RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Consumer Products; and Architectural and Industrial Maintenance Coatings

The Environmental Quality Board (Board) by this order amends Chapter 130, Subchapters B and C (relating to consumer products; and architectural and industrial maintenance coatings), to read as set forth in Annex A. The amendments to Subchapter B will amend the Table of Standards to add volatile organic compound (VOC) content limits for an additional 11 categories of consumer products and revise the VOC content limits for one category of consumer products currently regulated. The amendments to Subchapter B also include definitions for approximately 30 new terms, including terms that relate to the new regulated product categories, and revised definitions for approximately 75 existing terms to provide clarity. The amendments add the term "VOC—volatile organic compound" to Subchapter B and revise the definition of the term in Subchapter C to mirror the definition of the term in § 121.1 (relating to definitions). The definition of the term "VOC—volatile organic compound" in § 121.1 refers to the Federal definition of VOC.

This order was adopted by the Board at its meeting of June 17, 2008.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

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C. *Statutory Authority*

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

D. *Background of the Amendments*

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health and welfare are adversely affected. The United States Environmental Protection Agency (EPA) has concluded that there is an association between high levels of ambient ozone and increased hospital admissions for respiratory ailments, such as asthma. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ozone while engaged in activities that involve physical exertion. Though these symptoms are often temporary, repeated exposure could result in permanent lung damage. High levels of ground-level ozone also cause damage to crops and vegetation, buildings and synthetic fibers, including nylon, and reduce visibility on roadways and in natural areas.

On March 12, 2008, the EPA announced a revised primary and secondary 8-hour ozone standard from 0.08 ppm to 0.075 ppm. The EPA selected the new levels for the final standards after reviewing more than 1,700 peer-reviewed scientific studies about the effects of ozone on public health and welfare, and after considering advice from the agency's external scientific advisors and staff, along with extensive public comment. The EPA held five public hearings and received nearly 90,000 written comments. The EPA's projections indicate that without additional State or local controls, there will still be areas not meeting this more protective standard.

The purpose of the amendments is to reduce the VOCs emitted from consumer products. Ozone is not directly emitted by consumer products, but is created as a result of the chemical reaction of oxides of nitrogen and VOCs in the presence of light and heat. The amendments are part of the Commonwealth's strategy to achieve and maintain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) throughout this Commonwealth. The amendments expand upon the consumer products regulation adopted by the Board at its meeting of July 16, 2002. See 32 Pa.B. 4824 (October 5, 2002).

The amendments also revise the definition of the term "VOC—volatile organic compound" in Subchapter C to mirror the definition of the term in § 121.1. The definition of the term "VOC—volatile organic compound" in § 121.1 refers to the Federal definition of VOC. This revision will harmonize the VOC definitions in Chapters 121 and 130 and in Subchapters B and C of Chapter 130, and will make the most currently VOC exempt compounds available as tools to reduce ozone and particulate matter (PM) formation.

While there are Federal VOC content limits codified at 40 CFR Part 59, Subpart C (relating to national volatile organic compound emission standards for consumer products) for certain consumer products already regulated by Chapter 130, Subchapter B, there are no Federal limits for the additional products that will be regulated by this final-form rulemaking.

These amendments are consistent with regulatory initiatives that are being undertaken by other jurisdictions in the Ozone Transport Region (OTR) to address regional transport of ozone precursor emissions. The Ozone Transport Commission (OTC) Member States and the District of Columbia and OTC staff formed a workgroup to discuss additional control measures for consumer products during a series of conference calls and workshops held from the spring of 2004 through the autumn of 2006. Representatives of the major consumer products trade associations, including the Consumer Specialty Products Association (CSPA), the American Solvents Council and the Cosmetic, Toiletry and Fragrance Association (now the Personal Care Products Council or PCPC), participated in several of the conference calls or meetings and are generally supportive of the initiative. The OTC workgroup collected

and evaluated information regarding emission reduction benefits, cost-effectiveness and implementation issues.

Consistent with section 7.4 of the APCA (35 P. S. § 4007.4), the Department held three public meetings regarding control measures under consideration for adoption by the OTC on May 22, 23 and 25, 2006. The control measures reviewed at these meetings included the OTC Consumer Products Model Rule. Notice of these meetings was published at 36 Pa.B. 2071 (April 29, 2006).

Based on the analysis performed by the OTC workgroup, the OTC Commissioners at the OTC Commissioners' meetings of June and November, 2006, made recommendations to the OTC Member Jurisdictions to consider additional emission reductions from consumer products. The resulting 2006 OTC Model Rule for Consumer Products is similar to the California Air Resources Board (CARB) consumer products regulation amended in September 2005. The Department used the OTC Model Rule and background material as a starting point and reviewed those documents, including specific emission reductions, for applicability in this Commonwealth.

Because the Commonwealth, in conjunction with other OTC Member Jurisdictions, has had discussions with representatives of the various National consumer product manufacturers in related industries, and gathered their support for the amendments at the proposed rulemaking stage, it is important that the amendments of the consumer product regulation be implemented consistently and uniformly in the OTR.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on the final-form rulemaking on March 27, 2008. The AQTAC concurred unanimously with the Department's recommendation to present the final-form rulemaking to the Board for consideration as final-form rulemaking at the Board's June 17, 2008, meeting. The Department discussed the final-form rulemaking with the Citizens Advisory Council on March 18, 2008, and the SBCAC on April 23, 2008. The CAC and SBCAC had no comments or concerns with the final-form rulemaking.

E. *Summary of Regulatory Requirements and Major Changes to the Proposed Rulemaking*

This final-form rulemaking amends the definitions in § 130.202 (relating to definitions) of the following terms, for clarity, style and format: "ACP emissions," "ACP limit," "ACP product," "ACP VOC standard," "ASTM," "adhesive," "adhesive remover," "aerosol adhesive," "aerosol product," "agricultural use," "air freshener," "all other forms," "astringent/toner," "automotive wax, polish, sealant or glaze," "bathroom and tile cleaner," "bug and tar remover," "carburetor or fuel-injection air intake cleaners," "carpet and upholstery cleaner," "compliance period," "construction, panel and floor covering adhesive," "consumer product," "contact adhesive," "deodorant," "device," "dry cleaning fluid," "dusting aid," "electronic cleaner," "enforceable sales record," "fabric protectant," "facial cleaner or soap," "floor polish or wax," "floor wax stripper," "flying bug insecticide," "fragrance," "furniture coating," "furniture maintenance product," "general purpose adhesive," "general purpose cleaner," "general purpose degreaser," "general-use hand or body cleaner or soap," "hair shine," "hair spray," "hair styling gel," "heavy-duty hand cleaner or soap," "institutional product or industrial and institutional (I&I) product," "LVP content or lower vapor pressure content," "LVP-VOC or lower vapor pressure-VOC," "lawn and garden insecticide," "liquid," "lubricant," "medicated astringent/medicated toner," "multipurpose lubricant," "multipurpose solvent," "nonresilient flooring," "paint remover or stripper," "penetrant," "Pennsylvania sales," "plasticizer," "pre-ACP VOC content," "principal display panel or panels," "product category," "sealant and caulking compound," "shaving cream," "shortfall," "solid," "special purpose spray adhesive," "spot remover," "structural waterproof adhesive," "surplus reduction," "TMHE-Total maximum historical emissions," "type B propellant," "type C propellant," "undercoating," "VOC content," "waterproofer" and "wax."

