEMPTIONS**

**§ 130.331. Products for shipment and use outside this Commonwealth.**

(a) This subchapter does not apply to a consumer product manufactured in this Commonwealth for shipment and use outside of this Commonwealth.

(b) This subchapter does not apply to a manufacturer or distributor who sells, supplies or offers for sale in this Commonwealth a consumer product that does not comply with the VOC standards specified in § 130.211 (relating to table of standards), as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of this Commonwealth, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed in this Common-



wealth. This subsection does not apply to consumer products that are sold, supplied or offered for sale by a person to retail outlets in this Commonwealth.

**§ 130.332. Antiperspirants and deodorants.**

(a) The MVOC content standards in § 130.211 (relating to table of standards) for antiperspirants and deodorants do not apply to ethanol.

(b) The VOC limits specified in § 130.211 do not apply to fragrances up to a combined level of 2% by weight contained in a consumer product and do not apply to colorants up to a combined level of 2% by weight contained in an antiperspirant or deodorant.

(c) The requirements of § 130.211 for antiperspirants and deodorants do not apply to those VOCs that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20°C.

**§ 130.333. LVP-VOC.**

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to an LVP-VOC.

**§ 130.334. Insecticides, fungicides and rodenticides.**

The requirements of § 130.371 (relating to code-dating) do not apply to consumer products registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136–136y).

**§ 130.335. Air fresheners.**

(a) The VOC limits specified in § 130.211 (relating to table of standards) do not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under § 130.202 (relating to definitions) or exempted under § 130.335 (relating to air fresheners).

(b) The VOC limits specified in § 130.211 do not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

**§ 130.336. Adhesives.**

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to adhesives sold in containers of 1 fluid ounce or less.

**§ 130.337. Bait station insecticides.**

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to bait station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5% active ingredients.

**INNOVATIVE PRODUCTS**

**§ 130.351. Innovative products exemption.**

A manufacturer of consumer products that has been granted an innovative products exemption by the CARB under the innovative products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5, Article 1, Section 94503.5 of Title 17 of the CCR shall be exempt from § 130.211 (relating to table of standards) for the period of time that the CARB innovative products exemption remains in effect provided that all consumer products within the CARB innovative products exemption are contained in § 130.211. A manufacturer claiming such an exemption on this basis shall submit to the Department a copy of the CARB Innovative Products exemption decision (that is, the Executive Order), including all conditions established by CARB applicable to the exemption.

**§ 130.352. Request for exemption.**

A manufacturer of consumer products that has been granted an innovative products exemption under the innovative products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5, Article 1, Section 94503.5 of Title 17 of the CCR based on California-specific data, or that has not been granted an exemption by CARB may seek an innovative products exemption in accordance with the following criteria:

(1) The Department may exempt a consumer product from the VOC limits specified in § 130.211 (relating to table of standards) if a manufacturer demonstrates that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions.

(2) A manufacturer shall apply in writing to the Department for an exemption claimed under § 130.331(b) (relating to products for shipment and use outside this Commonwealth). The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant shall provide information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content.

(3) If the VOC limits specified in § 130.211 are lowered for a product category through a subsequent rulemaking, the innovative product exemptions granted for products in the product category, except as provided in this subsection, shall have no force and effect as of the effective date of the modified VOC standard. This paragraph does not apply to those innovative products which have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Department at least 60 days before the effective date of the limits.

(4) If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in paragraph (1), the Department may modify or revoke the exemption as necessary to assure that the product will meet these criteria.

**ADMINISTRATIVE REQUIREMENTS**

**§ 130.371. Code-dating.**

(a) *Code-dating.* Each manufacturer of a consumer product subject to §§ 130.211–130.216 (relating to standards) shall clearly display on each consumer product container or package, the day, month and year on which the product was manufactured, or a code indicating that date. The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cap/cover) without disassembling a part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than 12 months prior to the effective date of the applicable standard specified in § 130.211 (relating to table of standards). The requirements of this provision do not apply to products containing no VOCs as defined in § 130.202 (relating to definitions), or containing VOCs at 0.10% by weight or less.

(b) If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to

§§ 130.211—130.216, an explanation of the code shall be filed with the Department no later than 12 months prior to the effective date of the applicable standard specified in § 130.211.

**§ 130.372. Most restrictive limit.**

Notwithstanding the definition of “product category” in § 130.202 (relating to definitions), if on the principal display panel of a consumer product, a representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in § 130.211 (relating to table of standards), the lowest VOC limit applies. This requirement does not apply to general purpose cleaners and antiperspirant/deodorant products.

**§ 130.373. Additional labeling requirements for aerosol adhesives.**

(a) In addition to the requirements specified in §§ 130.371 and 130.372 (relating to code-dating; and most restrictive limit) and §§ 130.391 and 130.392 (relating to reporting requirements), both the manufacturer and responsible party for each aerosol adhesive product subject to this subchapter shall ensure that all products clearly display the following information on each product container which is manufactured on or after January 1, 2005:

(1) The aerosol adhesive category as specified in § 130.211 (relating to table of standards) or an abbreviation of the category shall be displayed.

(2) The applicable VOC standard for the product that is specified in § 130.211 expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the Department, as provided in §§ 130.451—130.464 (relating to ACP for consumer products).

(3) If the product is included in an alternative control plan approved by the Department, and the product exceeds the applicable VOC standard specified in § 130.211, the product shall be labeled with the term “ACP” or “ACP product.”

(4) If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed.

(5) If the manufacturer or responsible party uses an abbreviation as allowed by this section, an explanation of the abbreviation shall be filed with the Department before the abbreviation is used.

(b) The information required in § 130.371(a) shall be displayed on the product container so that it is readily observable without removing or disassembling a portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing product packaging.

**REPORTING REQUIREMENTS**

**§ 130.391. Required reporting of information to Department.**

Upon 90 days written notice, the Department may require a responsible party to report information for a consumer product the Department may specify.

**§ 130.392. Confidentiality.**

The information submitted by a responsible party under § 130.391 (relating to required reporting of informa-

tion to the Department) will be handled in accordance with the procedures specified in applicable Pennsylvania confidentiality requirements upon request by the responsible party.

**VARIANCES**

**§ 130.411. Application for variance.**

A person who cannot comply with §§ 130.211—130.216 (relating to standards), because of extraordinary reasons beyond the person’s control, may apply in writing to the Department for a variance. The variance application shall set forth:

(1) The specific grounds upon which the variance is sought.

