

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Architectural and Industrial Maintenance Coatings

The Environmental Quality Board (Board) adopts Subchapter C (relating to architectural and industrial maintenance coatings) to read as set forth in Annex A.

The final-form rulemaking adds definitions in § 130.302 (relating to definitions) for terms that are used in the substantive sections of Chapter 130 (relating to standards for products). Section 130.301 (relating to applicability) will apply to persons who supply, sell, offer for sale, manufacture, blend, repackage, apply or solicit for application architectural and industrial maintenance (AIM) coatings for use in this Commonwealth. Sections 130.303—130.311 establish, among other things, standards for volatile organic compound (VOC) content limits for those coatings, labeling requirements, reporting requirements, procedures for applying for and obtaining variances, including procedures for a public hearing and test method compliance requirements.

This order was adopted by the Board at its meeting of July 15, 2003.

A. *Effective Date*

Subchapter C will go into effect 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, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-2030; or Kristen Campfield, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The final-form 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. Further, although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respi-

ratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activities that involve physical exertion. Though the 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 final-form rulemaking is to reduce the VOCs emitted from AIM coatings. This final-form rulemaking is part of the Commonwealth's strategy to achieve and maintain the ozone standard throughout this Commonwealth. A Federal AIM coatings rule was promulgated in 1998. The Federal rule, however, did not provide the expected cost-effective and creditable VOC emission reductions originally anticipated by the Commonwealth and many other states. To capture additional emission reductions, the Commonwealth is adopting this final-form rulemaking, which is based on the Ozone Transport Commission (OTC) model rule, to reduce the allowable VOC content of AIM coatings. The Commonwealth has used the California Air Resources Board (CARB) Suggested Control Measure (SCM) and the OTC 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 Board's final-form rulemaking includes product categories covered in California, with limits effective at a date later than in California. To maximize consistency, VOC content limits for specific product categories in many cases are identical to those used in California.

This final-form rulemaking sets specific VOC content limits, in grams per liter, for 48 AIM coating categories and requires more stringent VOC content limits than the Federal rule. The limits are currently in effect in California and are known to be technologically feasible. The compliance date for the Commonwealth's limits is January 1, 2005. Manufacturers will ensure compliance with the limits by reformulating coatings and substituting coatings with compliant coatings that are already on the market.

Manufacturers producing AIM coatings will be responsible for developing and distributing compliant coatings for sale at the retail and wholesale levels. In addition, persons who sell, supply, offer for sale, blend or repackage AIM coatings will also be held accountable. Consumers should not be affected by this final-form rulemaking in that they should not notice any changes in the performance or quality of AIM coatings. Consumers may, however, experience a cost increase for certain paint products. Cost data developed by E. H. Pechan & Associates indicate the cost per ton of VOC reductions under the final-form AIM rulemaking to be approximately \$6,400 per ton of reductions. An analysis conducted by Aberdeen Proving Grounds, however, indicates that low VOC coatings are available that will result in average savings of approximately \$1.76 per gallon compared with higher VOC coatings.

The final-form rulemaking contains VOC content requirements for a wide variety of field-applied coatings, including graphic arts coatings, lacquers, primers and stains, to name a few. It also contains provisions for a variance from the VOC content limits, which can be issued only after public hearing and with conditions for achieving timely compliance. The final-form rulemaking

contains 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. There are a number of test methods that must be used to demonstrate compliance with this final-form rulemaking. Some of these test methods include those promulgated by the EPA and the South Coast Air Quality Management District of California. Enforcement of the VOC content limits and other requirements will be done by the Commonwealth. Because the Commonwealth, in conjunction with other northeastern states, met over an 18-month period with representatives of National trade associations and related industries prior to proposing this final-form rulemaking, it is important that the final-form rulemaking be implemented consistently and uniformly.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this final-form rulemaking. At its February 20, 2003, meeting, the AQTAC recommended adoption of this final-form rulemaking, with the deletion of proposed § 130.303(d) (relating to standards). The Committee recommended the deletion of § 130.303(d) because the Committee determined that the pollution prevention provisions contained in that section could result in potential enforcement inequities and inconsistencies.

The final-form rulemaking was also reviewed by the Small Business Compliance Advisory Committee (Committee) on April 23, 2003. The Committee supported the final-form rulemaking and endorsed the Department's determination that the final-form rulemaking should not include averaging provisions.

E. Summary of Regulatory Requirements and Major Changes Between Proposed and Final-Form Rulemakings

Section 130.301 states that Subchapter C is applicable to persons who supply, sell, offer for sale, manufacture, blend, repackage, apply or solicit for application an architectural or industrial maintenance (IM) coating for use in this Commonwealth.

Section 130.302 includes the following definitions of terms that will be used in the substantive provisions of Subchapter C: "adhesive," "aerosol coating product," "antenna coating," "antifouling coating," "appurtenance," "architectural coating," "bitumens," "bituminous roof coating," "bituminous roof primer," "bond breaker," "calcimine recoater," "clear brushing lacquers," "clear wood coatings," "coating," "colorant," "concrete curing compound," "concrete surface retarder," "conversion varnish," "dry fog coating," "exempt compound," "faux finishing coating," "fire-resistive coating," "fire-retardant coating," "flat coating," "floor coating," "flow coating," "form-release compound," "graphic arts coating or sign paint," "high-temperature coating," "impacted immersion coating," "industrial maintenance coating," "lacquer," "low-solids coating," "magnesite cement coating," "mastic texture coating," "metallic pigmented coating," "multicolor coating," "nonflat coating," "nonflat high gloss coating," "non-industrial use," "nuclear coating," "postconsumer coating," "pretreatment wash primer," "primer," "quick-dry enamel," "quick-dry primer, sealer and undercoater," "recycled coating," "residence," "roof coating," "rust-preventive coating," "sanding sealer," "sealer," "secondary coating (rework)," "shellac," "shop application," "solicit," "specialty primer, sealer and undercoater," "stain," "swimming pool coating," "swimming pool repair and maintenance coating," "temperature-indicator safety coating," "thermoplastic rubber coating and mastic," "tint base," "traffic marking

coating," "undercoater," "VOC—volatile organic compound," "VOC content," "varnish," "waterproofing concrete/masonry sealer," "waterproofing sealer" and "wood preservative."

Section 130.303 sets forth the quantity of VOC per liter that cannot be exceeded for coatings that are sold, supplied or offered for sale in this Commonwealth; manufactured, blended or repackaged for sale in this Commonwealth; or applied or solicited for application in this Commonwealth. VOC content limits are established for nonspecialty coating categories and specialty coatings. There are 48 coating categories regulated under this final-form rulemaking.

Section 130.304 (relating to container labeling requirements) requires that each manufacturer of coatings subject to this rule supply specific information on the coating container in which the coating is sold or distributed. Some of the information that must be displayed includes a date-code, VOC content and thinning recommendations.

Section 130.305 (relating to reporting requirements) requires that manufacturers submit reports to the Department, upon request by the Department, that specify the number of gallons sold in this Commonwealth and the methods used by the manufacturer to calculate sales in this Commonwealth.

Sections 130.306—130.310 were added at final-form rulemaking. They set forth the procedures that a person may use to apply for a variance of a limited duration with conditions for achieving compliance for AIM coating VOC content limits. The sections include a requirement for a public hearing prior to issuance, extension, modification or revocation of a variance order. When a complete variance application is received, the Department will hold the public hearing within 90 days.

Section 130.311 (relating to compliance provisions and test methods) sets forth the methods for calculating the VOC content of the coatings and the test methods, which are incorporated by reference, that are subject to the provisions of this final-form rulemaking. The test method that is current at the time the test is performed is the method that must be used.

The major changes that were made from the proposed rulemaking to the final-form rulemaking include: adding additional definitions in § 130.302 to ensure that each regulated category of coatings is clearly defined; deleting, at the AQTAC's request, proposed § 130.303(d), which would have required users to keep containers closed when not in use; adding VOC-per-liter content limits in § 130.303 for calcimine recoaters, conversion varnish, concrete surface retarders, impacted immersion coatings, lacquers (including lacquer sanding sealers), nuclear coatings and thermoplastic rubber coatings and mastic as a result of public comments received; adding §§ 130.306—130.310 to establish procedures for applying for a variance from VOC content limits, including a public hearing requirement, to allow time to comply with the limits in cases of technological infeasibility; clarifying in § 130.311 (proposed as § 130.306) that test methods used to test coatings subject to the final-form rulemaking must be the most current test method at the time testing is performed; and adding two new test methods in § 130.311 applicable to new categories added in the final-form rulemaking.

The final-form rulemaking will be submitted to the EPA as an amendment to the State Implementation Plan (SIP).

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

Several commentators indicated that many of the proposed VOC limits are not technologically feasible for the wide-ranging substrates, application environments and conditions for which a particular category of coating will be used and that the final-form rulemaking should contain revised VOC content limits for "exterior flat coatings," "nonflat coatings," "nonflat high gloss coatings," "floor coatings," "lacquers," "quick-dry coatings," "sanding sealers," "stains" and "varnishes." The Board disagrees. Although each manufacturer may not make all coatings in each category, compliant coatings are available in each category. The Board has not revised the VOC content limits in the final-form rulemaking. However, provisions have been added to the final-form rulemaking in §§ 130.306—130.310 that provide a mechanism for a person to obtain a variance from the VOC content limits if the person can demonstrate that compliance cannot be achieved because of technological infeasibility.

One commentator stated that the proposed VOC limits for flat coatings would eliminate currently available low VOC waterborne flat coatings that can be applied in cooler months when ozone is not a problem. The Board disagrees. Exterior flat coatings are currently available and are being marketed that meet the proposed limits and that are designed for application at temperatures as low as 35°F. Exterior coatings are designed for application on a variety of substrates including finished and unfinished siding, stucco, masonry, hardboard siding and similar surfaces. Interior flat coatings are available for application at temperatures above 50°F and may be applied to new or previously painted interior wallboard, plaster, ceilings and masonry, as well as primed or previously painted wood and metal.

Two commentators on behalf of the same organization indicated that the proposed VOC content limits would require that the coatings be transported and stored in heated environments to prevent freezing and destruction of the product. The Board disagrees. Numerous low VOC products have been introduced into the northeast market, including ultra-low VOC products, and there is no data to support the claim that these products experience increased damage because of freezing during storage and shipping.

Two commentators said that the testing and studies that were relied upon by CARB in setting the SCM, on which the limits in the final-form rulemaking are based, were not adequately performed or were laboratory tests that cannot be relied on for determining coating efficacy. The Board disagrees. The coating testing, coupled with actual field experience and consumer use and acceptance, indicates adequate performance of the coatings.

Two commentators on behalf of the same organization stated that the proposed rulemaking would confine virtually all exterior and unheated interior painting to the warmer months, reducing the livelihoods of painters and increasing the application of coating during the ozone season. The Board disagrees. Low VOC coatings are currently available that are formulated to provide for interior and exterior application at temperatures as low as 35°F. These coatings allow extension of the coating application period well beyond the ozone season.

Several commentators stated that the proposed VOC content limitations would result in the elimination of cost effective, durable and scrub resistant interior and exterior wall and trim coatings used for high traffic/usage/impact

or extreme exposure environments. The Board agrees that certain coatings presently marketed for these uses may not comply with the proposed rulemaking. However, low VOC replacement products are presently being marketed that provide similar performance characteristics to the higher VOC coating materials. In the event that a manufacturer cannot produce complying products because of technological infeasibility, the manufacturer may apply in writing to the Department for a variance under § 130.306 (relating to application for variance) of the final-form rulemaking.