Thirty-five of the definitions that were revised in the proposed rulemaking have been returned to their original language in the final-form rulemaking, in response to public comment expressing concern that replacement of the term "designed" with "formulated or labeled" would be inconsistent with the OTC Model Rule. The defined terms that have been returned to their existing regulatory language are the following: "aerosol cooking spray," "antimicrobial hand or body cleaner or soap," "automotive brake cleaner," "automotive hard paste wax," "automotive instant detailer," "automotive rubbing or polishing compound," "automotive windshield washer fluid," "charcoal lighter material," "container/packaging," "crawling bug insecticide," "disinfectant," "engine degreaser," "flea and tick insecticide," "floor seam sealer," "glass cleaner," "hair mousse," "herbicide," "household product," "insecticide," "insecticide fogger," "laundry prewash," "laundry starch product," "metal polish/cleanser," "multipurpose dry lubricant," "nail polish," "nail polish remover," "oven cleaner," "paint," "pesticide," "rubber and vinyl protectant," "silicone-based multipurpose lubricant," "spray buff product," "tire sealant and inflation," "wasp and hornet insecticide" and "wood floor wax."

This final-form rulemaking adds definitions in § 130.202 for the following terms to improve clarity or explain new product categories: "aerosol coating product," "antistatic product," "certified emissions," "certified use rate," "contact adhesive-general purpose," "contact adhesive-special purpose," "deodorant body spray," "electrical cleaner," "energized electrical cleaner," "existing product," "fabric refresher," "floor and wall covering adhesive remover," "floor coating," "footwear or leather care product," "gasket adhesive or thread locking adhesive remover," "general purpose adhesive remover," "graffiti remover," "hair styling product," "high pressure laminate," "highest sales," "highest VOC content," "personal fragrance product," "pressurized gas duster," "product form," "shaving gel," "specialty adhesive remover," "toilet/urinal care product," "vinyl/fabric/leather/polycarbonate coating" and "wood cleaner."

This final-form rulemaking also adds a definition in § 130.202 for the term "VOC—volatile organic compound," to mirror the definition of this term in § 121.1. This term in Subchapter C was not included in the proposed rulemaking and is amended in the final-form rulemaking in response to public comment. The definition of the term "VOC—volatile organic compound" in § 121.1 refers to the Federal definition of VOC. This reference to the Federal definition will allow the "VOC—volatile organic compound" definition in the Department's rules to be updated automatically whenever the EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC.

The final-form rulemaking amends § 130.211 (relating to table of standards) by adding VOC content limits for 11 new categories of consumer products and revising the VOC content limits for one category of product currently regulated (contact adhesive). This section sets forth the

percentage of VOC by weight that cannot be exceeded for consumer products that are sold, supplied, offered for sale or manufactured for sale in this Commonwealth. The 11 new categories are: adhesive remover (floor and wall covering, gasket or thread locking, general purpose and specialty); antistatic product; electrical cleaner; electronic cleaner; fabric refresher; footwear or leather care product; graffiti remover; hair styling product; shaving gel; toilet/urinal care product; and wood cleaner.

The final-form rulemaking amends §§ 130.201, 130.202, 130.211, 130.213 and130.215 (relating to products registered under FIFRA; requirements for charcoal lighter materials; and requirements for aerosol adhesives) for clarity and format. In addition, the final-form rulemaking amends § 130.214 to incorporate future changes in test procedures and deletes from § 130.215(a) an unnecessary reference to a California regulatory provision.

The final-form rulemaking adds § 130.217 (relating to sell-through of products) to allow for sell-through of product manufactured prior to applicable effective dates.

The final-form rulemaking amends §§ 130.331, 130.332, 130.334, 130.335 and 130.338 for clarity and format. The proposed rulemaking had proposed deleting "air fresheners" from the exemption in § 130.335(b) (relating to air fresheners) for consistency with the OTC Model Rule, because these air fresheners will be regulated in the new category "toilet/urinal care product." That left an exemption for insecticides containing at least 98% paradichlorobenzene in § 130.335(b), which in the final-form rulemaking has been moved to new § 130.334(b) (relating to products registered under FIFRA). Section 130.335(b) is deleted in the final-form rulemaking.

The final-form rulemaking amends § 130.371 (relating to product dating) by updating the product dating requirements and explaining the format and location for the date code. The final-form rulemaking also requires that a manufacturer submit an explanation of its modified codes to the Department before products displaying the modified code can be sold. The proposed rulemaking had required that the product date or code be displayed on each consumer product container or package, and an explanation of it filed with the Department, no later than 12 months prior to the effective date of the applicable standard. The final-form rulemaking amends this section to require that the date or date-code be displayed, and an explanation of it filed with the Department, before the consumer product is sold, supplied or offered for sale in this Commonwealth.

The final-form rulemaking amends § 130.372 (relating to most restrictive limit) to add new subsections (a) and (b). Section 130.372(a) establishes the lowest applicable VOC limit requirements for products manufactured before January 1, 2009, and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registered insecticides manufactured before January 1, 2010. Subsection 130.372(b) establishes the lowest applicable VOC limit requirements for products manufactured on or after January 1, 2009, and FIFRA-registered insecticides manufactured on or after January 1, 2010.

The final-form rulemaking requires additional information on product containers for products in § 130.373 (relating to additional labeling requirements for aerosol adhesive, adhesive remover, electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive products).

The final-form rulemaking amends §§ 130.411, 130.412 and 130.414 (relating to application for variance; variance orders; and modification of variance) for format.

The final-form rulemaking amends § 130.431 (relating to testing for compliance) to update the reference date for several test protocols and standards and to incorporate future amendments of test protocols and standards.

The final-form rulemaking amends §§ 130.452—130.455, 130.457, 130.458, 130.460, 130.462 and 130.465 for clarity.

The final-form rulemaking amends § 130.471 (relating to public hearings) to require the applicant for a variance or alternative control plan to publish the notice for the three public hearings in newspapers of general circulation not less than 30 days prior to the hearings. The Department will publish notice in the *Pennsylvania Bulletin*.

The final-form rulemaking amends the definition of the term "VOC—volatile organic compound" in the definitions pertaining to architectural and industrial maintenance coatings in Subchapter C, to mirror the definition of this term in § 121.1. The definition of the term "VOC—volatile organic compound" in § 121.1 refers to the Federal definition of VOC. This reference to the Federal definition will allow the Department's rules to be updated automatically whenever EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC. Specifically, this will allow for the use of tertiary butyl acetate as a VOC-exempt compound in architectural and industrial maintenance coatings, providing improved ozone air pollution reduction benefits to the citizens of this Commonwealth. Amendments to Subchapter C were not included in the proposed rulemaking, but this amendment is included in the final-form rulemaking in response to public comment on the proposed rulemaking. The requested revision is within the scope of this rulemaking. It will harmonize the VOC definitions in Chapters 121 and 130 and in Subchapters B and C of Chapter 130, and will make the most currently VOC exempt compounds available as tools to reduce ozone and PM formation.