(2) The proposed dates by which compliance with the provisions of § 130.211 (relating to table of standards) will be achieved.

(3) A compliance report reasonably detailing the methods by which compliance will be achieved.

**§ 130.412. Variance orders.**

A variance order shall specify a final compliance date by which the requirements of §§ 130.211—130.216 (relating to standards) will be achieved. A variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of applicable Commonwealth laws and regulations.

**§ 130.413. Termination of variance.**

A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with a term or condition of the variance.

**§ 130.414. Modification of variance.**

Upon the application of a person, the Department may review, and for good cause, modify or revoke a variance from requirements of §§ 130.211—130.216 (relating to standards) after holding a public hearing in accordance with the provisions of applicable Commonwealth regulations.

**TEST METHODS**

**§ 130.431. Testing for compliance.**

(a) Testing to determine compliance with this subchapter shall be performed by one of the following:

(1) Using CARB Method 310, *Determination of Volatile Organic Compounds (VOC) in Consumer Products*, adopted September 25, 1997, and as last amended on September 3, 1999.

(2) Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the Department.

(3) Calculation of the VOC content from records of the amounts of constituents used to make the product under the following criteria:

(i) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records shall be kept for at least 3 years.

(ii) For the purposes of this section, the VOC content shall be calculated according to the following equation:

$$\text{VOC Content} = \left( \frac{B - C}{A} \right) \times 100$$

where,

A = total net weight of unit (excluding container and packaging)

B = total weight of all VOCs per unit.

C = total weight of VOCs exempted under §§ 130.331—130.352 per unit

(iii) If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this section.

(b) Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 (May 25, 1990).

(c) Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(d) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (Sept. 28, 1990).

(e) A person may not create, alter, falsify or otherwise modify records so that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and other test, processes or records used in connection with product manufacture.

#### ACP FOR CONSUMER PRODUCTS

##### § 130.451. Alternative methods of compliance.

The purpose of this section is to provide an alternative method to comply with the Table of Standards specified in § 130.211 (relating to table of standards). This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate alternative control plans for consumer products, as specified in this subchapter. Only responsible ACP parties for consumer products may enter into an ACP.

##### § 130.452. Exemption.

A manufacturer of consumer products which has been granted an ACP Agreement by the CARB under Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the CCR shall be exempt from § 130.211 (relating to table of standards) for the period of time that the CARB ACP Agreement remains in effect provided that all ACP Products within the CARB ACP Agreement are contained in § 130.211. A manufacturer claiming such an ACP Agreement on this basis shall submit to the Department a copy of the CARB ACP decision (that is, the Executive Order), including the conditions established by CARB applicable to the exemption.

##### § 130.453. Request for exemption.

(a) Manufacturers of consumer products that have been granted an ACP Agreement under the ACP provision in Subchapter 8.5, Article 4, sections 94540—94555, of Title 17 of the CCR based on California specific data, or that have not been granted an exemption by the CARB may seek an ACP Agreement with the Department.

(b) The Department will not approve an ACP submitted by a responsible ACP party if the Department determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this subchapter, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

##### § 130.454. Recordkeeping and availability of requested information.

(a) Information specified in the ACP Agreement approving an ACP shall be maintained by the responsible ACP party for at least 3 years after the records are generated. The records shall be clearly legible and maintained in good condition during this period.

(b) The records specified in this section shall be made available to the Department:

(1) Immediately upon request during an onsite visit to a responsible ACP party.

(2) Within 5 working days after receipt of a written request from the Department.

(3) Within a time period mutually agreed upon by both the Department and the responsible ACP party.

##### § 130.455. Surplus reductions and surplus trading.

(a) The Department will issue surplus reduction certificates which establish and quantify, to the nearest pound of VOC reduced, surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to or transferred to a responsible ACP party operating under an ACP, as provided in this section. Surplus reductions will be calculated by the Department at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates do not constitute instruments, securities or other form of property.

(b) The issuance, use and trading of all surplus reductions shall be subject to the following provisions:

(1) For the purposes of this section, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in § 130.211 (relating to table of standards) may not be used to generate surplus reductions.

(2) Surplus reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under an approved ACP.

(3) Surplus reductions are valid only after the Department has issued an ACP agreement under this section.

(4) Surplus reductions issued by the Department may be used by the responsible ACP party who generated the surplus until the reductions expire or are traded or until the ACP is canceled under this section.

(5) Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

(6) Except as provided in this section, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

(7) While valid, surplus reductions can be used only for one of the following purposes:

(i) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period.

(ii) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided the reconciliation is part of the reconciliation of shortfalls plan approved by the Department under this section.

(8) A valid surplus reduction shall be in effect starting 5 days after the date of issuance by the Department, for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

(9) At least 5 working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the Department in writing of the transfer. The notification shall include the following:

- (i) The date the transfer is to become effective.
- (ii) The date the surplus reductions being traded are due to expire.
- (iii) The amount (in pounds of VOCs) of surplus reductions that are being transferred.
- (iv) The total purchase price paid by the buyer for the surplus reductions.
- (v) The contact persons, names of the companies, street and mail addresses and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions.

(vi) A copy of the Department-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

(10) Surplus reduction credits shall only be traded between ACP products for consumer products.

**§ 130.456. Limited-use surplus reduction credits for early reformulations of ACP products.**

(a) For the purposes of this subsection, "early reformulation" means an ACP product which is reformulated to result in a reduction in the product's VOC content, and which is sold, supplied or offered for sale in this Commonwealth for the first time during the 1 year (365-day) period immediately prior to the date on which the application for a proposed ACP is submitted to the Department. "Early reformulation" does not include reformulated ACP products which are sold, supplied or offered for sale in this Commonwealth more than 1 year prior to the date on which the ACP application is submitted to the Department.

(b) If requested in the application for a proposed ACP, the Department will, upon approval of the ACP, issue

surplus reduction credits for early reformulations of ACP products, provided that the following documentation has been provided by the responsible ACP party to the satisfaction of the Department:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level which is below the pre-ACP VOC content of the product, or below the applicable VOC standards in § 130.211 (relating to table of standards), whichever is the lesser of the two.

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets in this Commonwealth within the time period specified in this section.

(3) Accurate sales records for the early reformulated ACP product which meets the definition of "enforceable sales records" in § 130.202 (relating to definitions), and which demonstrate that the enforceable sales for the ACP product are at least 75.0% of the gross Pennsylvania sales for the product.