Two commentators suggested that the definitions of "bituminous roof coating" and "bituminous roof primer" be revised by deleting the reference to "roofing" from the terms and definitions. The commentators indicated that the definitions in the proposed rulemaking, requiring labeling and formulation exclusively for roofing, would cause substantial confusion among manufacturers because some of the products are formulated for multiple purposes. The Board disagrees. The definitions of the terms in the proposed rulemaking clarified that the terms and VOC content limits apply to materials formulated and labeled exclusively for roofing application. "Bituminous roof primer" materials formulated and labeled for multiple types of uses would be limited by the "nonflat" category VOC content limit of 150 grams per liter. The Board has not revised the definitions of the terms "bituminous roof coating" and "bituminous roof primer" in the final-form rulemaking.

Two commentators commented that the proposed VOC content limit of 350 grams per liter for "bituminous roofing primer" materials may result in increased VOC emissions because at lower temperatures more low VOC content material may be required to cover the same area than would be required of higher VOC content materials. The Board agrees that the viscosity of the "bituminous roofing primer" materials may increase at lower temperatures and that under some circumstances material use may increase slightly. However, if this slight increase in material use does occur, it will be outside of the ozone season (May to September) and should not negatively impact the Commonwealth's ozone reduction efforts.

Several commentators suggested that the final-form rulemaking should contain revised VOC content limits for "interior wood clear and semi-transparent stains," "interior wood varnishes," "interior wood sanding sealers," "exterior wood primers" and "floor coatings." The Board disagrees. Coatings are available and are being marketed that meet the VOC content limits in the rulemaking, indicating the technological feasibility of the limits and consumer acceptance of the products. In the event that a manufacturer cannot formulate complying materials because of technological infeasibility, the manufacturer may apply for a variance under § 130.306 of the final-form rulemaking. The Board has not revised the VOC content limits in the final-form rulemaking.

Several commentators stated that the proposed limits for "interior wood stains," "varnishes" and "sanding sealers" are based on the assumption that complying coatings are available that meet the performance requirements for the subcategories and that the use of coatings formulated to comply with the proposed VOC content limits will result in unacceptable performance issues, including "grain raising," "lapping" and "panelization." These commentators suggested that the limits in the rulemaking should be revised. The Board does not agree that the proposed limits will produce unacceptable performance characteristics. Grain raising can be addressed with a

light sanding between coating applications. Lapping of finish materials can be addressed by proper application techniques. Complying products are being produced and marketed, indicating that the products meet customer acceptance and performance expectations and that the issues of grain raising and lapping are not significant to consumers. The most common cause of panelization is reportedly the failure of the owner to maintain the floor or the indoor environment properly. There is no indication that water-based products are not appropriate, only that the finisher should be aware and use proper procedures. In the event that a manufacturer cannot formulate complying materials because of technological infeasibility, the manufacturer may apply for a variance under § 130.306 of the final-form rulemaking. The Board has not revised the VOC content limits for the products in the final-form rulemaking.

One commentator stated that the proposed VOC content limit for "primers, sealers and undercoaters" assumes that complying products are available or that suitable substitutes can be developed for the categories. Numerous manufacturers produce complying formulations in this coating category and there is no indication in the product literature that these coatings are inadequate. Many of the coatings are marketed with claims of exceptional performance. In the event that a manufacturer cannot formulate complying materials because of technological infeasibility, the manufacturer may apply for a variance under § 130.306 of the final-form rulemaking. The Board has not changed the limits in the final-form rulemaking.

One commentator recommended that the Department revise the VOC content limit for the "floor coating" category from 250 to 400 grams of VOC per liter. The commentator indicated that reliance on testing done in California was not appropriate because testing in California has been done only on concrete and not on wood floors such as there are in the northeast. According to the commentator, coatings for wood floors need the penetrating qualities of solvent-borne floor paints. The Board does not agree that the VOC content limit should be changed for floor coatings. Floor coatings are presently available and are being marketed that meet the limits in the final-form rulemaking. In the event that a manufacturer cannot formulate complying materials because of technological infeasibility, the manufacturer may apply for a variance under § 130.306 of the final-form rulemaking. The Board has not changed the VOC content limit for floor coatings in the final-form rulemaking.

One commentator suggested that the VOC content limit for "bituminous roof primer" should be changed to 550 grams per liter to achieve necessary application properties. The Board disagrees. Information contained in the CARB "Staff Report for the Proposed Suggested Control Measure for Architectural Coatings" indicates that bituminous roofing primers meeting the limit of 350 grams currently account for in excess of 50% of the market share in California. This strongly indicates that materials that meet the limit of 350 grams per liter are readily available. The Board has not revised the VOC content limit for bituminous primers in the final-form rulemaking.

One commentator recommended the addition of a separate category for "exterior wood primers, sealers and undercoaters" with a VOC content limit of 350 grams per liter, or, as an alternative, a revision to the definition of "specialty primer" to include coatings "recommended for application to exterior wood surfaces." The commentator indicated that this change would be necessary to allow the use of solvent-borne primers on hardboard products to

prevent water penetration. The Board does not agree that this revision is necessary. A number of coating manufacturers produce complying products in the "primer, sealer and undercoater" category, including products for professional use. Certain of these complying products are for use on new or unpainted wood/wood-based products. The commentator has not provided any evidence to indicate that complying formulations that provide acceptable performance are not feasible. The Board has not made this revision in the final-form rulemaking.

One commentator indicated that many coatings will take longer to dry and cure in humid or colder weather leaving the coating more vulnerable to dirt pickup and complete failure. The Board disagrees that this is a concern. Typically, the time required for the drying of water-based coatings is significantly less than the drying time for solvent based materials. When the materials are applied according to manufacturers' specifications, the finish quality and durability are satisfactory.

One commentator questioned why the Board proposed a VOC content limit of 340 grams per liter for IM coatings instead of the limit of 250 grams per liter limit in the OTC model rule. The OTC model rule contained the option for the states to set the VOC content limit for IM coatings at 340 grams per liter. This limit is also an optional limit in certain areas of California, such as San Francisco, where cooler, damper weather conditions exist. The Board proposed the limit and retained it in the final-form rulemaking because of the need for IM coatings that can be applied in cooler and damper weather conditions as might be experienced in this Commonwealth.

Two commentators on behalf of the same organization commented that the proposed solvent content restrictions would result in poorer performing, less durable coatings and in some cases would compromise effective lower solvent waterborne coatings that have been developed to replace higher solvent coatings. The Board disagrees. Although the coatings industry has provided some information concerning performance and durability of low VOC coatings, the information is subjective and does not empirically demonstrate that the reformulated coatings do not perform adequately. Numerous coating manufacturers produce complying coatings that are described in the manufacturers' product literature and in trade publications as providing exceptional film durability, having high hiding power, resistance to fading and other desirable characteristics.

Several commentators indicated that the proposed VOC content limits would result in the need for more frequent application of coatings or the application of several coats of finish material when a single application of a coating formulated at a higher VOC content might have been satisfactory. The commentators suggested that this could result in increased VOC emissions rather than reducing emissions. The Board disagrees that the proposed VOC content limits will result in increased VOC emissions resulting from the need for more frequent application of coatings due to inadequate coating performance. Information available for products currently available that meet the proposed VOC content limits indicates that the products have application and performance characteristics equivalent to high VOC content products. The commentators have not provided technical data supporting the contention that complying coatings will result in increased VOC emissions.

Two commentators on behalf of the same organization indicated that many coatings would be difficult to apply

because of the dry time, composition and increased vulnerability to slight environmental changes. The Board disagrees that the level of difficulty of coating application and other factors will be adversely affected by the proposed VOC content limitations. Product literature supports this. When the complying products are used according to manufacturers' specifications, the user/consumer should not notice differences.

The same commentators indicated that the rulemaking would result in the elimination of small volume specialty coatings that are designed to meet special needs, such as antigraffiti coatings. The Board disagrees. Water-based, complying coatings are available in all of the categories for which standards are established in Table 1. Although some manufacturers may be required to reformulate products to meet the VOC content standards, the reformulations are feasible. For every category of coatings for which limits are established in Table 1, complying formulations are available. The VOC content limits in Table 1 have not been changed in the final-form rulemaking.

These commentators also indicated that the proposed rulemaking will result in the reduction of availability of colors for interior and exterior coatings and gloss levels. The Board disagrees. Coatings that meet the VOC content limits are available in all coating categories. The commentators have not provided data that indicates that a broad range of coating colors and sheens will not be available to meet the limits in Table 1. Information does indicate that complying products are available in interior and exterior finishes in a variety of gloss levels and a full range of colors.

One commentator indicated that the VOC content limits for interior wood sealers would result in inferior products and increased costs for consumers. The Board disagrees. A review of product data sheets indicates that there are latex sealers suitable for use on interior wood substrates, all of which would comply with the proposed VOC limit for primers, sealers and undercoaters. Compliance is technologically feasible through the use of water-based technology. The Board has not changed the VOC content limits for interior wood sealers in the final-form rulemaking.

One commentator indicated that the VOC content limit for semitransparent stains should be maintained at the current Federal limit of 550 grams per liter to assure that the level of performance of the materials is maintained. The Board disagrees. The commentator has provided no data showing that reducing the VOC content limit for semitransparent stains is not technologically feasible. The commentator has not provided data to the Department demonstrating that maintaining the VOC content limit for semitransparent stains is necessary to assure adequate performance for these materials. In the event that formulation of a specific product is determined to be technologically infeasible, the manufacturer may request a variance for the product under § 130.306.

One commentator questioned how low VOC content requirements might impact the quality of the products. Specifically, the commentator questions whether reformulation of products to meet the low VOC content might result in lower quality products that would require more frequent refinishing and, consequently, increased emissions. Based on product technical literature available for low VOC content products, the Department does not expect an increase in repainting as a result of the requirements. Manufacturer claims regarding the performance of the low VOC content materials generally indi-

cate that the reformulated products perform as well as, or better than, high VOC content products.

A commentator supported the proposed rulemaking because it will result in reduction of VOC emissions and ground level ozone. In addition, the commentator indicated that the final-form rulemaking will reduce exposure of the citizens of this Commonwealth to hazardous air pollutants (HAP). The Board agrees that the emission reductions that will result from the VOC content limits will result in reduced exposure of the citizens of this Commonwealth to HAPs and unhealthy ground-level ozone.

Several commentators suggested that the Department adopt a revised Table of Standards for coatings and other regulatory provisions that the commentator believes would achieve approximately 70% of the reductions predicted by the Department to result from the proposed rulemaking. The Board agrees that the revised Table of Standards and other suggested revisions may result in emission reductions of approximately 70% of the VOC reductions predicted for the final-form rulemaking. However, this lower level of emission reductions would be inadequate to satisfy the emission reduction requirements necessary for this Commonwealth to achieve and maintain the health-based ozone air quality standards. Furthermore, compliant coatings are available and are currently being marketed which meet the proposed limitations. The Board has not revised the Table of Standards in the final-form rulemaking to incorporate the suggested limits.

Several commentators indicated that the Department has not considered the increased emissions that will result from increased painting required because of the reduced performance of complying coatings. The Board does not agree that there will be increased emissions resulting from the use of complying coatings. Surveys in California, where restrictive coating VOC requirements have been in place for several years, indicate no increase in per capita coating use resulting from the implementation of the low VOC requirements. Furthermore, product literature for complying coatings indicates that the materials exhibit exceptional durability and performance characteristics.