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

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

The Board approved publication of the proposed rulemaking at its meeting of June 19, 2007. The proposed rulemaking was published at 37 Pa.B. 5117 (September 15, 2007), with a 60-day public comment period. Revised dates for the public comment period and public hearings were published at 37 Pa.B. 5379 (October 7, 2007) and at 37 Pa.B. 5799 (October 27, 2007). Three public hearings were held on November 26, 2007, in Pittsburgh, Harrisburg and Norristown, PA. The public comment period closed on December 26, 2007.

General Support; Promulgation of Uniform Consumer Products Regulations Throughout the OTR

The CSPA supported the Department's proposed amendments. Despite noting that some of the standards may pose challenges for some CSPA members, especially small businesses, CSPA commented that adoption of uniform regional regulations is a practical necessity for small businesses and that CSPA's members support the promulgation of uniform regulations throughout the OTR.

The members of the PCPC commended the Department on substantially adhering to the revised OTC Model Rule in the proposed regulation. The Council worked closely

with the OTC on the adoption of both its original regulation and the 2006 updated version. The Council's support for these efforts stems from what it described as the critical need of Council members to have State regulations that are both technologically and commercially feasible for compliance and that permit the sale of uniform products across state lines.

The Department thanks the CSPA, the PCPC and their members for their efforts in promoting regulatory standards needed by this Commonwealth and other member jurisdictions of the OTR to achieve and maintain the 8-hour ozone NAAQS throughout the region. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The final-form rulemaking is consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursors throughout the OTR. The measures recommended by the OTC are reasonably necessary to achieve and maintain the health-based 8-hour ozone NAAQS in this Commonwealth. Additionally, on March 12, 2008, EPA issued a revised 8-hour ozone standard that could require additional emission reductions.

The Independent Regulatory Review Commission (IRRC) commended the Board for the promulgation of a regulation that is consistent with other regulations being implemented throughout the OTR, but noted that the EQB is not in control of the actions taken in the other OTR jurisdictions. IRRC requested that the Board explain the status of the implementation in other OTR jurisdictions, saying that if other jurisdictions were to implement different regulations or do their regulations on a different timetable, businesses and consumers in this Commonwealth could be disadvantaged.

In response, the Department has prepared a summary of the status of the adoption of consumer product amendments consistent with the OTC Model Rule. Connecticut adopted its rule on July 26, 2007, with an effective date of January 1, 2009. Maine adopted its rule on December 15, 2007, with an effective date of January 1, 2009. Maryland adopted its rule on June 18, 2007, with an effective date of January 1, 2009. Massachusetts adopted its rule on October 19, 2007, with an effective date of January 1, 2009. New Jersey published its proposed rulemaking on November 5, 2007, and the public comment period closed January 4, 2008. New Jersey proposed an effective date of January 1, 2009. Delaware intends to hold a public hearing in June 2008, and intends to publish a final rule August 1, 2008, with an effective date of January 1, 2009. New Hampshire, New York, Rhode Island, Virginia and the District of Columbia have rules in development.

IRRC also requested that the Board provide a comparison of the content of the regulations promulgated by other OTR jurisdictions with Pennsylvania's final-form regulations.

The Department responds that each jurisdiction, with the exception of Vermont, has adopted or intends to adopt the OTC Model Rule, some with changes based on their need, discretion or regulatory procedure and formatting conventions. However, the VOC content limits of the products and the basic provisions of the rules are consistent across the jurisdictions. The minor differences between the rules are not sufficient to interfere with the development of a regional control strategy or regional market.

IRRC requested that the Board explain how Pennsylvania's final-form regulation minimize the economic impact on businesses and consumers in this Commonwealth.

The Department responds that the final-form amendments are uniform and consistent with the OTC Model Rule and the consumer product regulations promulgated by the other member jurisdictions of the OTR. Manufacturers will not need to develop a Pennsylvania-specific product to comply with the final-form rulemaking. The amendments may slightly increase costs to purchasers of consumer products, but the cost increase is expected to be negligible because much of the reformulation of products has been completed as manufacturers developed products to meet these limits in other areas of the country. CARB estimated the cost effectiveness of VOC limits with an effective date (in California) of December 31, 2006, to be about $4,000 per ton of VOC reduced. CARB further estimated the average increase in cost per unit to the manufacturer to be about $0.16 per unit. Assuming CARB's estimates for the OTR provides a conservative estimate, because some of the one-time research and reformulation costs incurred for products sold in California will not have to be incurred again for products sold in the OTR.

Using the OTR's conservative estimate, it is estimated that for Pennsylvania, if none of the reformulation had yet been completed, the reduction of VOC content for the affected consumer products would cost approximately $4,000 per ton of emissions reduced. The VOC emission reduction benefit for the additional regulated consumer products is estimated to be 2.1 tons per day (tpd) and 767 tons annually. It is estimated that the reductions will be approximately 0.13 pound per resident per year. Total cost to the users is estimated to be approximately $3.1 million. This is an average of $0.26 per resident per year.

The production of low-VOC consumer products for these additional categories may require some new product development, but much of this work has already been done because of similar regulatory efforts in California.

Definitions—Reasonableness and Clarity

IRRC noted that the definition of "construction, panel and floor covering adhesive" exempts products that "weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging." IRRC noted that there are similar exemptions in the definitions of "contact adhesive" and "general purpose adhesive." IRRC asked why the EQB placed no limit on the VOC content of large containers of these products, but placed the limits in § 130.211 on the identical product in a smaller container? IRRC requested that the EQB explain why these exemptions are reasonable and will not adversely affect the stated goal to reduce VOCs emitted from consumer products.

The Department responds that the Department anticipates the larger containers of construction, panel and floor covering adhesives, contact adhesives and general purpose adhesives to be regulated by the Department's proposed Chapter 130, Subchapter D amendment, relating to adhesives, sealants and primers. The Subchapter D amendment will be consistent with the requirements of the OTC 2006 Adhesives, Sealants and Primers Model Rule and is scheduled to be proposed to the EQB in the summer of 2008.

IRRC noted that subparagraphs (i) and (ii) of the definition of "deodorant body spray" refer to a "product with 20% or less fragrance." It is not clear how to apply the 20% figure. For example, the "Table of Standards" in

§ 130.211 uses "percent VOC by weight." IRRC recommended that the regulation specify what the 20% figure is related to, such as weight or volume.

The Department agrees and has revised the definition of the term "deodorant body spray" in the final-form rulemaking to clarify that the 20% fragrance is by weight.

Reasonable Effective Date (§ 130.211)

The CSPA commented that the proposed effective date of January 1, 2009, for the new VOC limits and related administrative and enforcement provisions would allow sufficient time for companies to comply with the technology-forcing VOC limits. IRRC requested that the EQB explain how the January 1, 2009, effective date, which requires compliance in less than a year, is reasonable and feasible for businesses and consumers.

The Department responds that the staff of the OTC and member states formed a workgroup to discuss additional control measures for consumer products during a series of conference calls and workshops held from the spring of 2004 through the autumn of 2006. Representatives of the major consumer products trade associations, including the CSPA, the American Solvents Council and the PCPC, participated in several of the conference calls with the OTC Workgroup and worked with the group to set the date of January 1, 2009, as the effective date. Hence, the members of these industry groups have been familiar with the OTC 2006 final Consumer Products Model Rule, are supportive of the initiative, and are aware that this rulemaking is being published with a January 1, 2009, compliance date.