(4) Accurate documentation for the early reformulated ACP product which meets the requirements specified in this section, and which identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in this section.

(c) Surplus reduction credits issued under this section shall be calculated separately for each early reformulated ACP product by the Department according to the following equation:

$$SR = \text{Enforceable Sales} \times \frac{((VOC\ Content)_{initial} \times (VOC\ Content)_{final})}{100}$$

where,

SR = Surplus reductions for the ACP product, expressed to the nearest pound

Enforceable

Sales = The enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product,

VOC

Content<sub>initial</sub> = The Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 3 (a), whichever is the lesser of the two, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product,

VOC

Content<sub>final</sub> = The VOC Content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product.

(d) The use of surplus reduction credits issued under this section shall be subject to the following provisions:

(1) Surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and may not be used for another purpose.

(2) Surplus reduction credits may not be transferred to, or used by, another responsible ACP party.

(3) Except as provided in this section, surplus reduction credits shall be subject to the requirements applicable to surplus reductions and surplus trading, as specified in this section.

**§ 130.457. Reconciliation of shortfalls.**

(a) At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period, as specified in the ACP agreement approving the ACP. Upon receipt of this information, the Department will determine the amount of a shortfall that has occurred during the compliance period, and notify the responsible ACP party of this determination.

(b) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP, within 30 working days from the date of written notification of a shortfall by the Department.

(c) Shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

(d) The requirements specified in the ACP agreement approving an ACP, including the applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

**§ 130.458. Notification of modifications to an ACP by the responsible ACP party.**

(a) *Modifications that do not require Department preapproval.* The responsible ACP party shall notify the Department, in writing, of a change in the following with respect to an ACP product:

- (1) Product name.
- (2) Product formulation.
- (3) Product form.
- (4) Product function.
- (5) Applicable product category.
- (6) VOC content.
- (7) LVP content.
- (8) Date-codes.
- (9) Recommended product usage directions.

(b) *Notification.* The notification shall be submitted no later than 15 working days from the date the change occurs. For each modification, the notification shall fully explain the following:

- (1) The nature of the modification.
- (2) The extent to which the ACP product formulation, VOC content, LVP content or recommended usage directions will be changed.
- (3) The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period.
- (4) The effective date and corresponding date-codes for the modification.

**§ 130.459. Modifications that require Department preapproval.**

The responsible ACP party may propose modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP Agreement approving the

ACP. Proposed modifications shall be fully described in writing and forwarded to the Department. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this subchapter. The responsible ACP party shall meet all applicable requirements of the existing ACP until a proposed modification is approved in writing by the Department.

**§ 130.460. Other modifications.**

Except as otherwise provided in this section, the responsible ACP party shall notify the Department, in writing, of information that the responsible ACP party may have which may alter the information submitted. The responsible ACP party shall provide the notification to the Department no later than 15 working days from the date the information is known to the responsible ACP party.

**§ 130.461. Modification of an ACP by the Department.**

(a) If the Department determines that the enforceable sales for an ACP product are no longer at least 75.0% of the gross Pennsylvania sales for that product, or the information submitted under the approval process in this section is no longer valid, or the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, the Department will modify the ACP as necessary to ensure that the ACP meets the requirements of this subchapter and that the ACP emissions will not exceed the ACP limit.

(b) The Department will not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing in accordance with the procedures specified in applicable laws and regulations of the Commonwealth, to determine if the ACP should be modified.

(c) If an applicable VOC standard specified in § 130.211 (relating to table of standards) is modified by CARB in a future rulemaking, the Department will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of its effective date.

**§ 130.462. Cancellation of an ACP.**

An ACP shall remain in effect until:

- (1) The ACP reaches the expiration date specified in the ACP agreement.
- (2) The ACP is modified by the responsible ACP party and approved by the Department.
- (3) The ACP is modified by the Department.
- (4) The ACP includes a product for which the VOC standard specified in § 130.211 (relating to table of standards) is modified by the Department in a future rulemaking, and the responsible ACP party informs the Department in writing that the ACP will terminate on the effective date of the modified standard.
- (5) The ACP is cancelled by the Department.

**§ 130.463. Treatment of information.**

The information required by §§ 130.451—130.464 (relating to ACP for consumer products) is public information which may not be claimed as confidential. Other information submitted to the Department to meet the requirements of this subchapter will be handled in accordance with the procedures specified in applicable laws and regulations of the Commonwealth.

**§ 130.464. Other applicable requirements.**

A responsible ACP party may transfer an ACP to another responsible ACP party, provided that the following conditions are met:

(1) The Department shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least 5 working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

(2) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with the requirements of the ACP agreement approving the ACP and this subchapter.

[Pa.B. Doc. No. 01-2013. Filed for public inspection November 9, 2001, 9:00 a.m.]

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**[25 PA. CODE CH. 130]**  
**Portable Fuel Containers**

The Environmental Quality Board (Board) proposes to establish Chapter 130 (relating to standards for products) to read as set forth in Annex A.

Subchapter A (relating to portable fuel containers) will apply to persons who sell, supply, offer for sale or manufacture for sale in this Commonwealth portable fuel containers or spouts or both and portable fuel containers and spouts, for use in this Commonwealth. Subchapter A will also add definitions for terms to be used in the substantive provisions of the chapter.

This notice is given under Board order at its meeting of September 18, 2001.

**A. Effective Date**

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

**B. Contact Persons**

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663; or Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

**C. Statutory Authority**

This proposed rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (35 P.S. § 4005) which grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

**D. Background**

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The United States Environmental

Protection Agency (EPA) has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Although 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 ambient ozone while engaged in activity that involves physical exertion. Though these symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of this proposed rulemaking is to reduce the volatile organic compounds (VOCs) emitted from portable fuel containers. This proposed rulemaking is part of the Commonwealth's specific action plan to achieve and maintain the ozone National Ambient Air Quality Standard in this Commonwealth.

A number of northeastern states have also committed to developing regulations designed to reduce the amount of VOCs emitted into the environment from portable fuel containers. It is anticipated that once these states, together with California, have adopted these regulations, they will have the effect of being a "de facto" National rule.

In addition to reducing VOC emissions, the proposed rulemaking will also reduce public exposure to hazardous constituents present in gasoline such as benzene. Benzene is a toxic air contaminant and a known human carcinogen. Although the risk reductions have not been quantified, it is assumed that the spill-proof features and permeation requirement would significantly reduce benzene emissions.