One commentator suggested that the proposed rulemaking is unreasonably stringent and unnecessary for the protection of the public health, welfare and safety. The Board does not agree that the proposed rulemaking is unreasonably stringent or unnecessary. The emission reductions that will result from the regulation are necessary to satisfy SIP commitments for achievement and maintenance of the health-based ozone National Ambient Air Quality Standard (NAAQS) in the southeast Pennsylvania ozone nonattainment area and for the achievement and maintenance of the 8-hour ozone NAAQS throughout this Commonwealth.

One commentator indicated that the record does not support the emission reduction claims of the proposed rulemaking and the proposed rulemaking is arbitrary and capricious. The Board disagrees. The emission reduction estimates for the rulemaking are based on an analysis conducted for the OTC by E. H. Pechan and reported in "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules" (March 31, 2001). This analysis is based on the best available information regarding AIM coating use and formulation data available to the OTC member states regarding AIM coatings. The VOC content limits in the final-form rulemaking are

based on CARB's extensive analysis of AIM coatings and reflect coating technologies that are available.

A commentator expressed concern that certain exceptions in the rulemaking could negatively impact the VOC emission reductions anticipated from the AIM program. The commentator indicated that the effectiveness of the final-form rulemaking would be enhanced if the exceptions in § 130.303(b) were to be eliminated. The Board disagrees. The exceptions to the most restrictive VOC content limits provided for in § 130.303 are necessary to allow the use of specialized coatings where high performance characteristics are important. These exceptions are retained in the final-form rulemaking.

Two commentators on behalf of the same organization suggested that the definition of "nonflat high gloss coating" should be revised. The Board disagrees. There is no functional distinction between the definition of "nonflat high gloss coating" in the proposed rulemaking and the language submitted by the commentator. The Board has not revised the definition in the final-form rulemaking.

Several commentators suggested that the definition of "specialty primer" should be revised to include wording that would include additional coatings in this category, including coatings used to "... block odors or efflorescence..." and coatings that are "... recommended for application to exterior wood or wood-based surfaces, or for highly alkaline cement, plaster, and other cementitious surfaces." The suggested change would increase the number of coatings included under the term, including all coatings recommended for exterior wood applications. This would result in an increase in the allowable VOC content for exterior wood coatings from 100 g/l for flat coatings to 350 g/l; for nonflat coatings from 150 g/l to 350 g/l; and for nonflat high gloss coatings from 250 g/l to 350 g/l. The Board does not agree that all of the suggested changes to the definition are necessary. Complying coatings are available that perform the functions recommended by the commentators without changing the definition. Changing the definition as suggested by the commentators would allow a significant number of coatings available in low VOC formulations to be regulated at higher VOC content limits. This would result in fewer emission reductions from the rulemaking than predicted and would jeopardize achievement of the Commonwealth's necessary emission reductions. The Board has revised the definition in the final-form rulemaking by adding the phrase "... or efflorescence..." following "... to block stains..." in the first sentence.

Two commentators on behalf of the same organization suggested that the rulemaking be revised to include three additional specialty coatings categories: "conversion varnish," "thermoplastic rubber coatings" and "impacted immersion coatings." The Board agrees and has added definitions for these materials in § 130.302 and VOC content limits for these three specialty coatings categories in § 130.303 of the final-form rulemaking.

A number of commentators suggested the addition of definitions and product categories with VOC content limits for "calcimine recoaters," "conversion varnish," "concrete surface retarders," "impacted immersion coatings," "nuclear coatings" and "thermoplastic rubber coatings." The Board agrees and has added the terms and definitions for these materials in § 130.302 and VOC content limits in § 130.303 to the final-form rulemaking.

One commentator suggested that the rulemaking should contain a coating definition and VOC content limit specifically for "nuclear coatings." The commentator indi-

cated that if coating reformulation is required to meet a VOC content limit lower than the Federal AIM limit, the cost of recertifying the coatings to meet Nuclear Regulatory Commission requirements would be prohibitive. The Board agrees that there should be a separate coating definition and limit for "nuclear coatings" consistent with the Federal requirements and has made these changes to the final-form rulemaking. The Board has added a definition of "nuclear coatings" to § 130.302 and has added a VOC content limit for these materials in § 130.303 of the final-form rulemaking.

One commentator indicated that the Department should develop a separate category of products to address concerns regarding professional applications. This category should contain products labeled as "professional semi-transparent wood stain," "professional varnish" and "professional sanding sealer." The commentator suggested that the materials should be labeled "For Professional Use Only" and that these "professional" coatings should be formulated at VOC content levels higher than those in the proposed rulemaking for the "nonprofessional" materials. The Board disagrees that the final-form rulemaking should contain special categories for "professional" AIM coating materials. There is no practical way to assure that these products would be sold only to "professionals" and no practical way to enforce sales only to "professionals." Therefore, there is no assurance that any of the coatings in the product categories would be produced at "nonprofessional" coating VOC content compliance levels in Table 1 and there is no assurance that the Commonwealth would meet the required emission reductions. The Board has not added the coating categories and VOC content limits suggested by the commentator to the final-form rulemaking.

One commentator recommended that the Department revise the definition of "low solids coating" to include low solids content semitransparent stains that do not meet the proposed definition. Another commentator recommended that the definition be revised to include waterborne clear or semitransparent stain. The Board disagrees that the definition should be revised as suggested by the commentators. The changes suggested would lessen the stringency of the VOC content limitation requirements for semitransparent stains. This would reduce the emission reduction benefits of the final-form rulemaking and would jeopardize this Commonwealth's ability to meet emission reduction requirements necessary to achieve and maintain the ozone air quality standard. Semitransparent stain formulations that meet the limits in the final-form rulemaking are available in the market. The Board has not changed the definition in the final-form rulemaking. In the event that a manufacturer cannot formulate complying materials because of technological infeasibility, the manufacturer may apply for a variance under § 130.306 of the final-form rulemaking.

One commentator suggested that the Department should add a definition of "shellac" to the final-form rulemaking. The Board agrees. A definition of "shellac," a regulated category of coatings, has been added to § 130.302.

Several commentators suggested that the Department include provisions in the final-form rulemaking regarding variances consistent with the provisions in the Commonwealth's recently promulgated consumer products rulemaking published at 32 Pa.B. 4824 (October 5, 2002). The commentators believe that these provisions are necessary to provide equity and fairness by granting the same regulatory flexibility provided for consumer products. The

Board agrees that there may be situations where a person may not be able to comply with the coating VOC content requirements because of technological infeasibility. The Board has added variance provisions in §§ 130.306—130.310 in the final-form rulemaking to allow producers to apply for limited variances from VOC content requirements.

Several commentators suggested that the Department revise the rulemaking to include averaging provisions to allow coating manufacturers to utilize credits for coatings formulated below compliance levels to allow the marketing of coatings that do not comply with the regulatory limits. The Board disagrees that averaging provisions are necessary for manufacturers to achieve compliance with the VOC content requirements in the rulemaking. Complying coatings are available in each category for which VOC content limits are specified. An averaging provision is not necessary for manufacturers to comply with the proposed limits. One of the commentators who supports averaging indicates in the comments that an averaging provision “. . . would have to ensure the availability of a sufficient amount of below compliance VOC product such that there would be no *net increase* in VOC emissions from his products as a whole.” (Emphasis added.) The purpose of this final-form rulemaking is to assure VOC emission reductions, not to maintain the status quo as suggested by the commentator. In addition, adding averaging provisions to the final-form rulemaking can be extremely disadvantageous for coating manufacturers that have a limited product line with few coatings to use to generate credits for averaging. Coating manufacturers with a broad product line, especially those producing large volumes of those flat coatings that are easily formulated below the compliance levels, could generate a large quantity of credits to be used to avoid having to reformulate smaller volume coatings. This could be extremely disadvantageous for a smaller coating supplier with fewer product lines to average because the manufacturer would have to incur reformulating expenses. This competitive disadvantage could result in economic hardship and business failure of the smaller companies. The final-form rulemaking does not contain averaging provisions.

One commentator indicated that inclusion of an averaging provision in the consumer products rulemaking and not in the AIM rulemaking is arbitrary and capricious and places an unreasonable and unequal burden on the architectural coating industry. The Board disagrees. Unlike the AIM rulemaking, the consumer products rulemaking is technology-forcing. For this reason, it is appropriate to incorporate averaging provisions as a compliance option for consumer product manufacturers. The VOC content limits in the AIM rulemaking are not “technology-forcing.” Complying products are currently in the market for the regulated product categories. There is no need for averaging to meet the VOC content limits for AIM coatings. In the event that a manufacturer cannot formulate complying materials because of technological infeasibility, the manufacturer may apply for a variance under § 130.306 of the final-form rulemaking. The Board has not added averaging provisions to the final-form rulemaking.

One commentator questioned why the Department was not included in the rulemaking the averaging provisions and the variance provisions that are contained in the OTC model rule on which the rulemaking is based. The OTC model does contain provisions for averaging. The Board agrees that the OTC Model Rule does contain averaging provisions; however, the language of the OTC

model rule regarding averaging provisions indicates that the averaging provisions “. . . shall cease to be effective on January 1, 2005, after which averaging will no longer be allowed.” The averaging provisions in the OTC model rule are intended to apply only if compliance with the low VOC content limits in the OTC model rule is required before January 1, 2005. The final-form rulemaking does not require compliance with the low VOC content limits until January 1, 2005, so the averaging provisions are not necessary. The Board has not included averaging provisions in the final-form rulemaking.

One commentator supported the proposed rulemaking “as is” without an averaging provision. The Board agrees that an averaging provision is not appropriate. The VOC content limits for the regulated coating categories are not “technology-forcing.” Coatings are presently being marketed at VOC content levels equal to or lower than the limits in the proposed rulemaking. The final-form rulemaking does not contain an averaging provision.

Two commentators on behalf of the same organization suggested that the Department include provisions in the final-form rulemaking regarding innovative technology consistent with the provisions in the Commonwealth’s recently promulgated consumer products rulemaking. The commentators believe that these provisions are necessary to provide equity and fairness by granting the same regulatory flexibility that is provided for consumer products. The Board disagrees. The innovative technology provisions of Subchapter B (relating to consumer products) are necessary because the VOC content limitations for the products regulated in Subchapter B are technology-forcing requirements. The VOC content limitations in the proposed AIM requirements are not technology-forcing requirements. Products that meet the proposed VOC content limits for AIM coatings are presently available. The final-form rulemaking does not contain innovative technology provisions.

Several commentators indicated that the rulemaking should be revised to include a technology assessment provision to determine the appropriateness of the VOC limits in the rulemaking. The Board disagrees. Available information indicates that there are complying formulations available in each of the regulated categories. Based on the current availability of complying formulations, there is no need for future assessments unless plans are developed to implement additional coating VOC limitations. If these plans are developed, a technology assessment will be appropriate.

One commentator questioned whether the Department thought it necessary to have the information required in the annual report to the Department and the criteria that the Department will use to determine when the information will be requested. The reporting requirements in § 130.305 are necessary to provide the basis for the Department to monitor coating formulation and to determine the emission impacts of the AIM regulatory program. The Department is required periodically to prepare emission inventory data for use in the development of SIPs and tracking of SIP emission reduction commitments. The frequency of the data requests and the content of the reports will be determined based on the need and/or intended use of the reported information. Reporting requirements are retained in the final-form rulemaking.

One commentator suggested that the annual reporting requirements specified in § 130.305 would not provide an accurate database of bituminous roof primers used in this Commonwealth. The commentator stated that, for ex-

ample, many who purchase these products in this Commonwealth are not direct end users, but distributors of private label accounts and that, therefore, manufacturers of these products would have no means of knowing how much of the products that they sell either inside or outside of this Commonwealth are used within this Commonwealth. The Board disagrees that manufacturers or producers will not be able to provide data regarding product sales in this Commonwealth. While there may be certain products for which it may be difficult to track sales, generally distribution and marketing systems can provide data with a level of quality for the Commonwealth to track product use and determine emissions. Section 130.305 have not been revised in response to this comment.