Additionally, the majority of currently marketed products have already been reformulated to meet the California VOC limits which were adopted in July 2005. Most of these limits were effective in California by December 31, 2006. The standards in the final-form rulemaking are identical to the California standards, thus the manufacturers of the regulated products have had over 2 years to develop compliant products.

Sell-through of Products Manufactured Before the Applicable Effective Date (§ 130.217)

The CSPA support the Board's proposal for dealing with products manufactured before the applicable effective date for the VOC limits. This provision is entirely consistent with the parallel provision in the OTC Model Rule that imposes a sell-through limitation only on products that do not display either the date of manufacture or an appropriate date code. The practical realities of industry-wide competition and prevailing retailer practices result in the overwhelming number of products being sold within 12-18 months after the date of manufacture.

The Department appreciates the commentators' support.

Alternative Control Plan Provision (§ 130.452)

The CSPA urged the Board to consider adopting a narrowly-tailored amendment to the Commonwealth's current ACP provision, explaining that the amendment would have the effect of producing a measurable net environmental benefit for this Commonwealth. The CSPA explained that the Commonwealth's current regulation recognizes an ACP agreement approved by CARB, but that it is possible that there may be a very limited number of instances in which some products used in CARB's ACP compliance calculations may not be subject to the VOC limits in the proposed rulemaking, thereby leading to the denial of a CARB-approved ACP that is still producing a net environmental benefit. The CSPA offered a technical revision, which it asserted would make Pennsylvania's ACP provision consistent with the corresponding provision in the Ohio EPA's recently promulgated final regulation and the Illinois EPA's final draft regulation.

The Department responds that the amendments to the consumer products regulation are designed to reduce emissions within this Commonwealth's borders and in downwind areas in the OTR. The promulgation and implementation of the regulation in this Commonwealth will allow the Department to make progress in achieving and maintaining the NAAQS. The Alternative Control Plan approach outlined in the final-form regulation preserves the Commonwealth's right and obligation to determine on a case-by-case basis if an ACP will be environmentally beneficial, prior to granting approval of a plan. Adding the phrase "used for emission credits" would allow noncomplying product to be sold in this Commonwealth that could not be sold elsewhere in the OTR. Therefore, the requested exception has not been included in the final-form rulemaking.

IRRC noted that the CSPA believes that, as written, the regulation may have the unintended effect of limiting the environmental benefits of the regulation. IRRC suggested adding the phrase "used for emission credits" to § 130.452 (relating to exemption) so that the first sentence of this section in the final regulation would end: ". . . provided that all ACP products used for emission credits within the CARB ACP agreement are contained in § 130.211." IRRC recommended that the EQB consider including this phrase in the final-form regulation.

While the Department appreciates the point that IRRC and the CSPA make, the amendments to the consumer products regulation are consistent with the OTC's Model Rule strategy, which is designed to reduce ozone precursors in this Commonwealth and in downwind areas. The addition of the CSPA suggested language would create inconsistency among the OTR member jurisdictions. Moreover, adding the phrase "used for emission credits" would allow noncomplying product to be sold in this Commonwealth that could not be sold in the other OTR states. The Department does not see a need to create such an exception.

Is Proposal Needed to Meet SIP Commitments?

The PCPC asked whether it is necessary to proceed with the proposal for the Commonwealth to meet its SIP commitments. On May 30, 2007, the Director of the EPA's Office of Air Quality Planning Standards issued a memorandum to EPA Regional Offices and to all states preparing ozone State Implementation Plans. The memorandum establishes the VOC Emission Reduction Credits that states can claim due to the EPA commercial and consumer product rules to be proposed imminently, with new limits to take effect January 1, 2009. The commentator urged the Department to seriously consider suspending action on its current proposal. The commentator stated that avoiding an additional State rulemaking proceeding would substantially simplify compliance and enforcement, reduce the costs of regulation, and dispel any chance of unintended but significant differences between the regulations.

The Department responds that emission reductions from this consumer product rulemaking are necessary as they are identified in the contingency measure plan in the

Commonwealth's attainment demonstration for the 8-hour ozone NAAQS for the Philadelphia area. Additionally, emission reductions from this rulemaking will support the 8-hour ozone NAAQS attainment demonstration for the Pittsburgh-Beaver Valley Area; the original redesignation request and maintenance plan submitted to the EPA for the Pittsburgh region is no longer approvable because of a violation of the standard during the 2007 ozone season. The VOC emission reductions resulting from the adoption and implementation of the final-form regulation are reasonably necessary to achieve and maintain the 8-hour standard. The May 30, 2007, EPA memorandum stated that EPA's consumer product rule revision would be proposed in June 2007 and finalized in December 2007, with compliance being required by January 1, 2009. The EPA now expects to propose the rule in May of 2008, with compliance required by May 1, 2009. Additionally, the EPA notes on page 4 of its May 30, 2007, memorandum that, " . . . if the EPA rule does not provide the reduction anticipated for a particular area, any State claiming credit from the Federal rule will be responsible for developing measures to make up the shortfall." In light of that and the fact that on March 12, 2008, the EPA announced a revised 8-hour ozone standard of 0.075 parts per million, it is important for the Commonwealth to develop and implement emission reduction strategies to reduce ozone precursor emissions within its borders. Based on 2004-2006 data, at least 23 counties are monitoring nonattainment of the March 12, 2008, 8-hour ozone standard.

Proposed Language: Use of the Term 'Designed'

The PCPC noted one deviation from the OTC Model Rule that was problematic. Throughout the proposal, the term "designed" was replaced with "formulated or labeled" and the commentator believed the proposal should revert to the use of the term "designed" to promote consistency with the OTC Model Rule. The PCPC noted that the term "designed" is largely in alignment with the Federal Food and Drug Administration's intended use doctrine. The language of the proposal—"formulated or labeled"—suggested that a product could be defined solely on the basis of either: 1) its claims; or 2) what may be in the product. This would be a fundamental policy shift and would be impracticable. Therefore, the proposal should be revised to use the term "designed" wherever it originally appeared in the definitional sections of the rule, or, alternatively, "formulated and labeled"—but not "formulated or labeled."

The Department agrees with the recommendation and has reverted to the wording used by the OTC Model Rule for all of the definitions.

Definition of VOC and Exempt Solvent in Subchapters B and C

The National Paint and Coatings Association (NPCA) and Lyondell Chemical Company (Lyondell) commented that they were pleased to see that the proposed amendments were silent on the definition of a "VOC" or an "exempt solvent," which means that the general definitions in § 121.1 will apply to the amended consumer products rule. Both definitions refer to the Federal definition of a VOC, which was last amended in 2004 to exclude tertiary butyl acetate (TBAC) based on its negligible ozone-forming potential. This reference to the Federal definition was a key reason the Commonwealth was one of the first states to be able to use TBAC as a tool to reduce ozone formation from a variety of product and point source emissions. They note that the Commonwealth's VOC rules are, therefore, automatically updated when the EPA excludes a compound from the VOC definition. This saves the Department resources and allows the quick use of negligibly reactive compounds instead of reactive ones, which helps to reduce ozone levels.