This proposed rulemaking would also improve water quality aquifers, lakes and rivers. It would greatly reduce the amount of gasoline spilled onto the ground while refueling lawn, garden and small construction equipment and other machines with small gasoline engines. Many marine pleasure craft, especially personal watercrafts, are refueled using portable containers, and the threat of fuel spillage during onwater refueling is always present. The spill-proof systems would allow users of pleasure craft to refuel their engines without fuel spillage; this would eliminate the potential discharge of fuel into the aquatic environment from these activities.

This proposed rulemaking applies to all portable fuel containers or spouts, or both, except: 1) containers with capacity of less than or equal to 1 quart; 2) rapid refueling devices with capacities equal to or greater than 4 gallons, provided they are designed for use in officially sanctioned off-road motorcycle competitions; and 3) safety cans and portable marine fuel tanks that operate in conjunction with outboard motors.

Portable fuel containers or spouts, or both, must be equipped with an automatic shut-off device that stops fuel flow before the fuel tank overflows and an automatic device that closes and seals when it is removed from the fuel tank. There are also other required design specifications, all of which are intended to significantly lessen the possibility of gasoline spillage and reduce emissions.

Compliance with the proposed performance standards are designed to maximize VOC emission reductions. It is estimated that VOCs would be reduced by approximately 75% of total uncontrolled emissions from this sector once the rule is finalized.

The major implementation issues are consumer acceptance and the long life of these containers. These containers will look and operate somewhat differently than those currently on the market. However, based on experiences to date, manufacturers have indicated that consumers prefer the new product after becoming familiar with it. The Commonwealth, through the Ozone Transport Commission (OTC), has worked with manufacturers of these containers, and manufacturers have indicated that they would be able to provide the products to the market by 2003.

The Department of Environmental Protection (Department) worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this proposed rulemaking. At its May 24, 2001, meeting, AQTAC recommended adoption of the proposed rulemaking. AQTAC also recommended that the Department continue aggressive efforts with other states to support National standards for these products.

#### E. Summary of Regulatory Requirements

The proposed addition of Chapter 130 includes definitions of terms and substantive provisions as well. The definitions in § 130.102 (relating to definitions) include "ASTM," "nominal capacity," "outboard engine," "permeation," "portable fuel container," "product category," "spill-proof spout," "spill-proof system," "spout" and "target fuel tank."

The substantive provisions of Chapter 130 include under § 103.101 (relating to applicability) requirements and a cross reference to Department of Labor and Industry requirements related to portable fuel containers. Section 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts) includes, among other things, automatic shut-off spouts that stop fuel flow before the tank overflows. Section 130.104 (relating to exemptions) provides exemptions for portable fuel containers and spouts manufactured for sale and use outside of this Commonwealth. Innovative products exemptions are provided for in § 130.105 (relating to innovative products) to encourage the design and manufacture of products that will result in cumulative VOC emissions below those types of containers currently in the market. Section 130.106 (relating to administrative requirements) provides for recordkeeping and labeling. Under § 130.107 (relating to variances), a person or manufacturer that cannot comply with Chapter 130 due to extraordinary circumstances beyond that person's reasonable control may request a variance. Test procedures to determine if performance standards for portable fuel containers and spouts have been met are specified in § 130.108 (relating to test procedures).

These regulatory provisions, if approved, will be submitted to the Environmental Protection Agency (EPA) as an amendment to the State Implementation Plan (SIP).

#### F. Benefits and Costs

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulations.

##### *Benefits*

Overall, the citizens of this Commonwealth will benefit from these required changes because they will result in improved air quality by reducing ozone precursor emissions and encourage new technologies and practices, which reduce emissions. Moreover, it is also anticipated that adoption of this rulemaking will save consumers money because it will result in reduced evaporative loss from gasoline.

#### *Compliance Costs*

Manufacturers indicate that the requirements may add an additional \$6 to \$10 to the cost of containers. Cost to residents of this Commonwealth is estimated to be approximately \$3 million annually with an estimated VOC emission reduction to be approximately 7,500 tons per year. If the value of the emission reductions of gasoline saved is factored in, the net cost to citizens of this Commonwealth will be reduced to be approximately \$500,000.

#### *Compliance Assistance Plan*

The Department will continue to work with the other states in the northeast, with the OTC and with the National product manufacturers to ensure their understanding of the requirements. In addition, the Department is exploring opportunities for partnering with organizations to facilitate the transition to the new products.

#### *Paperwork Requirements*

The regulatory revisions will not increase the paperwork that is already generated during the normal course of business operations.

#### G. Sunset Review

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

#### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 26, 2001, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days following the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections prior to final publication of the amendments.

#### I. Public Comments.

*Written comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by January 16, 2002. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by January 16, 2002. The one-page summary will be provided to each member of the Board

in the agenda packet distributed prior to the meeting at which the final-form rulemaking will be considered.

*Electronic comments*—Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by January 16, 2002.

*J. Public Hearings*

The Board will hold three public hearings for the purpose of accepting comments on this proposal. The hearings will be held at 1 p.m. as follows:

December 11, 2001, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA.

December 13, 2001, Department of Environmental Protection, Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA.

December 17, 2001, Department of Environmental Protection, Southeast Regional Office, Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA.

Persons wishing to present testimony at a hearing are requested to contact Debra Failor at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aide, service or other accommodation to participate should contact Debra Failor at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

DAVID E. HESS,  
Chairperson

**Fiscal Note:** 7-369. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE III. AIR RESOURCES**

**CHAPTER 130. STANDARDS FOR PRODUCTS**

**Subchapter A. PORTABLE FUEL CONTAINERS**

- Sec. 130.101. Applicability.
- 130.102. Definitions.
- 130.103. Performance standards for portable fuel containers and spill-proof spouts.
- 130.104. Exemptions.
- 130.105. Innovative products.
- 130.106. Administrative requirements.
- 130.107. Variances.
- 130.108. Test procedures.

**§ 130.101. Applicability.**

Except as provided in § 130.104 (relating to exemptions), this article applies to a person who sells, supplies,

offers for sale, or manufactures for sale in this Commonwealth portable fuel containers or spouts or both portable fuel containers and spouts for use in this Commonwealth. For additional requirements, see section 7 of the Combustible and Flammable Liquids Act (35 P. S. § 1247(c)) and 37 Pa. Code § 11.7 (relating to container construction).