One commentator suggested that the reliance, by the Ozone Transport Region (OTR), on information developed by CARB regarding coating performance is not appropriate given the dissimilar climatic conditions in California and the northeast. The Board disagrees that the climatic conditions between the two areas are so dissimilar that use of CARB's data is inappropriate. Although there are areas in California where weather conditions are generally hot and dry, there are areas that experience temperature and precipitation conditions similar to those in the northeast.

Two commentators suggested that the reliance, by the OTR, on information developed by the CARB regarding coating availability and cost is not appropriate. The Board disagrees that it is inappropriate to use information developed by CARB regarding product availability and costs. Complying products developed for sale in the California market, which includes areas with weather conditions and product application and durability requirements similar to those in this Commonwealth, are suitable for use in this Commonwealth. The use of the cost data developed by CARB in assessing the economic impact of the SCM should not unrealistically represent the cost of compliance for this Commonwealth. In fact, the cost estimates for complying with the requirements in this Commonwealth may be lower than the costs estimated for meeting the limits proposed in the CARB SCM in California. Inasmuch as the limits in the CARB SCM will be implemented in the South Coast Air Quality Management District and numerous other jurisdictions in California in 2003, prior to the compliance deadline in this Commonwealth, much of the research and development work will have been completed and the costs absorbed, absent any requirements in this Commonwealth.

One commentator questioned how the cost data developed by CARB is applicable to this Commonwealth. The use of the cost data developed by CARB in assessing the economic impact of the SCM represents the upper bounds of the cost of compliance for this Commonwealth. In fact, the cost estimates for complying with the requirements in this Commonwealth may be lower than the costs estimated for meeting the limits proposed in the CARB SCM. Inasmuch as the limits in the CARB SCM will be implemented in the South Coast Air Quality Management District and approximately 18 other jurisdictions in California in 2003, much of the research and development work will have been completed and the costs absorbed prior to implementation of any requirements in this Commonwealth.

One commentator indicated that the economic analysis used in the development of the rulemaking is inaccurate. The commentator stated that it is not appropriate to use

CARB's cost data to estimate costs for this Commonwealth's requirements because low coating VOC requirements have been in place in California for a number of years. The commentator suggested that the Commonwealth should conduct its own independent assessment of the compliance costs for the program. The Board disagrees. The cost data for the rulemaking is based on an analysis conducted for the OTC by E. H. Pechan and reported in "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules." This analysis is based on the best available information regarding costs available to the OTC member states regarding AIM coatings.

One commentator indicated that the Department should not rely on the results of the National Technical Systems (NTS) Study carried out in California to assess the performance of coatings. The commentator cites a number of differences between the NTS Study protocols and "the generally accepted procedure," including the method of coating application and the size of the test panels. The Board agrees that there may be differences between the NTS Study protocols and evaluation methods used in other circumstances. However, the commentator has not provided information refuting the validity of the NTS Study. In fact, the protocols used for the NTS Study were agreed upon, in advance, by a group representing, among others, the coating industry.

A commentator indicated that the rulemaking should not include small manufacturer exemptions or delayed implementation dates for any manufacturers. The commentator indicated that the final-form rulemaking should provide a level playing field for all manufacturers. The Board agrees that there should not be small manufacturer exemptions or specific delayed implementation dates. The final-form rulemaking does, however, include a variance provision if a manufacturer can show that compliance by the January 1, 2005, deadline is not technologically feasible. The Board has not added provisions regarding small manufacturer exemptions or delayed implementation dates to the final-form rulemaking.

Several commentators indicated that the rulemaking should provide an indefinite "sell-through" provision for coatings manufactured prior to the compliance deadline and that requiring disposal of coating materials after 3 years, as would be required by the proposed rulemaking, is not environmentally acceptable. The Board agrees. The Board has revised § 130.303(c) to allow indefinitely after January 1, 2005, the sale and use of AIM material so long as the material was formulated in compliance at the time of its manufacture.

One commentator suggested that the sell-through provisions in § 130.303(c) should be revised to assure that parties do not stockpile large quantities of high VOC content coatings in advance of the compliance deadline. The Board disagrees that there will be significant "stockpiling" of high VOC content products. Maintenance of high levels of inventory would be expensive. In addition, many manufacturers indicate that the low VOC content formulations perform equally as well, or better, than high VOC content formulations, so there is no real incentive for obtaining significant inventories of high VOC content products.

Several commentators indicated that the rulemaking should provide for a technology assessment to confirm the technological feasibility of the VOC content limits in the rulemaking. The Board disagrees. A technology assessment is not necessary in the rulemaking. Complying formulations are currently available for all coating category

ries. If complying with the VOC content limits is technologically infeasible, the manufacturer may apply to the Department for a variance under § 130.306 of the final-form rulemaking. The Board has not revised the final-form rulemaking to include provisions for a technology assessment.

Several commentators suggested that the rulemaking should be revised to eliminate unnecessary and burdensome reporting requirements. The Board disagrees. The reporting requirements in the rulemaking are not burdensome. The requirements do not require ongoing reporting, but rather provide the authority for the Department to obtain information from coating manufacturers when necessary. The Board has not substantively revised the reporting requirements in the final-form rulemaking.

One commentator, an AIM coatings manufacturer, indicates that the rulemaking will have a significant adverse impact on the manufacturer and that the Department should use its discretionary authority to issue a rule that achieves substantial VOC emission reductions beyond the National AIM rule without causing serious adverse impact on potential sales of certain products. The Board added § 130.306 to the final-form rulemaking to provide the opportunity for a manufacturer to request a variance from the VOC content limits for products for which the manufacturer can show that compliance is technologically infeasible. By obtaining a variance, a manufacturer may continue to manufacture and market those products for which the manufacturer demonstrates that there are no viable alternatives.

A commentator indicated that the Department should consider adding provisions for a technology assessment to determine the appropriateness of maintaining future VOC limits. The Board disagrees. A technology assessment is not necessary in the final-form rulemaking. Complying formulations are currently available for all coating categories. If complying with the VOC content limits is technologically infeasible, the manufacturer may apply to the Department for a variance under § 130.306 of the final-form rulemaking.

One commentator indicated support for the VOC content requirements in the proposed rulemaking and indicated that the rulemaking provides adequate time (until January 1, 2005) for manufacturers to reformulate coatings to meet the VOC content limits. The Board appreciates the commentator's support and agrees that the time provided for achieving compliance should be adequate for manufacturers to reformulate coatings to compliance levels.

One commentator questioned how other states in the OTR regulate AIM coatings and if the Commonwealth's requirements are more restrictive than those in other states. Delaware has adopted a final AIM rulemaking. The Delaware rulemaking has been approved by the EPA as a SIP revision. The National Paint and Coating Association and several coating manufacturers appealed the rulemaking to the Delaware Environmental Appeals Board (DEAB). By a unanimous vote, the DEAB upheld the Delaware AIM rulemaking. As is the case with the Commonwealth, New York, Maryland and New Jersey are in the process of adopting AIM rulemakings with VOC content limits consistent with those in this final-form rulemaking and the final SIP-approved Delaware rulemaking. States outside of the OTR, other than California, have not developed additional AIM rulemakings.

The commentator questioned how the restriction of VOC content in coatings would affect businesses that

utilize these products. The Board does not anticipate any significant adverse impacts on users of the complying formulations. The low VOC content limits may require that certain users change their work practices to use the reformulated coatings properly. However, these changes should not be significant. It is anticipated that the use of reformulated coatings may improve productivity because the shorter drying time for many water-based formulations will allow quicker recoating and less time at a job site or fewer return trips to the site for professional painters. Because of the lower VOC content of the coatings, workers and occupants of structures being painted will experience reduced exposure to hazardous pollutants and VOCs.

A commentator requested that, in addition to the commentator's testimony, summary of concerns and "Recommended Changes to Proposed Rulemaking of the Environmental Quality Board [25 Pa. Code Ch. 130] Architectural and Industrial Maintenance Coatings [31 Pa.B. 6807]," the Department "consider the August 30, 2001, submission to Delaware concerning Delaware's proposed adoption of the OTC AIM Coatings Model Rule." The Department has reviewed and considered the commentator's submission to Delaware, which the Department understands to have been submitted to the Board as background material and not as official comments on this final-form rulemaking. The commentator makes most, if not all, of the same comments on this final-form rulemaking. Although the Department has reviewed and considered the comments on the Delaware rulemaking, the Department is not providing specific responses to them. The Department has provided specific responses throughout this Comment and Response document to the comments of the commentator that are submitted specifically on this final-form rulemaking.

G. *Benefits, Costs and Compliance*

Benefits—Overall, the citizens of this Commonwealth will benefit from this final-form rulemaking because the changes will result in improved air quality by reducing ozone precursor emissions from AIM coatings and encourage new technologies and practices, which will reduce emissions. The final-form rulemaking will also result in reduced levels of HAPs throughout this Commonwealth. In addition, the final-form rulemaking will reduce citizen exposure to a variety of VOCs, including HAPs, that are used in a variety of AIM coatings.

Compliance Costs—Under this final-form rulemaking, E. H. Pechan, a contractor to the OTC estimated that the reduction of VOC content of the affected AIM coatings will cost approximately \$6,400 per ton of VOC emissions reduced. An analysis conducted by Aberdeen Proving Grounds, however, indicates that low VOC coatings are available that will result in average savings of approximately \$1.76 per gallon compared with higher VOC coatings.

Compliance Assistance Plan—The Department plans to educate and assist the public and regulated community with understanding the new requirements and how to comply with them. This will be accomplished through the Department's compliance assistance program by direct contact and meetings with manufacturers as appropriate.

Paperwork Requirements—The final-form rulemaking will not increase the paperwork that is already generated by the normal course of business practices.

H. *Sunset Review*

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the

Department to determine whether the final-form rulemaking effectively fulfills the goals for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 29, 2001, the Department submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 6807 (December 15, 2001), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 11, 2003, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 12, 2003, and approved the final-form rulemaking.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) This rulemaking do not enlarge the purpose of the proposed rulemaking published at 31 Pa.B. 6807.

(4) This rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

(5) This rulemaking is necessary for the Commonwealth to achieve and maintain ambient air quality standards.

(6) This rulemaking is necessary for the Commonwealth to avoid sanctions under the Federal Clean Air Act.

K. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 130, are amended by adding §§ 130.301—130.311 to read as set forth in Annex A.

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

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

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

KATHLEEN A. MCGINTY,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 4865 (September 27, 2003).)

Fiscal Note: Fiscal Note 7-371 remains valid for the final adoption of the subject regulations.

Annex A

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

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 130. STANDARDS FOR PRODUCTS

Subchapter C. ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS

Sec.	
130.301.	Applicability.
130.302.	Definitions.
130.303.	Standards.
130.304.	Container labeling requirements.
130.305.	Reporting requirements.
130.306.	Application for variance.
130.307.	Variance orders.
130.308.	Termination of variance.
130.309.	Extension, modification or revocation of variance.
130.310.	Public hearings.
130.311.	Compliance provisions and test methods.

§ 130.301. Applicability.

This subchapter applies to a person who supplies, sells, offers for sale, manufactures, blends or repackages an architectural or industrial maintenance coating for use within this Commonwealth, as well as a person who applies or solicits the application of an architectural or industrial maintenance coating within this Commonwealth except for:

(1) An architectural or industrial maintenance coating that is sold or manufactured for use outside of this Commonwealth or for shipment to other manufacturers for reformulation or repackaging.