The Department appreciates the commentators' support and agrees that the general definitions of the terms "VOC—volatile organic compound" and "exempt solvent" found in § 121.1 apply to the consumer products subchapter. Additionally, the Department has added, at final, the term "VOC—volatile organic compound" to Chapter 130, Subchapter B, with the definition: "An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity."

The NPCA and Lyondell also commented that Subchapter C (relating to architectural and industrial maintenance coatings) includes definitions for the terms "VOC" and "exempt compounds" that are inconsistent with the Federal definitions, the Commonwealth's general definitions, the Commonwealth's consumer products definitions and those of all other OTC states. The commentators noted that these outdated definitions were left over from the OTC Model Rule and recommended that they be deleted from Subchapter C as part of this rulemaking. They explained that this would harmonize the Commonwealth's VOC definitions and make the latest VOC exempt compounds available as tools to reduce ozone and PM formation from architectural coating emissions statewide. They stated that this would also eliminate the need to revise Subchapter C each time the Federal VOC definition is amended, thus saving the Department resources.

The Department agrees. The requested revision is within the scope of this rulemaking. It will harmonize the VOC definitions in Chapters 121 and 130 and in Subchapters B and C of Chapter 130, and will make the most current VOC exempt compounds available as tools to reduce ozone and PM formation. The Department has revised the definition of the term "VOC—volatile organic compound" in Chapter 130, Subchapter C as part of this final-form consumer products rulemaking; the definition will read: "An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity." The term "exempt compound" and its definition in Subchapter C did not need revision.

G. *Benefits, Costs and Compliance*

Benefits

The final-form rulemaking will assure that the residents of this Commonwealth and the environment will continue to benefit from reduced emissions of VOCs and Hazardous Air Pollutants (HAPs) in consumer products. Although the consumer product requirements are designed primarily to reduce ozone precursors, the reformulation of products to meet the VOC content limits will also result in the reduction of HAP emissions. The amendments will result in improved indoor and outdoor air quality for all citizens of this Commonwealth by reducing ozone precursor emissions and HAP compounds. The reduced levels of HAPs will also benefit water quality through reduced loading on water treatment plants and in reduced quantities of HAP compounds in spillage on the ground.

This final-form rulemaking will also improve ozone air pollution reduction benefits to the citizens of this Commonwealth by harmonizing the definition of "VOC—volatile organic compound" in Subchapter C with that in § 121.1 and Subchapter B. This revision will allow the Department's rules to be updated automatically when the EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC. This will make the most currently VOC exempt compounds, such as TBAC, available as tools to reduce ozone and PM formation.

Compliance Costs

It is estimated that the reduction of VOC content for the affected consumer products will cost approximately $4,000 per ton of emissions reduced. The VOC emission reduction benefit for the additional regulated consumer products is estimated to be 2.1 tpd and 767 tons annually. It is estimated that the reductions will be approximately 0.13 pound per resident per year. Total cost to the users is estimated to be approximately $3.1 million. This is an average of $0.26 per resident per year. The final-form rulemaking includes compliance and averaging options that will allow manufacturers to formulate products in the most efficient and effective manner.

Additionally, the amendments to Chapter 130, Subchapter C, allow for the use of TBAC, an exempt VOC compound, which will provide additional cost-effective compliance options in the reformulation of architectural and industrial maintenance coating products.

Compliance Assistance Plan

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

Paperwork Requirements

The final-form amendments revise the product dating requirements of Subchapter B to require only that the product date or date-code must be displayed on each consumer product container or package before the consumer product is sold, supplied or offered for sale in this Commonwealth. Additionally, the amendments require that a manufacturer must file an explanation of the code indicating the date of manufacture for a consumer product with the Department before the consumer product is sold, supplied or offered for sale in this Commonwealth. Prior to these revisions, the deadline for these requirements was no later than 12 months prior to the effective date of the applicable standard specified in the Table of Standards.

An applicant for an alternative control plan or variance will be required to publish notice of the time, place and purpose of the three public hearings for approval of the alternative control plan or variance in newspapers of general circulation at least 30 days prior to the hearings.

H. *Pollution Prevention*

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

These amendments will assure that the citizens and the environment of this Commonwealth will continue to experience the benefits of reduced emissions of VOCs and HAPs from low-VOC consumer products. Although the requirements are intended to address ozone air quality by reducing emissions of ozone precursors, the reformulation of products to meet the VOC content limits will also result in the reduction of HAP emissions. The final-form regulations will result in improved indoor and outdoor air quality for all citizens of this Commonwealth by reducing ozone precursor emissions and HAP compounds. The reduced levels of HAPs will also benefit water quality through reduced loading on water treatment plants and in reduced quantities of HAP compounds in spillage on the ground.

These amendments will also improve ozone air pollution reduction benefits to the citizens of this Commonwealth by making the most currently VOC exempt compounds, such as TBAC available under Subchapter C as tools to reduce ozone and PM formation.

I. *Sunset Review*

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

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 29, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 5117, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (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 the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 20, 2008, 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 August 21, 2008, and approved the final-form rulemaking.

K. *Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 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) These regulations do not enlarge the purpose of the proposal published at 37 Pa.B. 5117.

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

(5) These regulations are necessary for the Commonwealth to achieve and maintain ambient air quality standards.

L. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 130, are amended by amending §§ 130.201, 130.202, 130.211, 130.213—130.215, 130.331, 130.332, 130.334, 130.335, 130.371—130.373, 130.411, 130.412, 130.414, 130.431, 130.452—130.455, 130.457, 130.458, 130.460, 130.462, 130.465, 130.471 and 130.602; and by adding §§ 130.217 and 130.338 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(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 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*.

JOHN HANGER,
Acting Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to the document, see 38 Pa.B. 4961 (September 6, 2008).)

Fiscal Note: Fiscal Note 7-416 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 B. CONSUMER PRODUCTS

GENERAL PROVISIONS

§ 130.201. Applicability.

Except as provided in §§ 130.331—130.338 (relating to exemptions), this subchapter applies to a person who sells, supplies, offers for sale or manufactures a consumer product on or after the applicable effective date in § 130.211 (relating to table of standards), for use in this Commonwealth.

§ 130.202. Definitions.

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

* * * * *

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

$$\text{ACP Emissions} = (\text{Emissions})_1 + (\text{Emissions})_2 + \ldots + (\text{Emissions})_N$$

where,

(i) *Emissions* = $\dfrac{(\text{VOC content}) \times (\text{Enforceable sales})}{100}$

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

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

$$\text{ACP limit} = (\text{Limit})_1 + (\text{Limit})_2 + \ldots + (\text{Limit})_N$$

where,

(i) *Limit* = $\dfrac{(\text{ACP standard}) \times (\text{Enforceable sales})}{100}$

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

ACP product—A consumer product subject to the VOC standards specified in § 130.211 (relating to table of standards), except those products that have been exempted under §§ 130.331—130.338 (relating to exemptions), or exempted as innovative products under §§ 130.351 and 130.352 (relating to innovative products).

* * * * *

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

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

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

$$\text{VOC standard} = \frac{(0.020 \text{ pound } CH_2 \text{ per start} \times 100)}{\text{Certified use rate}}$$

where,

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

ASTM—ASTM International, formerly the American Society for Testing and Materials.

Adhesive—A product that is used to bond one surface to another by attachment.