**§ 130.102. Definitions.**

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

*ASTM*—The American Society for Testing and Materials.

*Nominal capacity*—The volume indicated by the manufacturer that represents the maximum recommended filling level.

*Outboard engine*—A spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

*Permeation*—The process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

*Portable fuel container*—A container or vessel with a nominal capacity of 10 gallons or less intended for reuse that is designed or used primarily for receiving, transporting, storing and dispensing fuel.

*Product category*—The applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate and permeation rate, as applicable, as determined by the Commonwealth.

*Spill-proof spout*—A spout that complies with the performance standards specified in § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts).

*Spill-proof system*—A configuration of portable fuel container and firmly attached spout that complies with all of the performance standards in § 130.103(a).

*Spout*—A device that can be firmly attached to a portable fuel container for conducting pouring through which the contents of a portable fuel container can be dispensed.

*Target fuel tank*—A receptacle that receives fuel from a portable fuel container.

**§ 130.103. Performance standards for portable fuel containers and spill-proof spouts.**

(a) Except as provided in § 130.104 (relating to exemptions), a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a portable fuel container or spout, or a portable fuel container and spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof systems:

- (1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.
- (2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.
- (3) Has only one opening for both filling and pouring.
- (4) Provides a fuel flow rate and fill level of one of the following:



(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of:

(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.

(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on an accompanying package.

(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.

(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

(5) Does not exceed a permeation rate of 0.4 grams per gallon per day.

(6) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.

(b) Except as provided in § 130.104, a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof spouts:

(1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

(2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

(3) Provides a fuel flow rate and fill level of one of the following:

(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of one of the following:

(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.

(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on an accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.

(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

(4) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.

(c) The test procedures for determining compliance with the performance standards in this section are set forth in § 130.108 (relating to test procedures). The

manufacturer of portable fuel containers or spouts or both portable fuel containers and spouts shall perform the tests for determining compliance as set forth in § 130.108 to show that its product meets the performance standards of this section prior to allowing the product to be offered for sale in this Commonwealth. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale in this Commonwealth and make those test results available to the Department within 60 days of request.

(d) Notwithstanding subsections (a) and (b), a portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003, may be sold, supplied or offered for sale until January 1, 2004, if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

#### § 130.104. Exemptions.

(a) This subchapter does not apply to a portable fuel container or spout or both portable fuel container and spout manufactured in this Commonwealth for shipment, sale and use outside of this Commonwealth.

(b) This subchapter does not apply to a manufacturer or distributor who sells, supplies or offers for sale in this Commonwealth a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards specified in § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts), if the manufacturer or distributor can demonstrate the following:

(1) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of this Commonwealth.

(2) The manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout or both portable fuel container and spout is not distributed in this Commonwealth.

(c) This subchapter does not apply to portable fuel containers with a nominal capacity less than or equal to 1 quart.

(d) This subchapter does not apply to rapid refueling devices, with nominal capacities greater than or equal to 4 gallons, provided the devices are designed for use in officially sanctioned off-highway motorcycle competitions, or either create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

(e) This subchapter does not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

#### § 130.105. Innovative products.

The Department may exempt a portable fuel container or spout or both portable fuel container and spout from one or more of the requirements of § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts) if a manufacturer demonstrates to the satisfaction of the Department that, due to the product's design, delivery system or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category as determined from applicable testing.

(1) An applicant shall apply in writing to the Commonwealth for an innovative product exemption claimed under this section. The application shall include the supporting documentation that quantifies the emissions from the innovative product, including the actual physical test methods used to generate the data. In addition, the applicant shall provide information necessary to enable the Department to establish enforceable conditions for granting the exemption.

(2) For a portable fuel container or spout or both portable fuel container and spout for which an innovative product exemption has been granted under this section, the applicant shall notify the Department in writing at least 30 days before the applicant changes a product's design, delivery system or other factors that may effect the VOC emissions during recommended usage. The applicant shall also notify the Department within 30 days after the applicant learns of information that would alter the emissions estimates submitted to the Department in support of the exemption application.

(3) If the performance standards specified in § 130.103 are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in this section, have no force and effect as of the effective date of the amended performance standards.

(4) If the Department believes that a portable fuel container or spout or both portable fuel container and spout for which an exemption has been granted no longer meets the criteria for an innovative product specified in this section, the Department may revoke or modify the exemption.

#### § 130.106. Administrative requirements.

(a) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103(a) (relating to performance standards for portable fuel containers and spill-proof spouts) shall clearly display the following on each spill-proof system:

- (1) The phrase "Spill-Proof System."
- (2) A date of manufacture or representative date.
- (3) A representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with § 130.103(a).

(b) Each manufacturer of a spout subject to and complying with § 130.103(b) shall clearly display the following on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

- (1) The phrase "Spill-Proof Spout."
- (2) A date of manufacture or representative date.
- (3) A representative code identifying the spout as subject to and complying with § 130.103(b).

(c) Each manufacturer subject to subsection (a) or (b) shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on an accompanying package.

(d) Each manufacturer of a spout subject to subsection (b) shall clearly display the make, model number and size of only those portable fuel containers the spout is designed to accommodate and can demonstrate compliance with § 130.103(a) on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label affixed thereto.

(e) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103 that, due to its design or other features cannot be used to refuel one or more on-road motor vehicles, shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater.

#### § 130.107. Variances.

(a) A person or manufacturer who cannot comply with § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts), due to extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall include the following:

- (1) The specific grounds upon which the variance is sought.
- (2) The proposed dates by which compliance with § 130.103 will be achieved.
- (3) A compliance report detailing the methods by which compliance will be achieved.

(b) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with a term or condition of the variance.

(c) Upon the application of a person, the Department may review and modify or revoke a variance from § 130.103.

#### § 130.108. Test procedures.

(a) Testing to determine compliance with § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts) shall be performed by using the following test procedures:

(1) "Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, which is incorporated herein by reference.

(2) "Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000, which is incorporated herein by reference.

(3) "Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, which is incorporated herein by reference.

(b) Testing to determine compliance with § 130.103(a) shall be performed by using all test procedures in subsection (a) and "Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000, which is incorporated herein by reference.

[Pa.B. Doc. No. 01-2014. Filed for public inspection November 9, 2001, 9:00 a.m.]