(2) An aerosol coating product.

(3) An architectural or industrial maintenance coating that is sold in a container with a volume of 1 liter (1.057 quart) or less.

§ 130.302. Definitions.

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

Adhesive—A chemical substance that is applied for the purposes of bonding two surfaces together other than by mechanical means.

Aerosol coating product—A pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant and is packaged in a disposable can for hand-held application or for use in specialized equipment for ground traffic marking applications.

Antenna coating—A coating labeled and formulated exclusively for application to equipment and associated

structural appurtenances that are used to receive or transmit electromagnetic signals.

Antifouling coating—A coating labeled and formulated for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an antifouling coating, the coating shall be registered with the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.A. §§ 136–136y).

Appurtenance—An accessory to a stationary structure coated at the site of installation, whether installed or detached. The term includes:

- (i) Bathroom and kitchen fixtures.
- (ii) Cabinets.
- (iii) Concrete forms.
- (iv) Doors.
- (v) Elevators.
- (vi) Fences.
- (vii) Hand railings.
- (viii) Heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools.
- (ix) Lampposts.
- (x) Partitions.
- (xi) Pipes and piping systems.
- (xii) Rain gutters and downspouts.
- (xiii) Stairways.
- (xiv) Fixed ladders.
- (xv) Catwalks and fire escapes.
- (xvi) Window screens.

Architectural coating—A coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements or to curbs. Coatings applied in shop applications or to nonstationary structures such as airplanes, ships, boats, railcars and automobiles, and adhesives are not considered architectural coatings for the purposes of this subchapter.

Bitumens—Black or brown materials including asphalt, tar, pitch and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

Bituminous roof coating—A coating that incorporates bitumens that is labeled and formulated exclusively for roofing.

Bituminous roof primer—A primer that incorporates bitumens that is labeled and formulated exclusively for roofing.

Bond breaker—A coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

Calcimine recoater—A flat solvent-borne coating formulated and recommended specifically for recoating calcimine-painted ceilings and other calcimine-painted substrates.

Clear brushing lacquers—

- (i) Clear wood coatings formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without

chemical reaction and to provide a solid protective film, which are intended exclusively for application by brush and which are labeled as required in § 130.304(a)(5) (relating to container labeling requirements).

- (ii) The term excludes clear lacquer sanding sealers.

Clear wood coatings—Clear and semitransparent coatings applied to wood substrates to provide a transparent or translucent film, including clear brushing lacquers, clear lacquer sanding sealers, sanding sealers other than clear lacquer sanding sealers and varnishes.

Coating—An architectural or industrial maintenance coating or a material applied onto or impregnated into a substrate for protective, decorative or functional purposes. The materials include paints, varnishes, sealers and stains.

Colorant—A concentrated pigment dispersion in water, solvent or binder that is added to an architectural coating after packaging in sales units to produce the desired color.

Concrete curing compound—A coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water.

Concrete surface retarder—A mixture of retarding ingredients such as extender pigments, primary pigments, resin and solvent that interact chemically with cement to prevent hardening on the surface where the retarder is applied, allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.

Conversion varnish—A clear acid-curing coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product. Conversion varnishes produce a hard, durable, clear finish designed for professional application to wood flooring. Conversion varnish film formation is the result of an acid-catalyzed condensation reaction, effecting a transesterification at the reactive ethers of the amino resins.

Dry fog coating—A coating labeled and formulated only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

Exempt compound—A compound identified as exempt under the definition of VOC in this section. Exempt compounds content of a coating shall be determined by EPA Reference Method 24 or South Coast Air Quality Management District (SCAQMD) Method 303-91, incorporated by reference in § 130.311(e)(10) (relating to compliance provisions and test methods).

Faux finishing coating—A coating labeled and formulated as a stain or glaze to create artistic effects including dirt, old age, smoke damage and simulated marble and wood grain.

Fire-resistive coating—An opaque coating labeled and formulated to protect structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials, that has been fire tested and rated by a testing agency and approved by building code officials for use in bringing building and construction materials into compliance with Federal, State and local building code requirements. The fire-resistive testing agency must be approved by building code officials and test the coating in accordance with ASTM E 119-98, incorporated by reference in § 130.311(e)(2).

Fire-retardant coating—A coating labeled and formulated to retard ignition and flame spread, that has been fire tested and rated by a testing agency approved by building code officials for use in bringing building and construction materials into compliance with Federal, State and local building code requirements.

(i) The fire-retardant coating and the testing agency shall be approved by building code officials.

(ii) The fire-retardant coating shall be tested in accordance with ASTM E 84-99, incorporated by reference in § 130.311(e)(1).

Flat coating—A coating that is not defined under any other definition in this subchapter and that registers gloss less than 15 on an 85° meter or less than 5 on a 60° meter according to ASTM D 523-89, incorporated by reference in § 130.311(e)(3).

Floor coating—An opaque coating that is labeled and formulated for application to flooring, including decks, porches, steps and other horizontal surfaces, which may be subjected to foot traffic.

Flow coating—A coating labeled and formulated exclusively for use by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

Form-release compound—A coating labeled and formulated for application to a concrete form to prevent freshly poured concrete from bonding to the form. The form may consist of wood, metal or material other than concrete.

Graphic arts coating or sign paint—A coating labeled and formulated for hand application by artists using brush or roller techniques to indoor and outdoor signs (excluding structural components) and murals, including letter enamels, poster colors, copy blockers and bulletin enamels.

High-temperature coating—A high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

Impacted immersion coating—A high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage caused by floating ice or debris.

Industrial maintenance coating—A high performance architectural coating, including primers, sealers, undercoaters, intermediate coats and topcoats, formulated for application to substrates exposed to one or more of the following extreme environmental conditions and labeled as specified in § 130.304(a)(4) (relating to container labeling requirements):

(i) Immersion in water, wastewater or chemical solutions (aqueous and nonaqueous solutions), or chronic exposure of interior surfaces to moisture condensation.

(ii) Acute or chronic exposure to corrosive, caustic or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions.

(iii) Repeated exposure to temperatures above 121°C (250°F).

(iv) Repeated (frequent) heavy abrasion, including mechanical wear and repeated scrubbing with industrial solvents, cleansers or scouring agents.

(v) Exterior exposure of metal structures and structural components.

Lacquer—A clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film.

Low-solids coating—A coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per gallon) of coating material.

Magnesite cement coating—A coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

Mastic texture coating—A coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, and applied in a single coat of at least 10 mils (0.010 inch) dry film thickness.

Metallic pigmented coating—A coating containing at least 48 grams of elemental metallic pigment per liter of coating as applied (0.4 pounds per gallon), when tested in accordance with SCAQMD Method 318-95, incorporated by reference in § 130.311(e)(4).

Multicolor coating—A coating that is packaged in a single container and that exhibits more than one color when applied in a single coat.

Nonflat coating—A coating that is not defined under any other definition in this subchapter and that registers a gloss of 15 or greater on an 85° meter and 5 or greater on a 60° meter according to ASTM D 523-89, incorporated by reference in § 130.311(e)(3).

Nonflat high gloss coating—A nonflat coating that registers a gloss of 70 or above on a 60° meter according to ASTM D 523-89, incorporated by reference in § 130.311(e)(3).

Nonindustrial use—The use of architectural coatings except in the construction or maintenance of the following:

(i) Facilities used in the manufacturing of goods or commodities.

(ii) Transportation infrastructure, including highways, bridges, airports and railroads.

(iii) Facilities used in mining activities, including petroleum extraction.

(iv) Utilities infrastructure, including power generation and distribution, and water treatment and distribution systems.

Nuclear coating—A protective coating formulated and recommended to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusions by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure as determined by ASTM Method D 4082-89, incorporated by reference in § 130.311(e)(14), relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed as determined by ASTM Method D 3912-80, incorporated by reference in § 130.311(e)(15).

Postconsumer coating—

(i) A finished coating that would have been disposed of in a landfill, having completed its usefulness to a consumer.

(ii) The term does not include manufacturing wastes.

Pretreatment wash primer—A primer that contains a minimum of 0.5% acid, by weight, when tested in accordance with ASTM D 1613-96, incorporated by reference in

§ 130.311(e)(5), that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent top-coats.

Primer—A coating labeled and formulated for application to a substrate to provide a firm bond between the substrate and subsequent coats.

Quick-dry enamel—A nonflat coating that is labeled as specified in § 130.304(a)(8) and that is formulated to have the following characteristics:

(i) Is capable of being applied directly from the container under normal conditions with ambient temperatures between 16° and 27°C (60° and 80°F).

(ii) When tested in accordance with ASTM D 1640-95, incorporated by reference in § 130.311(e)(6), sets to touch in 2 hours or less, is tack-free in 4 hours or less, and dries hard in 8 hours or less by the mechanical test method.

(iii) Has a dried film gloss of 70 or above on a 60° meter according to ASTM D 523-89.

Quick-dry primer, sealer and undercoater—A primer, sealer or undercoater that is dry to the touch in 30 minutes and can be recoated in 2 hours when tested in accordance with ASTM D 1640-95, incorporated by reference in § 130.311(e)(6).

Recycled coating—An architectural coating formulated so that at least 50% of the total weight consists of secondary and postconsumer coating, with at least 10% of the total weight consisting of postconsumer coating.

Residence—An area in which people reside or lodge, including a single or multiple family dwelling, condominium, mobile home, apartment complex, motel or hotel.

Roof coating—A nonbituminous coating labeled and formulated exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat and ultraviolet radiation. Metallic pigmented roof coatings, which qualify as metallic pigmented coatings, will not be considered in this category, but will be considered to be in the metallic pigmented coatings category.

Rust-preventive coating—A coating formulated exclusively for nonindustrial use to prevent the corrosion of metal surfaces and labeled as specified in § 130.304(a)(6).

Sanding sealer—

(i) A clear wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent application of coatings.

(ii) The term does not include a sanding sealer that meets the definition of a lacquer.

Sealer—A coating labeled and formulated for application to a substrate to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

Secondary coating (rework)—

(i) A fragment of a finished coating or a finished coating from a manufacturing process that has converted resources into a commodity of real economic value.

(ii) The term does not include excess virgin resources of the manufacturing process.

Shellac—A clear or opaque coating formulated solely with the resinous secretions of the Lac Beetle (lacifer

lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

Shop application—The application of a coating to a product or a component of a product in or on the premises of a factory or shop as part of a manufacturing, production or repairing process, such as original equipment manufacturing coatings.

Solicit—To require for use or to specify, by written or oral contract.

Specialty primer, sealer and undercoater—A coating labeled as specified in § 130.304(a)(7) and that is formulated for application to a substrate to seal fire, smoke or water damage; to condition excessively chalky surfaces; or to block stains or efflorescence. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM D 4214-98, incorporated by reference in § 130.311(e)(7).

Stain—A clear, semitransparent or opaque coating labeled and formulated to change the color of a surface, but not to conceal the grain pattern or texture.

Swimming pool coating—A coating labeled and formulated to coat the interior of a swimming pool and to resist swimming pool chemicals.

Swimming pool repair and maintenance coating—A rubber-based coating labeled and formulated to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

Temperature-indicator safety coating—A coating labeled and formulated as a color-changing indicator coating for the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

Thermoplastic rubber coating and mastic—A coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40% by weight of thermoplastic rubbers in the total resin solids that may also contain other ingredients including fillers, pigments and modifying resins.

Tint base—An architectural coating to which colorant is added after packaging in sale units to produce a desired color.