(i) The term includes caulks, sealants, glues and similar substances used for the purpose of forming a bond.

(ii) The term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners or other products with an adhesive incorporated onto or in an inert substrate.

Adhesive remover—

(i) A product designed to remove adhesive from either a specific substrate or a variety of substrates.

(ii) The term does not include products that remove adhesives intended exclusively for use on humans or animals.

Aerosol adhesive—

(i) An aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

(ii) The term includes the following:

(A) Special purpose spray adhesive.

(B) Mist spray adhesive.

(C) Web spray adhesive.

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 designed for hand-held application or for use in specialized equipment for ground traffic marking applications.

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

Aerosol product—

(i) A pressurized spray system that dispenses product ingredients by means of a propellant contained in the product or the product's container or by means of a mechanically induced force.

(ii) The term does not include pump sprays.

Agricultural use—

(i) The use of a pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of an animal or plant crop.

(ii) The term does not include the sale or use of pesticides in properly labeled packages or containers which are intended for the following uses:

(A) *Home use.* Use in a household or its immediate environment.

(B) *Structural pest control.* A use requiring a license under the applicable State pesticide licensing requirement.

(C) *Industrial use.* Use for or in a manufacturing, mining or chemical process or use in the operation of factories, processing plants and similar sites.

(D) *Institutional use.* Use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums and office complexes.

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

(i) The term does not include the following:

(A) Products that are used on the human body.

(B) Products that function primarily as cleaning products, as indicated on a product label.

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

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

(E) Toilet/urinal care products.

* * * * *

All other forms—Consumer product forms for which no form-specific VOC standard is specified in §§ 130.211—130.217 (relating to standards). Unless specified otherwise by the applicable VOC standard, the term includes solids, liquids, wicks, powders, crystals and cloth or paper wipes (towelettes).

Antimicrobial hand or *body cleaner* or *soap*—

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

(ii) Antimicrobial hand or body washes/cleaners.

(A) Foodhandler hand washes.

(B) Healthcare personnel hand washes.

(C) Preoperative skin preparations.

(D) Surgical scrubs.

* * * * *

Antistatic product—

(i) A product that is labeled to eliminate, prevent or inhibit the accumulation of static electricity.

(ii) The term does not include the following:

(A) Electronic cleaner.

(B) Floor polish or wax.

(C) Floor coating.

(D) Aerosol coating product.

(E) Architectural coating.

* * * * *

Astringent/toner—A product not regulated as a drug by the United States Food and Drug Administration (FDA) that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include the following:

(i) Hand, face or body cleaner or soap products.

(ii) Medicated astringent/medicated toner.

(iii) Cold cream.

(iv) Lotion.

(v) Antiperspirant.

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

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

(i) Designed to protect and improve the appearance of automotive paint surfaces.

(ii) A solid at room temperature.

(iii) 0% water by formulation.

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

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

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

(i) The term includes products designed for:

(A) Use in autobody repair shops and drive-through car washes.

(B) Use by the general public.

(ii) The term does not include the following:

(A) Automotive rubbing or polishing compounds.

(B) Automotive wash and wax products.

(C) Surfactant-containg car wash products.

(D) Products designed for use on unpainted surfaces such as bare metal, chrome, glass or plastic.

Automotive windshield washer fluid—

(i) A liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing or wetting the windshield.

(ii) The term does not include fluids placed by the manufacturer in a new vehicle.

Bathroom and tile cleaner—

(i) A product designed to clean tile or surfaces in bathrooms.

(ii) The term does not include products designed primarily to clean toilet bowls, toilet tanks or urinals.

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

(i) Biological-type residues such as insect carcasses and tree sap.

(ii) Road grime such as road tar, roadway paint markings and asphalt.

Carburetor or fuel-injection air intake cleaners—

(i) A product designed to remove fuel deposits, dirt or other contaminants from a carburetor, choke, throttle body of a fuel-injection system or associated linkages.

(ii) The term does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

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

(i) The term includes products that make fabric protectant claims.

(ii) The term does not include the following:

(A) General purpose cleaner.

(B) Spot remover.

(C) Vinyl or leather cleaner.

(D) Dry cleaning fluids.

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

Certified emissions—The emissions level for products approved by the Department under § 130.214 (relating to requirements for charcoal lighter material products), as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), including subsequent amendments, expressed to the nearest 0.001 pound CH_2 per start.

Certified use rate—The usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), including subsequent amendments, expressed to the nearest 0.001 pound certified product used per start.

Charcoal lighter material—

(i) A combustible material designed to be applied on, incorporated in, added to or used with charcoal to enhance ignition.

(ii) The term does not include the following:

(A) Electrical starters and probes.

(B) Metallic cylinders using paper tinder.

(C) Natural gas.

(D) Propane.

(E) Fat wood.

* * * * *

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

Construction, panel and floor covering adhesive—

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

(A) Structural and building components that include the following:

(I) Beams.

(II) Trusses.

(III) Studs.

(IV) Paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, predecorated hardboard or tileboard, and the like).

(V) Ceiling and acoustical tile.

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

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

(I) Wood or simulated wood covering.

(II) Carpet, carpet pad or cushion, vinyl-backed carpet.

(III) Flexible flooring material.

(IV) Nonresilient flooring material.

(V) Mirror tiles and other types of tiles.

(VI) Artificial grass.

(ii) the term does not include the following:

(A) Floor seam sealer.

(B) Units of product that weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging.

* * * * *

Consumer product—

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

(A) Detergents.

(B) Cleaning compounds.

(C) Polishes.

(D) Floor finishes.

(E) Cosmetics.

(F) Personal care products.

(G) Home, lawn and garden products.

(H) Disinfectants.

(I) Sanitizers.

(J) Aerosol paints.

(K) Automotive specialty products.

(L) Aerosol adhesives, including aerosol adhesives used for consumer, industrial or commercial uses.

* * * * *

Contact adhesive—

(i) An adhesive that:

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

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

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

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

(ii) The term does not include the following:

(A) Rubber cements that are primarily intended for use on paper substrates.

(B) Vulcanizing fluids that are designed and labeled for tire repair only.

(C) Units of product, less packaging, that consist of more than 1 gallon.

Contact adhesive—general purpose—A contact adhesive that is not a "contact adhesive—special purpose."

Contact adhesive—special purpose—A contact adhesive that is used for either of the following:

(i) To bond melamine-covered board, unprimed metal, unsupported vinyl, Teflon, ultra-high molecular weight polyethylene, rubber, high pressure laminate or wood veneer 1/16 inch or less in thickness to a porous or nonporous surface, and is sold in units of product, less packaging, that contain more than 8 fluid ounces.

(ii) In automotive applications that are either of the following:

(A) Automotive under-the-hood applications requiring heat, oil or gasoline resistance.

(B) Attachment of body-side molding, automotive weatherstrip or decorative trim.

Container/packaging—

(i) The parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended.

(ii) The term includes an article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

* * * * *

Crawling bug insecticide—

(i) An insecticide product that is designed for use against ants, cockroaches or other household crawling arthropods, including mites, silverfish or spiders.

(ii) The term does not include products designed to be used exclusively on humans or animals, or house dust mite product. For the purposes of this definition only:

(A) *House dust mite.* Mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata and the family Pyroglyphidae.