## GAME COMMISSION

[58 PA. CODE CHS. 135, 141 AND 143]

All-Terrain Vehicles; Elk Hunting; Return Postage Fee

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its October 2, 2001, meeting, proposed the following amendments:

Amend § 135.50 (relating to definitions) to establish weight and width specification for all-terrain vehicles (ATVs) not defined as Class I ATVs under 75 Pa.C.S. Chapter 77 (relating to Snowmobile and All-Terrain Vehicle Law) (ATV law) and § 135.53 (relating to operation of ATVs on designated State game land roads by permitted persons) to accurately reflect and abide by the changes in the ATV law.

Amend § 141.42 (relating to big game animal hunting roster) by adding elk to ensure elk hunters may not cooperate to hunt elk in groups larger than 25 persons.

Amend § 143.10 (relating to fee for return postage) to allow the Director to establish return postage fees commensurate with changing first-class postage rates.

These proposed amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for these proposed amendments is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

These proposed amendments were made public at the October 2, 2001, meeting of the Commission and comments on these proposed amendments can be sent to the Director of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until December 28, 2001.

*Proposed Amendments to §§ 135.50 and 135.53*

1. *Introduction*

The act of June 25, 2001 (P. L. 701, No. 68) (Act 68) amended the ATV law to change the definitions of Class I and Class II ATVs. Class II ATVs no longer have a maximum width or weight. Section 135.50 incorporates these definitions. In addition, sections 7711.1 and 7711.2 of the ATV law (relating to registration of dealers; and registration of snowmobiles and registration and issuance of certificates of titles for ATVs) were amended to require the display of registration plates on ATVs. To adjust for these changes, the Commission, at its October 2, 2001, meeting, proposed amending § 135.50 to put width and weight limits on ATVs that can be used on State game lands and amending § 135.53 to require the display of a valid registration plate on ATVs used on State game lands.

These proposed amendments were made under the authority contained in section 2901(b) of the code (relating to authority to issue permits).

2. *Purpose and Authority*

As was indicated in the Introduction, Act 68 changed the definition of Class II ATVs to eliminate width and weight restrictions. Since ATVs of an excessive size can cause damage to State game lands, the Commission has proposed to retain the limitation for ATVs permitted to go on State game lands. Act 68 also changed sections 7711.1 and 7711.2 of the ATV law to require the display of registration plates on ATVs. With these changes, the requirement of displaying a valid decal currently contained in § 135.53 is superseded by the registration plate requirement.

Section 2901(b) of the code provides that the Commission may "... promulgate regulations to control the activities which may be performed under the authority of any permit issued." This provision provides the authority for the proposed amendments.

3. *Regulatory Requirements*

The proposed amendments will retain the size limitations on ATVs that may be used on State game lands that

existed prior to the effective date of Act 68 and will require the displaying of a valid registration plate rather than a decal.

4. *Persons Affected*

Disabled person permit holders desiring to use ATVs on State game lands will be affected by the proposed amendments.

5. *Cost and Paperwork Requirements*

The proposed amendments should not result in any additional cost or paperwork.

*Proposed Amendment to § 141.42*

1. *Introduction*

To more effectively manage the elk population of this Commonwealth and to standardize hunting methods, the Commission, at its October 2, 2001, meeting, proposed amending § 141.42(e) to limit the number of individuals in parties hunting elk to 25 persons. Section 2102 of the code (relating to regulations) directs the Commission to promulgate regulations concerning the ways, manner, methods and means of hunting. This provision provides the authority for the proposed amendment.

2. *Purpose and Authority*

The act of December 20, 2000 (P. L. 452, No. 111) added section 2705(15) of the code (relating to classes of licenses) which provides for issuance by the Commission of elk hunting licenses. In addition, the Commission has adopted regulations providing for an elk hunting season in this Commonwealth in 2001. The Commission is now in the process of standardizing requirements and limitations for elk hunting with hunting of other big game species. The Commission has therefore proposed amending § 141.42(e) to limit parties hunting elk to 25 persons to promote safety and fair chase.

Section 2102 of the code provides that: "The commission shall promulgate such regulations as it deems necessary and appropriate concerning . . . the ways, manner, methods, and means of hunting or furtaking . . ." The amendment is proposed under this authority.

3. *Regulatory Requirements*

The proposed amendment will limit the number of individuals who can be involved in hunting elk together to 25. This is also currently true of parties hunting deer and bear.

4. *Persons Affected*

Individuals hunting elk either as license holders or as guides will be effected by the proposed amendment.

5. *Cost and Paperwork Requirements*

The proposed amendment should not result in any additional cost or paperwork.

*Proposed Amendment to § 143.10*

1. *Introduction*

In recent years, the Commission has experienced increasing sales of hunting and furtaking licenses by means of mail, fax and the Internet. In June 2001, the Commission added § 143.10 providing for a \$1.50 fee per license order to cover postage and packaging costs. Since that recent change, the actual cost per order has increased to \$1.95. To deal with rapidly changing costs, the Commission, at its October 2, 2001, meeting, proposed amending § 143.10 to allow the Executive Director to change the fee based on postage rates. This amendment is proposed on

the basis of section 2722(g) of the code (relating to authorized license-issuing agents).

2. Purpose and Authority

As was indicated in the Introduction, although the Commission recently established a fee for postage and packaging of hunting and furtaking licenses ordered by mail, fax or on the Internet, the fee is already too low. To provide maximum flexibility, the Commission is proposing to amend § 143.10 to allow the fee to be set by the Executive Director, based on first class postage rates.

Section 2722(g) of the code directs the Commission to adopt regulations for "...The administration, control, and performance of activities conducted pursuant to the provisions of this chapter." This section provides the authority for the proposed amendment.

3. Regulatory Requirements

The proposed amendment will allow increases of fees for postage and packaging for licenses ordered by mail, fax or the Internet by order of the Executive Director.

4. Persons Affected

Individuals applying for hunting or furtaking licenses by mail, fax or the Internet may be affected by the proposed amendment.

5. Cost and Paperwork Requirements

The proposed amendment may result in additional cost to license buyers for postage and packaging.

Effective Date

The proposed amendments will be effective on final-form publication in the Pennsylvania Bulletin and will remain in effect until changed by the Commission.

Contact Person

For further information regarding these proposed amendments, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS, Executive Director

Fiscal Note: 48-136. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter C. STATE GAME LANDS

§ 135.50. Definitions.