Traffic marking coating—A coating labeled and formulated for marking and striping streets, highways or other traffic surfaces including curbs, berms, driveways, parking lots, sidewalks and airport runways.

Undercoater—A coating labeled and formulated to provide a smooth surface for subsequent coatings.

VOC—Volatile organic compound—For the purposes of this subchapter, the term means any volatile compound containing at least one atom of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates and ammonium carbonate, and:

- (i) Excluding the following:
 - (A) Methane.
 - (B) Methylene chloride (dichloromethane).
 - (C) 1,1,1-trichloroethane (methyl chloroform).
 - (D) Trichlorofluoromethane (CFC-11).
 - (E) Dichlorodifluoromethane (CFC-12).
 - (F) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113).
 - (G) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114).

- (H) Chloropentafluoroethane (CFC-115).
 - (I) Chlorodifluoromethane (HCFC-22).
 - (J) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123).
 - (K) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124).
 - (L) 1,1-dichloro-1-fluoroethane (HCFC-141b).
 - (M) 1-chloro-1,1-difluoroethane (HCFC-142b).
 - (N) Trifluoromethane (HFC-23).
 - (O) Pentafluoroethane (HFC-125).
 - (P) 1,1,2,2-tetrafluoroethane (HFC-134).
 - (Q) 1,1,1,2-tetrafluoroethane (HFC-134a).
 - (R) 1,1,1-trifluoroethane (HFC-143a).
 - (S) 1,1-difluoroethane (HFC-152a).
- (T) Cyclic, branched or linear, completely methylated siloxanes.

(ii) Excluding the following classes of perfluorocarbons:

- (A) Cyclic, branched or linear, completely fluorinated alkanes.
- (B) Cyclic, branched or linear, completely fluorinated ethers with no unsaturations.
- (C) Cyclic, branched or linear, completely fluorinated tertiary amines with no unsaturations.
- (D) Sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds only to carbon and fluorine.

(iii) Excluding the following low-reactive organic compounds which have been exempted by the United States EPA:

- (A) Acetone.
- (B) Ethane.
- (C) Parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene).
- (D) Perchloroethylene.
- (E) Methyl acetate.

VOC content—The weight of VOC per volume of coating, calculated according to the procedures specified in § 130.311(a).

Varnish—A clear wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnish may contain small amounts of pigment to color a surface or to control the final sheen or gloss of the finish.

Waterproofing concrete/masonry sealer—A clear or pigmented film-forming coating that is labeled and formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light and staining.

Waterproofing sealer—A coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.

Wood preservative—A coating labeled and formulated to protect exposed wood from decay or insect attack, that is registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act.

§ 130.303. Standards.

(a) *VOC content limits*. Except as provided in subsections (b), (c) and (g), a person after January 1, 2005, may not:

(1) Manufacture, blend or repackage for sale within this Commonwealth a coating subject to this subchapter with a VOC content in excess of the corresponding limit specified in Table 1.

(2) Supply, sell or offer for sale within this Commonwealth a coating subject to this subchapter with a VOC content in excess of the corresponding limit specified in Table 1.

(3) Solicit for application or apply within this Commonwealth, a coating subject to this subchapter with a VOC content in excess of the corresponding limit specified in Table 1.

(b) *Most restrictive VOC limit*. If on the container of an architectural or industrial maintenance coating, or a label or sticker affixed to the container, or in sales, advertising or technical literature supplied by a manufacturer or a person acting on their behalf, a representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in Table 1, then the most restrictive VOC content limit applies. This provision does not apply to the following coating categories:

- (1) Lacquer coatings (including lacquer sanding sealers).
- (2) Metallic pigmented coatings.
- (3) Shellacs.
- (4) Fire-retardant coatings.
- (5) Pretreatment wash primers.
- (6) Industrial maintenance coatings.
- (7) Low-solids coatings.
- (8) Wood preservatives.
- (9) High-temperature coatings.
- (10) Temperature-indicator safety coatings.
- (11) Antenna coatings.
- (12) Antifouling coatings.
- (13) Flow coatings.
- (14) Bituminous roof primers.
- (15) Specialty primers, sealers and undercoaters.
- (16) Calcimine recoaters.
- (17) Impacted immersion coatings.
- (18) Nuclear coatings.
- (19) Thermoplastic rubber coatings and mastic.

(c) *Sell-through of architectural or industrial maintenance coatings*. An architectural or industrial maintenance coating manufactured prior to January 1, 2005, may be sold, supplied, offered for sale or applied after January 1, 2005, so long as the architectural or industrial maintenance coating complied with the standards in effect at the time the coating was manufactured.

(d) *Thinning*. A person may not apply or solicit the application of an architectural and industrial maintenance coating that is thinned to exceed the applicable VOC limit specified in Table 1.

(e) *Rust-preventive coatings*. A person may not apply or solicit the application of a rust-preventive coating for industrial use, unless the rust-preventive coating complies with the industrial maintenance coating VOC limit specified in Table 1.

(f) *Coatings not listed in Table 1.* For an architectural or industrial maintenance coating that does not meet the definitions for the specialty coatings categories listed in Table 1, the VOC content limit shall be determined by classifying the coating as a flat coating or a nonflat coating, based on its gloss as defined in § 130.302 (relating to definitions), and the corresponding flat or nonflat coating limit applies.

(g) *Lacquers.* Notwithstanding the provisions of subsection (a), a person or facility may add up to 10% by volume of VOC to a lacquer to avoid blushing of the finish during days with relative humidity greater than 70% and temperature below 65°F, at the time of application, provided that the coating contains acetone and no more than 550 grams of VOC per liter of coating, less water and exempt compounds, prior to the addition of VOC.

Table 1

VOC Content Limits for Architectural and Industrial Maintenance Coatings

The VOC content limits are effective on January 1, 2005, and are expressed in grams of VOC per liter¹ of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases. "Manufacturer's maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

<i>Coating Category</i>	<i>VOC Content Limit</i>
<i>Nonspecialty Coatings</i>	
Flat Coatings	100
Nonflat Coatings	150
Nonflat High Gloss Coatings	250
<i>Specialty Coatings</i>	
Antenna Coatings	530
Antifouling Coatings	400
Bituminous Roof Coatings	300
Bituminous Roof Primers	350
Bond Breakers	350
Calcimine Recoaters	475
Clear Wood Coatings	
—Clear Brushing Lacquers	680
—Conversion Varnish	725
—Sanding Sealers (other than Lacquer Sanding Sealers)	350
* Varnishes	350
Concrete Curing Compounds	350
Concrete Surface Retarders	780
Dry Fog Coatings	400
Faux Finishing Coatings	350
Fire-Resistive Coatings	350
Fire-Retardant Coatings	
—Clear	650
—Opaque	350
Floor Coatings	250
Flow Coatings	420
Form-Release Compounds	250
Graphic Arts Coatings (Sign Paints)	500
High-Temperature Coatings	420
Impacted Immersion Coatings	780
Industrial Maintenance Coatings	340

<i>Coating Category</i>	<i>VOC Content Limit</i>
Lacquers (including Lacquer Sanding Sealers)	550
Low-Solids Coatings	120 ²
Magnesite Cement Coatings	450
Mastic Texture Coatings	300
Metallic Pigmented Coatings	500
Multi-Color Coatings	250
Nuclear Coatings	450
Pretreatment Wash Primers	420
Primers, Sealers, and Undercoaters	200
Quick-Dry Enamels	250
Quick-Dry Primers, Sealers and Undercoaters	200
Recycled Coatings	250
Roof Coatings	250
Rust-Preventive Coatings	400
Shellacs	
—Clear	730
—Opaque	550
Specialty Primers, Sealers and Undercoaters	350
Stains	250
Swimming Pool Coatings	340
Swimming Pool Repair and Maintenance Coatings	340
Temperature-Indicator Safety Coatings	550
Thermoplastic Rubber Coatings and Mastic	550
Traffic Marking Coatings	150
Waterproofing Sealers	250
Waterproofing Concrete/Masonry Sealers	400
Wood Preservatives	350

§ 130.304. Container labeling requirements.

(a) Effective January 1, 2005, each manufacturer of architectural or industrial maintenance coatings subject to this subchapter shall display the information listed in paragraphs (1)—(9) on the coating container (or label) in which the coating is sold or distributed.

(1) *Date code.* The date the architectural or industrial maintenance coating was manufactured, or a date code representing the date, shall be indicated on the label, lid or bottom of the container. If the manufacturer uses a date code for a coating, the manufacturer shall file an explanation of each code with the Department by November 24, 2003, or the date on which the date code will first be used, whichever is later.

(2) *Thinning recommendations.* A statement of the manufacturer's recommendation regarding thinning of the architectural or industrial maintenance coating shall be indicated on the label or lid of the container. This requirement does not apply to the thinning of architectural or industrial maintenance coatings with water. If thinning of the coating prior to use is not necessary, the recommendation shall specify that the coating is to be applied without thinning.

(3) *VOC content.* Each container of a coating subject to this subchapter shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated

¹ Conversion factor: 1 pound VOC per gallon (U.S.) = 119.95 grams per liter.

² Including water and exempt solvents

using product formulation data, or shall be determined using the test methods in § 130.311 (relating to compliance provisions and test methods). The equations in § 130.311(a)(1) and (2) shall be used to calculate VOC content.

(4) *Industrial maintenance coatings.* Each manufacturer of an industrial maintenance coating shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the following descriptions:

- (i) "For industrial use only."
- (ii) "For professional use only."
- (iii) "Not for residential use."
- (iv) "Not intended for residential use."

(5) *Clear brushing lacquers.* The labels of clear brushing lacquers shall prominently display the statements, "For brush application only," and, "This product must not be thinned or sprayed."

(6) *Rust-preventive coatings.* The labels of rust-preventive coatings shall prominently display the statement, "For Metal Substrates Only."

(7) *Specialty primers, sealers and undercoaters.* The labels of specialty primers, sealers and undercoaters shall prominently display one or more of the following descriptions:

- (i) For blocking stains.
- (ii) For fire-damaged substrates.
- (iii) For smoke-damaged substrates.
- (iv) For water-damaged substrates.
- (v) For excessively chalky substrates.

(8) *Quick-dry enamel.* The labels of quick-dry enamels shall prominently display the words, "Quick Dry" and the dry-hard time.

(9) *Nonflat high gloss coatings.* The labels of nonflat high gloss coatings shall prominently display the words, "High Gloss."

§ 130.305. Reporting requirements.

Upon request of the Department, each manufacturer of an architectural or industrial maintenance coating subject to this subchapter shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the Department. The report shall specify the number of gallons of coating sold in this Commonwealth during the preceding calendar year and shall describe the method used by the manufacturer to calculate sales within this Commonwealth.

§ 130.306. Application for variance.

(a) A person who cannot comply with § 130.303(a) (relating to standards) 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 date by which compliance with § 130.303(a) will be achieved.
- (3) A compliance report detailing the methods by which compliance will be achieved.

(b) No later than 90 days after receipt of a complete variance application containing the information required

in this section, the Department will hold a public hearing in accordance with § 130.310 (relating to public hearings) to determine the following:

- (1) Whether a variance from the requirements in § 130.303(a) is necessary.
- (2) Under what conditions a variance from the requirements in § 130.303(a) is necessary.
- (3) To what extent a variance from the requirements in § 130.303(a) is necessary.

(c) The Department will not grant a variance unless the applicant demonstrates in writing the following to the Department's satisfaction that:

- (1) It is technologically infeasible for the applicant to comply with the requirements of § 130.303(a).
- (2) The public interest in issuing the variance would outweigh the public interest in avoiding increased emissions of air contaminants that would result from issuing the variance.