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

* * * * *

Deodorant—For products manufactured as follows:

(i) Before January 1, 2009, a product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

(ii) On or after January 1, 2009, a product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that indicates or depicts on the container or packaging, or on a sticker or label affixed to the container or packaging, that the product can be used on or applied to the human axilla to provide a scent or minimize odor. The term includes a deodorant body spray product that indicates or depicts on the container or packaging, or on a sticker or label affixed to the container or packaging, that it can be used on or applied to the human axilla.

Deodorant body spray—For products manufactured as follows:

(i) Before January 1, 2009, a personal fragrance product with 20% or less fragrance by weight.

(ii) On or after January 1, 2009, a personal fragrance product with 20% or less fragrance by weight, that is designed for application all over the human body to provide a scent.

(iii) The term includes a deodorant product that indicates or depicts on the container or packaging, or on a sticker or label affixed to the container or packaging, that it can be used on or applied to the human axilla.

Device—

(i) An instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling or mitigating a pest or other form of plant or animal life (other than humans and other than bacteria, viruses or other microorganisms on or in living humans or living animals).

(ii) The term does not include equipment used for the application of pesticides when sold separately.

Disinfectant—

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

(ii) The term does not include the following:

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

(B) Products designed for agricultural use.

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

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

* * * * *

Dry cleaning fluid—

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

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

(B) "S-coded" fabrics.

(ii) The term includes those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place.

* * * * *

Dusting aid—

(i) A product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating.

(ii) The term does not include pressurized gas duster.

Electrical cleaner—

(i) A product labeled to remove heavy soils like grease, grime or oil from electrical equipment, including electric motors, armatures, relays, electric panels and generators.

(ii) The term does not include the following:

(A) General purpose cleaner.

(B) General purpose degreaser.

(C) Dusting aid.

(D) Electronic cleaner.

(E) Energized electrical cleaner.

(F) Pressurized gas duster.

(G) Engine degreaser.

(H) Antistatic product.

(I) Products designed to clean the casings or housings of electrical equipment.

Electronic cleaner—

(i) A product labeled for the removal of dirt, moisture, dust, flux or oxides from the internal components of electronic or precision equipment, including circuit boards and the internal components of electronic devices, including the following:

(A) Radios.

(B) Compact disc (CD) players.

(C) Digital video disc (DVD) players.

(D) Computers.

(ii) The term does not include the following:

(A) General purpose cleaner.

(B) General purpose degreaser.

(C) Dusting aid.

(D) Pressurized gas duster.

(E) Engine degreaser.

(F) Electrical cleaner.

(G) Energized electrical cleaner.

(H) Antistatic product.

(I) Products designed to clean the casings or housings of electronic equipment.

Energized electrical cleaner—

(i) A product that meets both of the following:

(A) The product is labeled to clean or degrease electrical equipment, where cleaning or degreasing is accomplished when electrical current exists, or when there is a residual electrical potential from a component, such as a capacitor.

(B) The product label clearly states that the product is for energized equipment use only and is not to be used for motorized vehicle maintenance or maintenance of motorized vehicle parts.

(ii) The term does not include electronic cleaners.

* * * * *

Enforceable sales record—A written, point-of-sale record or other Department-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in this Commonwealth during the applicable compliance period can be accurately documented. For the purposes of this subchapter, the term includes the following types of records:

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

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

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

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

Existing product—A formulation of the same product category and form sold, supplied, manufactured or offered for sale in this Commonwealth prior to January 1, 2005, or a subsequently introduced identical formulation.

Fabric protectant—

(i) A product designed to be applied to fabric substrates to protect the surface from soiling by dirt and other impurities or to reduce absorption of liquid into the fabric's fibers.

(ii) The term does not include the following:

(A) Waterproofers.

(B) Products designed for use solely on leather.

(C) Products designed for use solely on fabrics which are labeled "dry clean only" and sold in containers of 10 fluid ounces or less.

Fabric refresher—

(i) A product labeled to neutralize or eliminate odors on nonlaundered fabric, including the following fabrics:

(A) Soft household surfaces.

(B) Rugs.

(C) Carpeting.

(D) Draperies.

(E) Bedding.

(F) Automotive interiors.

(G) Footwear.

(H) Athletic equipment.

(I) Clothing.

(J) Household furniture or objects upholstered or covered with fabrics including wool, cotton or nylon.

(ii) The term does not include the following:

(A) Antistatic product.

(B) Carpet and upholstery cleaner.

(C) Soft household surface sanitizer.

(D) Footwear or leather care product.

(E) Spot remover.

(F) Disinfectant.

(G) Products labeled for application to both fabric and human skin.

(iii) For the purposes of this definition, "soft household surface sanitizer" means a product labeled to neutralize or eliminate odors on surfaces listed in subparagraph (i) and the label for which is registered as a sanitizer under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Facial cleaner or soap—A cleaner or soap designed primarily to clean the face.

(i) The term includes the following:

(A) Facial cleansing cream.

(B) Semisolid.

(C) Liquid.

(D) Lotion.

(E) Substrate-impregnated forms.

(ii) The term does not include the following:

(A) Prescription drug products.

(B) Antimicrobial hand or body cleaner or soap.

(C) Astringent/toner.

(D) General-use hand or body cleaner or soap.

(E) Medicated astringent/medicated toner.

(F) Rubbing alcohol.

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Flea and tick insecticide—

(i) An insecticide product that is designed for use against fleas, ticks, their larvae or their eggs.

(ii) The term does not include products that are designed to be used exclusively on humans or animals and their bedding.

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Floor and wall covering adhesive remover—A product designed or labeled to remove floor or wall covering and associated adhesive from the underlying substrate.

Floor coating—An opaque coating that is designed and labeled for application to flooring, including the following:

(i) Decks.

(ii) Porches.

(iii) Steps.

(iv) Other horizontal surfaces which may be subject to foot traffic.

Floor polish or *wax*—

(i) A wax, polish or other product designed to polish, protect or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished.

(ii) The term does not include the following:

(A) Spray buff products.

(B) Products designed solely for the purpose of cleaning floors.

(C) Floor finish strippers.

(D) Products designed for unfinished wood floors.

(E) Coatings subject to architectural coatings regulations in this chapter.

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

Floor wax stripper—

(i) A product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax.

(ii) The term does not include the following:

(A) Aerosol floor wax stripper.

(B) Products designed to remove floor wax solely through abrasion.

Flying bug insecticide—An insecticide product that is designed for use against flying insects or other flying arthropods, including mosquitoes, moths or gnats.

(i) The term does not include the following:

(A) Wasp and hornet insecticide.

(B) Products that are designed to be used exclusively on humans or animals.

(C) A moth-proofing product.

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

Footwear or leather care product—

(i) A product designed or labeled to be applied to footwear or to other leather articles or components, to maintain, enhance, clean, protect or modify the appearance, durability, fit or flexibility of the footwear or leather article or component. Footwear includes both leather and nonleather foot apparel.

(ii) The term does not include the following:

(A) Fabric protectant.

(B) General purpose adhesive.

(C) Contact adhesive.

(D) Vinyl/fabric/leather/polycarbonate coating.

(E) Rubber and vinyl protectant.

(F) Fabric refresher.

(G) Products used solely for deodorizing.