The following words and terms, when used in this section and §§ 135.49 and 135.51—135.56, have the following meanings, unless the context clearly indicates otherwise:

ATV—All-terrain vehicle—A [motorized vehicle] Class I ATV as defined in 75 Pa.C.S. § 7702(1)[ — ] and (3) (relating to definitions), or a motorized off-highway vehicle 58 inches or less in width, having a dry weight of 900 pounds or less traveling on four or more low-pressure tires and having a bench seat, which complies with restrictions in 75 Pa.C.S. § 7702(3).

\* \* \* \* \*

§ 135.53. Operation of ATVs on designated State game land roads by permitted persons.

Permitted persons may operate an ATV on designated State game land roads under the following conditions:

\* \* \* \* \*

(3) The ATV is registered with the Department of Conservation and Natural Resources and is displaying the valid [ decal ] registration plate as required under 75 Pa.C.S. [ § 7712(a) and (b) (relating to registration of snowmobiles and registration and issuance of certificates of title for ATVs) ] §§ 7711.1 and 7711.2 (relating to registration of snowmobile or ATV; and limited registration of snowmobile or ATV).

\* \* \* \* \*

CHAPTER 141. HUNTING AND TRAPPING

Subchapter C. BIG GAME

§ 141.42. Big game animal hunting roster.

\* \* \* \* \*

(e) Parties hunting deer [ and ], bear or elk shall be limited to 25 persons.

\* \* \* \* \*

CHAPTER 143. HUNTING AND FURTKAKER LICENSES

Subchapter A. GENERAL

§ 143.10. Fee for return postage.

An additional fee [ of \$1.50 ], based on prevailing first-class postage rates and set through written authorization of the Executive Director, shall be remitted by an applicant who applies for a general hunting or furtaker license by mail order, fax or over the Internet. For this fee, licenses will be returned to applicants by standard first-class mail.

[Pa.B. Doc. No. 01-2015. Filed for public inspection November 9, 2001, 9:00 a.m.]

[58 PA. CODE CH. 147]

Wildlife Rehabilitation; Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 2, 2001, meeting, proposed the following amendments:

Amend §§ 147.301—147.304, 147.306, 147.308 and 147.309. With the advice of cooperation of the Wildlife Rehabilitation Council, the Commission wanted to apply some needed changes in the regulations to make the Commission's rehabilitation program more functional and easier to administer. These proposed amendments will help to clarify the various aspects of this program.

Amend § 147.553 (relating to permit) to establish posting requirements for farms enrolled in the deer control program.

These proposed amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for these proposed amendments is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

These proposed amendments were made public at the October 2, 2001, meeting of the Commission and comments on these proposed amendments can be sent to the Director of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until December 28, 2001.

*Proposed Amendments to §§ 147.301—147.309*

### 1. Introduction

The Commission has had regulations relating to wildlife rehabilitation permits in Subchapter P (relating to wildlife rehabilitation) since 1992. Although the regulations have generally worked well, the Commission decided to propose some modifications. Therefore, at its meeting held on October 2, 2001, the Commission proposed amending §§ 147.301—147.304, 147.306, 147.308 and 147.309. These amendments are proposed under authority contained in section 2901(b) of the code (relating to authority to issue permits).

### 2. Purpose and Authority

As was pointed out in the Introduction, the Commission has had regulations relating to wildlife rehabilitation permits for approximately 9 years. The Commission has decided to amend sections as follows:

§ 147.301—Defines “assistant” and redefines “wildlife rehabilitation.”

§ 147.302(a)(5)—Authorizes rehabilitator use of unlicensed volunteers.

§ 147.302(b)—Authorizes the holding of injured wildlife by a licensed veterinarian for up to 48 hours before notifying the Commission and requires transfer to a licensed rehabilitator.

§ 147.302(j)—Allows disposal of terminated wildlife in an appropriate manner.

§ 147.302(k)—Requires submission of a copy of permit records annually by July 30.

§ 147.302(o)—Makes renewal of permit contingent upon compliance with all relevant legal requirements.

§§ 147.303(b)(6) and 147.304(a)(1)(iv)—Changes “passerines” to “nonraptor” avian species for purposes of identifying types of wildlife.

§§ 147.303(b)(7) and 147.304(d)—Eliminates the master class of permit.

§ 147.304(c)(1)(ii)—Eliminates the requirement of passing a written test and requires submission of photographs or a videotape of the permittee’s facility.

§ 147.306(b)(4)—Allows submission of a videotape of facilities for endangered or threatened species certification.

§ 147.306(c)—Requires attendance at a certification workshop or seminar for endangered or threatened species certification.

§ 147.308(a)—Allows approval by the council and the Commission of equivalent training for certification.

§ 147.309(d)(3)—Prohibits free flying by any species not just avian species.

Section 2901(b) of the code authorizes the Commission to “. . . as deemed necessary to properly manage the game or wildlife resources, . . . promulgate regulations for the issuance of any permit and . . . to control the activities which may be performed under authority of any permit issued.” This section authorizes the proposed amendments.

### 3. Persons Affected

Individuals wishing to engage in wildlife rehabilitation activities will be affected by the proposed amendments.

### 4. Cost and Paperwork Requirements

The proposed amendments should not result in any substantial additional cost or paperwork.

*Proposed Amendment to § 147.553*

### 1. Introduction

The Commission, at its June 12, 2001, meeting, finally adopted the deletion of § 139.16. Posting of deer damage areas under § 139.16 was a prerequisite to obtaining a deer control permit under Subchapter R (relating to deer control). As a result, the Commission, at its October 2, 2001, meeting proposed amending § 147.553 by adding paragraph (3) requiring posting of the property. Section 2901(b) of the code authorizes the Commission to promulgate regulations to control activities performed under authority of a permit.

### 2. Purpose and Authority

As a result of the Commission’s adopting of concurrent antlerless and antlered deer seasons, the need for a special season for deer damage areas was eliminated and § 139.16 was deleted. Participation in the deer damage farm program, including posting of the property involved, was a prerequisite to obtaining an agricultural deer control permit under Subchapter R. The Commission has decided to retain the posting requirement of the deer damage farm program and has therefore proposed adding the posting requirement to § 147.553.

Section 2901(b) of the code authorizes the Commission to promulgate regulations to control activities which may be performed under the authority of a permit. This section provides the authority for the proposed amendment.

### 3. Regulatory Requirements

The proposed amendment will continue the requirement that signs be posted on boundaries and along public roads identifying a farm as experiencing deer damage as a prerequisite to obtain an agricultural deer control permit.