(3) The compliance program proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

§ 130.307. Variance orders.

(a) A variance order will specify a final compliance date by which the requirements of § 130.303 (relating to standards) must be achieved. A variance order will contain a condition that specifies increments of progress necessary to assure timely compliance and other conditions that the Department determines to be necessary, in consideration of the testimony received at the public hearing held in accordance with § 130.310 (relating to public hearings), written comments and other information available to the Department.

(b) The Department will submit each variance order to the United States Environmental Protection Agency for approval as a State Implementation Plan revision.

§ 130.308. Termination of variance.

A variance will 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.

§ 130.309. Extension, modification or revocation of variance.

The Department may, for good cause, including air quality considerations, extend, modify or revoke a variance from the requirements of § 130.303(a) (relating to standards) after holding a public hearing in accordance with § 130.310 (relating to public hearings).

§ 130.310. Public hearings.

(a) Prior to issuance, extension, modification or revocation of a variance order, the Department will hold a public hearing to take public comment on the application for a variance or on the proposed extension, modification or revocation of a variance order.

(b) The Department will publish notice of the time, place and purpose of the hearing in newspapers of general circulation and in the *Pennsylvania Bulletin* not less than 30 days prior to the hearing.

(c) Not less than 30 days prior to the hearing, the Department will make available to the public the following:

- (1) The application for the variance or, if the hearing is for an extension, modification or revocation, the variance order.

(2) The proposed order for issuing, extending, modifying or revoking the variance.

§ 130.311. Compliance provisions and test methods.

(a) *Calculation of VOC content.* For the purpose of determining compliance with the VOC content limits in § 130.303 Table 1 (relating to VOC content limits for architectural and industrial maintenance coatings), the VOC content of a coating shall be determined by using the procedures described in this subsection or subsection (b), as appropriate. The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured.

(1) With the exception of low solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of water and exempt compounds. Determine the VOC content using Equation 1 as follows:

$$\text{Equation 1: VOC Content} = \frac{(Ws - Ww - Wec)}{(Vm - Vw - Vec)}$$

Where:

VOC content = grams of VOC per liter of coating

Ws = weight of volatiles, in grams

Ww = weight of water, in grams

Wec = weight of exempt compounds, in grams

Vm = volume of coating, in liters

Vw = volume of water, in liters

Vec = volume of exempt compounds, in liters

(2) For low solids coatings, determine the VOC content in units of grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds. Determine the VOC content using Equation 2 as follows:

$$\text{Equation 2: VOC Content (ls)} = \frac{(Ws - Ww - Wec)}{(Vm)}$$

Where:

VOC Content (ls) = the VOC content of a low solids coating in grams of VOC per liter of coating

Ws = weight of volatile, in grams

Ww = weight of water, in grams

Wec = weight of exempt compounds, in grams

Vm = volume of coating, in liters

(b) *VOC content of coatings.* To determine the physical properties of a coating to perform the calculations in subsection (a), the reference method for VOC content is EPA Reference Method 24, except as provided in subsections (c) and (d). An alternative method to determine the VOC content of coatings is SCAQMD Method 304-91, incorporated by reference in this section. The exempt compounds content shall be determined by SCAQMD Method 303-91, incorporated by reference in subsection (e). To determine the VOC content of a coating, the manufacturer may use EPA Reference Method 24, or an alternative method, as provided in subsection (c), formulation data, or another reasonable means for predicting that the coating has been formulated as intended—for example, quality assurance checks and recordkeeping. If there are inconsistencies between the results of a Reference Method 24 test and another means for determining VOC content, the Reference Method 24 results will

govern, except when an alternative method is approved as specified in subsection (c). The Department may require the manufacturer to conduct a Reference Method 24 analysis.

(c) *Alternative test methods.* Other test methods demonstrated to provide results that are acceptable for purposes of determining compliance with subsection (b) may be used if approved in writing by the Department and the EPA.

(d) *Methacrylate traffic coating markings.* Analysis of methacrylate multicomponent coatings used as traffic marking coatings shall be conducted according to a modification of EPA Reference Method 24 (found at 40 CFR 59, Subpart D, Appendix A), incorporated by reference in subsection (e)(13). This method has not been approved for methacrylate multicomponent coatings used for other purposes than as traffic marking coatings or for other classes of multicomponent coatings.

(e) *Test methods.* The following test methods are incorporated herein by reference and the most up-to-date version of the test method shall be used to test coatings subject to of this subchapter:

(1) *Flame spread index.* The flame spread index of a fire-retardant coating shall be determined by ASTM E 84-99, "Standard Test Method for Surface Burning Characteristics of Building Materials."

(2) *Fire-resistance rating.* The fire-resistance rating of a fire-resistive coating shall be determined by ASTM E 119-98, "Standard Test Methods for Fire Tests of Building Construction Materials."

(3) *Gloss determination.* The gloss of a coating shall be determined by ASTM D 523-89, "Standard Test Method for Specular Gloss."

(4) *Metal content of coatings.* The metallic content of a coating shall be determined by SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples."

(5) *Acid content of coatings.* The acid content of a coating shall be determined by ASTM D 1613-96, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products."

(6) *Drying times.* The set-to-touch, dry-hard, dry-to-touch and dry-to-recoat times of a coating shall be determined by ASTM D 1640-95, "Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature," (see § 130.302 (relating to definitions) for definitions of "quickdry enamel" and "quick-dry primer, sealer and undercoater"). The tack-free time of a quick-dry enamel coating shall be determined by the mechanical test method of ASTM D 1640-95.

(7) *Surface chalkiness.* The chalkiness of a surface shall be determined using ASTM D 4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films."

(8) *Exempt compounds—siloxanes.* Exempt compounds that are cyclic, branched or linear, completely methylated siloxanes, shall be analyzed as exempt compounds for compliance with this section by BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," Bay Area Air Quality Management District (BAAQMD) Manual of Procedures, Volume III.

(9) *Exempt compounds—parachlorobenzotrifluoride (PCBTF)*. The exempt compound parachlorobenzotrifluoride shall be analyzed as an exempt compound for compliance with this section by BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride," found in BAAQMD Manual of Procedures, Volume III.

(10) *Exempt compounds*. The content of compounds exempt under EPA Method 24 shall be analyzed by SCAQMD Method 303-91, "Determination of Exempt Compounds," found in SCAQMD "Laboratory Methods of Analysis for Enforcement Samples."

(11) *VOC content of coatings*. The VOC content of a coating shall be analyzed by EPA Method 24 found in "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings."

(12) *Alternative VOC content of coatings*. The VOC content of coatings may be analyzed by either EPA Reference Method 24 or SCAQMD Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," found in "SCAQMD Laboratory Methods of Analysis for Enforcement Samples."

(13) *Methacrylate traffic marking coatings*. The VOC content of methacrylate multicomponent coatings used as traffic marking coatings shall be analyzed by the procedures in 40 CFR Part 59, Subpart D, Appendix A, "Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings."

(14) *Radiation resistance*. The radiation resistance of a nuclear coating shall be determined by ASTM Method D 4082-89, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(15) *Chemical resistance*. The chemical resistance of nuclear coatings shall be determined by ASTM Method D 3912-80, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants."

[Pa.B. Doc. No. 03-2067. Filed for public inspection October 24, 2003, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CHS. 131, 143 AND 147]

Hunter ID Number

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, adopted the following amendments:

Amend §§ 131.2, 143.202 and 147.701 (relating to definitions; application; and general) to define and implement the issuance of a "hunter ID number."

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 33 Pa.B. 2589 (May 31, 2003).

1. Introduction

The Commission defined and implemented the issuance of a "hunter ID number" by amending §§ 131.2, 143.202 and 147.701.

2. Purpose and Authority

Formerly, regulations allowed an applicant for an elk license or bobcat permit to submit a Social Security number or "some other appropriate form of individual identification" to provide a unique identifier in the database for each individual and to permit crosschecks for duplicates. The Commission has implemented a system whereby it assigns each applicant an individualized "hunter ID number" whenever that applicant does not have a Social Security number. The purpose of this system is to clearly articulate what will be considered an appropriate form of individual identification when a Social Security number is not available. The Commission will use this "hunter ID number" for identification and cross-referencing purposes.

Section 2722(g)(2) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of license issuing activities. Section 2901(b) of the code (relating to authority to issue permits) provides "The commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit . . ." Section 2102(a) of the code (relating to regulations) provides "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth . . ." These provisions provide the statutory basis for the final-form rulemaking.

3. Regulatory Requirements

The final-form rulemaking defines and implements the issuance of a "hunter ID number" to be used in the application process for elk licenses or bobcat permits whenever the applicant does not have a Social Security number.

4. Persons Affected

Persons who wish to apply for an elk license or bobcat permit and do not have a Social Security number will be affected by the final-form rulemaking.

5. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

6. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

7. Effective Date

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

8. Contact Person

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given

under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 131, 143 and 147, are amended by amending §§ 131.2, 143.202 and 147.701 to read as set forth at 33 Pa.B. 2589.

(b) The Executive Director of the Commission shall certify this order and 33 Pa.B. 2589 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-164 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 03-2068. Filed for public inspection October 24, 2003, 9:00 a.m.]

[58 PA. CODE CH. 135]
Lands and Buildings

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, adopted the following amendments:

Amend §§ 135.81 and 135.121—135.123 to ensure recently promulgated regulations apply to Commission administrative lands.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 33 Pa.B. 2763 (June 14, 2003) and corrected at 33 Pa.B. 2871 (June 21, 2003).

1. *Introduction*

The Commission amended §§ 135.81 and 135.121—135.123 to ensure recently promulgated regulations apply to Commission administrative lands.

2. *Purpose and Authority*

Since the new State game lands (SGLs) regulations were promulgated, many of the unlawful acts pertaining to SGLs were listed in § 135.41 (relating to State game lands). To ensure these prohibitions applied to Commission administrative lands, the Commission added a reference to § 135.41 in § 135.81 (relating to Commission administrative lands). Additionally, since § 135.41 was intended for SGLs and Commission administrative lands, the reference to § 135.41 in §§ 135.121—135.123 (relating to Federal-owned lands; State-owned lands; and po-

litical subdivision-owned lands) was eliminated since the language in § 135.41 is inapplicable on Federal, State and political subdivision-owned lands under Commission lease or control.

Section 721(a) of the code (relating to control of property) provides that “The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters.” The proposed rulemaking was made under this authority.

3. *Regulatory Requirements*

The final-form rulemaking does not impose any additional restrictions, but rather clarifies the application of regulations in § 135.2 (relating to unlawful actions) and § 135.41.

4. *Persons Affected*

Persons wishing to use SGLs or leased areas and other areas under agreement with the Commission will be affected by this final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

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

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 135, are amended by amending §§ 135.81 and 135.121—135.123 are to read as set forth at 33 Pa.B. 2763 and 2871.

(b) The Executive Director of the Commission shall certify this order and 33 Pa.B. 2763 and 2871 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-169 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 03-2069. Filed for public inspection October 24, 2003, 9:00 a.m.]

[58 PA. CODE CH. 141]

Hunting and Trapping; Coyote

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, adopted the following amendment:

Amend § 141.4 (relating to hunting hours) to permit the taking of coyotes at any hour, day or night, even during the legal hunting hours of the spring gobbler season.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 33 Pa.B. 2881 (June 21, 2003).

1. Introduction

The Commission amended § 141.4(2) to permit the taking of coyotes at any hour, day or night, even during the legal hunting hours of the spring gobbler season.