### 4. Persons Affected

Individuals owning or leasing farms experiencing deer damages and hunters desiring to hunt on the land would be affected by the proposed amendments.

### 5. Cost and Paperwork Requirements

The proposed amendments will continue an existing requirement and therefore should not result in any additional cost or paperwork.

### Effective Date

The proposed amendments will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

### Contact Person

For further information regarding these amendments, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-137. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter P. WILDLIFE REHABILITATION

§ 147.301. Definitions.

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

**Assistant**—Individuals appointed by the wildlife rehabilitator to provide food and housing for wildlife being rehabilitated.

\* \* \* \* \*

**Wildlife rehabilitation**—The treatment and temporary care [provided for injured or displaced wildlife] care of injured, diseased and displaced wildlife, and the subsequent release of healthy wildlife to appropriate habitats in the wild.

\* \* \* \* \*

§ 147.302. General.

(a) The Director may issue a permit to an individual who meets the requirements of 34 Pa.C.S. § 2901(a) (relating to authority to issue permits) and this subchapter for the purpose of wildlife rehabilitation, wildlife capture and transportation, and educational use of rehabilitation wildlife.

\* \* \* \* \*

(5) Permitted wildlife rehabilitators may use unlicensed volunteers under their supervision, at their facility, provided that they maintain current records including name, address and phone number.

(b) A licensed veterinarian may accept injured wildlife for emergency treatment without a permit, if the wildlife is not held for more than 48 hours before [transfer to] contacting the Commission or a wildlife rehabilitator. Wildlife shall be transferred to a properly permitted rehabilitator as soon as specialized veterinarian care is not required. This period may be extended by the district wildlife conservation officer if necessary for completion of the emergency treatment.

\* \* \* \* \*

(j) Wildlife which is terminated shall be surrendered to the Commission as required, or disposed of in an appropriate manner.

(k) Records shall be kept by the permittee on forms supplied by the Commission and a copy shall be submitted annually with the application for permit renewal by July 30.

\* \* \* \* \*

(o) The renewal of a permit is contingent upon the permittee's compliance with relevant State and Federal statutes and this subchapter. Failure to comply with one or more conditions of the permit or this [subsection] subchapter will be sufficient cause for recall of the permit.

§ 147.303. Permit applications.

\* \* \* \* \*

(b) Each application shall include the following:

\* \* \* \* \*

(6) The type of wildlife. (Mammals, [passerines] nonraptor avian species, raptors [or] of all species).

(7) The permit class. (Novice[, ] or general [or master]—wildlife rehabilitation only).

\* \* \* \* \*

§ 147.304. Wildlife rehabilitation permits.

(a) *Wildlife rehabilitation permits.* Wildlife rehabilitation permits will be limited as follows:

(1) A maximum of two permits, including all classes, covering all species may be issued for each county with the following exceptions:

\* \* \* \* \*

(iv) Due to the issuance of permits which limit rehabilitation to specific types of wildlife (mammals, [passerines] nonraptor avian species or raptors), the number of permits issued would not exceed two of any specific species listed in this subparagraph, unless excepted by subparagraph (i), (ii) or (iii).

\* \* \* \* \*

(c) *General class wildlife rehabilitation permits.*

(1) *Qualifications.*

\* \* \* \* \*

(ii) [The applicant shall successfully pass a written examination administered by the Bureau of Law Enforcement.] Submit photographs or videotape with commentary of the permittee's facility to the Bureau of Law Enforcement for review by the council.

\* \* \* \* \*

[ (d) *Master class wildlife rehabilitation permits.*

(1) *Qualifications.*

(i) The applicant shall have actively rehabilitated wildlife for at least 5 years as a general class wildlife rehabilitator or equivalent experience approved by the Council and the Bureau of Law Enforcement.

(ii) The applicant shall successfully pass a written examination administered by the Bureau of Law Enforcement.

(iii) The applicant shall appear for and successfully pass an oral examination/interview which shall be conducted by members of the Council.

(2) *Permit conditions.*

(i) A permittee claiming equivalent experience under qualifications may not accept wildlife for rehabilitation prior to a facility's inspection and approval by the district wildlife conservation officer.

(ii) A permittee may accept wildlife as authorized by the permit, including endangered or threatened species, if additionally certified, for the purpose of rehabilitation.

(iii) A master class wildlife rehabilitator may not list more than 15 capture and transportation permittees on its permit.

(iv) A master class wildlife rehabilitator may not appoint more than 15 responsible individuals to assist in providing food and housing for wildlife being rehabilitated, with the exception of endangered or threatened species. It is the permittee's responsibility to notify the Bureau of Law Enforcement in writing of the names, addresses and telephone numbers of the appointees and necessary changes as they occur.

(v) Additional capture and transportation permittees and assistants may be listed, only with the advance approval of the Council and the Bureau of Law Enforcement. A request shall be in writing with justification for an increase. ]

§ 147.306. Endangered or threatened species certification.

\* \* \* \* \*

(b) The request shall include:

\* \* \* \* \*

(4) A description and photograph or videotape of facilities available.

(c) [ The applicant shall successfully pass a written examination administered by the Bureau of Law Enforcement. ] Attend a certification workshop or seminar as established by council and the Bureau of Law Enforcement.

§ 147.308. Training and education requirements.

(a) A wildlife rehabilitator and capture and transportation permittee will be required to attend a minimum of one training program or symposium conducted by the Council or the Commission within a 2-year period when this training is made available, or an equivalent training as approved by council.

\* \* \* \* \*

§ 147.309. Educational use of rehabilitation wildlife permits.

\* \* \* \* \*

(d) Permit conditions are as follows:

\* \* \* \* \*

(3) Human contact may not be permitted with the wildlife and the wildlife shall be restrained to preclude danger to the public or injury to the specimen. Free flying of [ an avian ] any species is prohibited.

\* \* \* \* \*

Subchapter R. DEER CONTROL AGRICULTURE

§ 147.553. Permit.

The deer control permit authorizes the permittee to enlist the aid of a limited number of subpermits. The maximum number of subpermits issued will be no more than one for every 5 acres of land that is under cultivation unless the wildlife conservation officer recommends an increase in the number due to warranted circumstances.

\* \* \* \* \*

(3) Posting. Deer control permit signs provided by the Commission shall be conspicuously posted on the boundary of and along all public roadways traversing the property by the landowner/cooperator on all contiguous acres of the farm under agreement. Posting shall be completed prior to February 1.

(4) \* \* \*

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