2. Purpose and Authority

Section 139.4 (relating to seasons and bag limits for the license year) presently contains language permitting the taking of coyotes during the spring gobbler turkey season by persons who have a valid spring turkey tag and meet fluorescent and shot size requirements. However, § 141.4 concurrently contains language forbidding the hunting of coyotes during the legal hunting hours of the spring gobbler season (1/2 hour before sunrise to 12 p.m.). To make the regulations more consistent, the Commission amended § 141.4 to permit the taking of coyotes during legal hunting hours of the spring gobbler season.

Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking, the possession of certain species or parts thereof, the number and types of devices and equipment allowed, the identification of devices and the use and possession of devices." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." These provisions provide the statutory authority for the final-form rulemaking.

3. Regulatory Requirements

The final-form rulemaking permits hunters to harvest a coyote during the legal hunting hours of the spring gobbler season.

4. Persons Affected

Persons wishing to take a coyote during the spring gobbler season will be affected by this final-form rulemaking.

5. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

6. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

7. Effective Date

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

8. Contact Person

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.4 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-168 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.4. Hunting hours.

During open hunting seasons, wild birds and animals may be taken 1/2 hour before sunrise to sunset unless further restricted.

(1) During the regular antlered and antlerless deer seasons, it is unlawful to take or attempt to take other wild birds or mammals from 1/2 hour before sunrise to sunset. Game birds on regulated hunting grounds and migratory waterfowl are excepted. Coyotes may be taken from the first day to the last day inclusive of any deer or bear season only by persons who possess a valid furtaker's license and wear 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined visible in a 360° arc from 2 hours before sunrise to 2 hours after sunset or by persons lawfully engaged in hunting deer or bear who have a valid tag.

(2) Raccoon, fox, skunk, opossum, coyote, bobcat and weasel may be taken any hour, day or night, except during restricted periods in paragraph (1), and woodchuck, opossum, skunk and weasel may not be hunted prior to 12 noon during the spring gobbler season.

(3) Turkey hunting hours are 1/2 hour before sunrise to 12 noon during the spring gobbler season.

(4) Mourning doves may be hunted from 12 noon to sunset from the first season opening date through the first season closing date.

[Pa.B. Doc. No. 03-2070. Filed for public inspection October 24, 2003, 9:00 a.m.]

[58 PA. CODE CH. 141]
Hunting and Trapping; Deer

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, adopted the following amendment:

Amend § 141.43(g) (relating to deer) to permit the cooperation of hunters who are properly licensed to hunt during a particular deer season.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 33 Pa.B. 2590 (May 31, 2003).

1. *Introduction*

The Commission amended § 141.43(g) to permit the cooperation of any hunters who are properly licensed to hunt during a particular deer season.

2. *Purpose and Authority*

Formerly, regulations permitted properly licensed hunters to cooperate and drive deer for each other when deer seasons ran concurrently. However, all hunters were required to have a doe license from the county in which they were hunting to drive deer for other hunters who were hunting doe in that county. In light of the recently adopted larger deer management units, this provision is no longer practical. For example, former regulations permitted an archery hunter to drive deer for a rifle hunter or muzzleloader hunter and vice versa during the concurrent October seasons. However, the same archery hunter who did not have an antlerless license could not drive deer for a rifle or muzzleloader hunter who could only hunt doe in that early season. The former concurrent

buck/doe seasons only added to this type confusion over cooperation between archery, muzzleloader and rifle hunters.

The amendment to § 141.43(g) will permit any hunter who is properly licensed to hunt in a specific deer season to cooperate with other hunters who are also properly licensed to hunt in a specific deer season. For example, archery hunters, muzzleloader hunters and those entitled to use rifles during the October season will be permitted to drive deer for other hunters even if the archery hunters among them does not have a doe license. It will also allow any hunter who is properly licensed to hunt during the concurrent deer season to drive deer for another hunter who is also properly licensed to hunt during the concurrent deer season, even if either has only an antlerless tag from a different deer management unit and one or both hunter has already harvested a buck.

Section 2102(a) of the code (relating to regulations) provides "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 141.43(g) was proposed under this provision.

3. *Regulatory Requirements*

The final-form rulemaking permits the cooperation of hunters who are properly licensed to hunt during a particular deer season.

4. *Persons Affected*

Persons wishing to hunt deer cooperatively during open seasons will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

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

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.43 to read as set forth at 33 Pa.B. 2590.

(b) The Executive Director of the Commission shall certify this order and 33 Pa.B. 2590 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-163 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 03-2071. Filed for public inspection October 24, 2003, 9:00 a.m.]

[58 PA. CODE CH. 141]
Hunting and Trapping; Elk

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, adopted the following amendment:

Amend § 141.47 (relating to elk) to make it unlawful to drive or herd elk.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 33 Pa.B. 2882 (June 21, 2003).

1. *Introduction*

The Commission amended § 141.47 to make it unlawful to drive or herd elk.

2. *Purpose and Authority*

Recently the Commission has experienced a number of problems with elk hunters and guides driving elk from one management zone to another or out of safety zones. This final-form rulemaking makes driving or herding elk unlawful.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." This provision provides the statutory authority for the final-form rulemaking.

3. *Regulatory Requirements*

The final-form rulemaking makes it unlawful to drive or herd elk.

4. *Persons Affected*

Persons wishing to hunt elk or provide guide services to hunt elk will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

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

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.47 to read as set forth at 33 Pa.B. 2882.

(b) The Executive Director of the Commission shall certify this order and 33 Pa.B. 2882 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-166 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 03-2072. Filed for public inspection October 24, 2003, 9:00 a.m.]

[58 PA. CODE CH. 141]
Hunting and Trapping; Presque Isle State Park

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, adopted the following amendment:

Delete § 141.17 (relating to Presque Isle State Park) to remove the regulations pertaining to hunting deer in Presque Isle State Park.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 33 Pa.B. 2591 (May 31, 2003).

1. *Introduction*

The Commission deleted § 141.17 to remove the regulations pertaining to hunting deer in Presque Isle State Park.

2. *Purpose and Authority*

The Department of Conservation and Natural Resources (Department) submitted a request that regulation pertaining to hunting deer in Presque Isle State Park be removed. The Department has determined that the present deer population in Presque Isle State Park can be properly controlled and maintained using the existing, Statewide deer management plan. By deleting § 141.17, hunters will be permitted to hunt deer in Presque Isle State Park during the open seasons for hunting deer in accordance with remaining laws and regulations.

Section 2102(d) of the code (relating to regulations) states that "The commission shall promulgate regulations stipulating . . . the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the seasons when the devices may be used." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The deletion of § 141.17 was proposed under these provisions.

3. *Regulatory Requirements*

The final-form rulemaking will remove the regulations pertaining to hunting deer in Presque Isle State Park.

4. *Persons Affected*

Persons wishing to hunt deer in Presque Isle State Park will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

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

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by deleting § 141.17 to read as set forth at 33 Pa.B. 2591.

(b) The Executive Director of the Commission shall certify this order and 33 Pa.B. 2591 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-162 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 03-2073. Filed for public inspection October 24, 2003, 9:00 a.m.]

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses; Elk Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, adopted the following amendments:

Amend § 143.203 (relating to drawing) to eliminate the 10% cap on the number of nonresident elk licenses that can be issued and to establish and implement a preference system for all current applicants who have been unsuccessful in having their applications drawn in previous years.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 33 Pa.B. 2883 (June 21, 2003).

1. *Introduction*

The Commission amended § 143.203 to eliminate the 10% cap on the number of nonresident elk licenses that can be issued and to establish and implement a preference system for all current applicants who have been unsuccessful in having their application drawn in previous years.

2. *Purpose and Authority*

Formerly, regulations required a 10% yearly cap on the number of nonresident elk licenses that could be issued in a given year. This cap was determined by the percentage of nonresident general licenses that were sold in the

current year. The Commission eliminated the cap on the number of nonresident elk licenses that could be issued to establish a preference system for all current applicants who have been unsuccessful in having their applications drawn in previous years. Under this preference, those current applicants who have applied in the 2003-2004 license year and any subsequent years will have their applications that have not been drawn remain in the pool of applications from which successful applicants are drawn, thus accruing preference and increasing their chances of being successfully drawn for a license.

Section 2705(15) of the code (relating to classes of licenses) provides that "To ensure sound management of this Commonwealth's wild elk population, the commission may promulgate regulations to establish a limited number of licenses." Section 2722(g)(2) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of license issuing activities. Section 2102(a) of the code (relating to regulations) authorizes the Commission to "promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting . . ." These provisions provide the statutory basis for the final-form rulemaking.

3. *Regulatory Requirements*

The final-form rulemaking eliminates the 10% cap on the number of nonresident elk licenses that could be issued to establish and implement a preference system for all current applicants who have been unsuccessful in having their application drawn in previous years.

4. *Persons Affected*

Persons who wish to apply for an elk license will be affected by this final-form rulemaking.

5. *Comment and Response Summary*

There were six official comments received regarding this final-form rulemaking. All were in opposition to the removal of the cap on the number of nonresident elk licenses that could be issued in a given year.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

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

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.203 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-165 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTKAKER LICENSES

Subchapter K. ELK LICENSES

§ 143.203. Drawing.

(a) The Executive Director will set the date and location for the random drawing of applications for the issuance of elk licenses. Incomplete, illegible or duplicate applications will not be included in the drawing.

(b) Applications from current applicants who have applied in the 2003-2004 license year and subsequent years will be included in the drawing until the applicant is successfully drawn and issued a license.

(c) An applicant issued an antlered elk license is not permitted to apply for another elk license for 5 license years.

(d) Qualified applicants and alternates drawn for an elk license shall be required to obtain a regular hunting license prior to attending an orientation session sponsored by the Commission before the elk license is issued. Persons who are eligible for license and fee exemptions and meet the requirements in section 2706 of the act (relating to resident license and fee exemptions) are not required to purchase a regular hunting license.

(e) The number of licenses shall be limited to a number set by the Commission.

[Pa.B. Doc. No. 03-2074. Filed for public inspection October 24, 2003, 9:00 a.m.]

[58 PA. CODE CH. 147] Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, adopted the following amendment:

Amend § 147.222 (relating to permits for dog trials on Commission controlled lands) to clarify that permits for dog trials other than bird dog trials may be issued for State game lands (SGLs).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 33 Pa.B. 2884 (June 21, 2003).

1. *Introduction*

The Commission amended § 147.222 to clarify that permits for dog trials other than bird dog trials may be issued for SGLs.

2. *Purpose and Authority*

Two sections provide for permits to hold dog trials: § 147.222 applies to trials held on SGLs and § 147.223 (relating to permits for dog trials on privately-owned lands) applies to privately owned lands. Although the Commission issues permits for many types of dog trials on SGLs, the language in § 147.222 refers to permits for only "bird" dog trials. However, § 147.223 refers to dog trials with no reference to "bird." By removing the reference "bird" from the section heading and § 147.222(a), this confusion is eliminated. This final-form rulemaking clarifies that permits for dog trials other than bird dog trials may be issued for SGLs.

Section 2901(b) of the code (relating to authority to issue permits) provides that "The commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat . . ." These provisions provide the statutory authority for the final-form rulemaking.

3. *Regulatory Requirements*

This final-form rulemaking clarifies that permits for dog trials other than bird dog trials may be issued for SGLs by eliminating the word "bird" from § 147.222.

4. *Persons Affected*

Persons wishing to apply for a permit to hold dog trials on SGLs will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

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

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.222 to read as set forth at 33 Pa.B. 2884.

(b) The Executive Director of the Commission shall certify this order and 33 Pa.B. 2884 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-167 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 03-2075. Filed for public inspection October 24, 2003, 9:00 a.m.]