(H) Sealant products with adhesive properties used to create external protective layers greater than 2 millimeters thick.

Fragrance—A substance or complex mixture of aroma chemicals, natural essential oils and other functional components with a combined vapor pressure not in excess of 2 mm of Mercury at 20° C, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

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

Furniture maintenance product—

(i) A wax, polish, conditioner or other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors.

(ii) The term does not include the following:

(A) Dusting aids.

(B) Wood cleaner.

(C) Products designed solely for the purpose of cleaning.

(D) Products designed to leave a permanent finish, including stains, sanding sealers and lacquers.

Gasket adhesive or *thread locking adhesive remover*—

(i) A product designed or labeled to remove gasket or thread locking adhesives.

(ii) The term includes products labeled for dual use as a paint stripper and gasket adhesive remover or thread locking adhesive remover.

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General purpose adhesive—

(i) A nonaerosol adhesive designed for use on a variety of substrates.

(ii) The term does not include the following:

(A) Contact adhesive.

(B) Construction, panel and floor covering adhesive.

(C) Adhesives designed exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers or vinyls).

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

(E) Units of product that weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging.

General purpose adhesive remover—A product designed or labeled to remove cyanoacrylate adhesives as well as nonreactive adhesives or residue from a variety of substrates.

(i) The term includes products that remove the following:

(A) Thermoplastic adhesives.

(B) Pressure sensitive adhesives.

(C) Dextrine or starchbased adhesives.

(D) Casein glues.

(E) Rubber or latex-based adhesives.

(F) Stickers, decals, stencils or similar materials.

(ii) The term does not include floor and wall covering adhesive remover.

General purpose cleaner—A product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations.

(i) The term includes products designed for general floor cleaning or kitchen or countertop cleaning and cleaners designed to be used on a variety of hard surfaces.

(ii) The term does not include general purpose degreaser and electronic cleaner.

General purpose degreaser—A product labeled to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(i) The term does not include the following:

(A) Engine degreaser.

(B) General purpose cleaner.

(C) Adhesive remover.

(D) Electrical cleaner.

(E) Electronic cleaner.

(F) Energized electrical cleaner.

(G) Metal polish/cleanser.

(H) Products used exclusively in solvent cleaning tanks or related equipment.

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

(ii) For the purposes of this definition, the term "solvent cleaning tanks or related equipment" includes the following:

(A) Cold cleaners.

(B) Vapor degreasers.

(C) Conveyorized degreasers.

(D) Film cleaning machines.

(E) Products designed to clean miscellaneous metallic parts by immersion in a container.

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

(i) The term includes the following:

(A) Hand or body washes.

(B) Dual-purpose shampoo-body cleaners.

(C) Shower or bath gels.

(D) Moisturizing cleaners or soaps.

(ii) The term does not include the following:

(A) Prescription drug products.

(B) Antimicrobial hand or body cleaner or soap.

(C) Astringent/toner.

(D) Facial cleaner or soap.

(E) Hand dishwashing detergent, including antimicrobial.

(F) Heavy-duty hand cleaner or soap.

(G) Medicated astringent/medicated toner.

(H) Rubbing alcohol.

Glass cleaner—

(i) A cleaning product designed primarily for cleaning surfaces made of glass.

(ii) The term does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

Graffiti remover—A product labeled to remove spray paint, ink, marker, crayon, lipstick, nail polish or shoe polish from a variety of noncloth or nonfabric substrates.

(i) The term does not include the following:

(A) Paint remover or stripper.

(B) Nail polish remover.

(C) Spot remover.

(ii) Products labeled for dual use as both a paint stripper and graffiti remover are considered "graffiti removers."

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

Hair shine—A product designed for the primary purpose of creating a shine when applied to the hair.

(i) The term includes dual-use products designed primarily to impart a sheen to the hair.

(ii) The term does not include the following:

(A) Hair spray.

(B) Hair mousse.

(C) Hair styling product.

(D) Hair styling gel.

(E) Products whose primary purpose is to condition or hold the hair.

Hair spray—

(i) For products manufactured before January 1, 2009, a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

(ii) For products manufactured on or after January 1, 2009, a consumer product that is applied to styled hair, and is designed or labeled to provide sufficient rigidity, to hold, retain or finish the style of the hair for a period of time.

(iii) The term includes the following:

(A) Aerosol hair sprays.

(B) Pump hair sprays.

(C) Spray waxes.

(D) Color, glitter or sparkle hair sprays that make finishing claims.

(E) Products that are both a styling and finishing product.

(iv) The term does not include spray products that are intended to aid in styling but do not provide finishing of a hairstyle.

(v) For the purposes of this subchapter, the terms:

(A) "Finish" and "finishing" mean the maintaining or holding of previously styled hair for a period of time.

(B) "Style" and "styling" mean the forming, sculpting or manipulating of the hair to temporarily alter the hair's shape.

Hair styling gel—A consumer product manufactured before January 1, 2009, that is a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

Hair styling product—A consumer product manufactured on or after January 1, 2009, that is designed or labeled for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling or sculpting of the hair.

(i) The term includes the following:

(A) Hair balm.

(B) Clay.

(C) Cream.

(D) Creme.

(E) Curl straightener.

(F) Gel.

(G) Liquid.

(H) Lotion.

(I) Paste.

(J) Pomade.

(K) Putty.

(L) Root lifter.

(M) Serum.

(N) Spray gel.

(O) Stick.

(P) Temporary hair straightener.

(Q) Wax.

(R) Spray products that aid in styling but do not provide finishing of a hairstyle.

(S) Leave-in volumizers, detanglers or conditioners that make styling claims.

(ii) The term does not include the following:

(A) Hair mousse.

(B) Hair shine.

(C) Hair spray.

(D) Shampoos or conditioners that are rinsed from the hair prior to styling.

(iii) For the purposes of this subchapter, the terms:

(A) "Finish" and "finishing" mean the maintaining or holding of previously styled hair for a period of time.

(B) "Style" and "styling" mean the forming, sculpting or manipulating of the hair to temporarily alter the hair's shape.

Heavy-duty hand cleaner or soap—

(i) A product designed to clean or remove difficult dirt and soils, including oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt or adhesives from the hand with or without the use of water.

(ii) The term does not include the following:

(A) Prescription drug products.

(B) Antimicrobial hand or body cleaner or soap.

(C) Astringent/toner.

(D) Facial cleaner or soap.

(E) General-use hand or body cleaner or soap.

(F) Medicated astringent/medicated toner.

(G) Rubbing alcohol.

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

(i) For agricultural use.

(ii) Restricted materials that require a permit for use and possession.

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

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

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

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

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

(i) For agricultural use.

(ii) For a use which requires a structural pest control license under applicable laws or regulations of the Commonwealth.

(iii) Restricted materials that require a permit for use and possession.

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

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

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

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

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

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

(iii) For the purposes of this definition, the term "establishment" includes the following:

(A) Government agencies.

(B) Factories.

(C) Schools.

(D) Hospitals.

(E) Sanitariums.

(F) Prisons.

(G) Restaurants.

(H) Hotels.

(I) Stores.

(J) Automobile service and parts centers.

(K) Health clubs.

(L) Theaters.

(M) Transportation companies.

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

LVP-VOC or lower vapor pressure VOC—

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

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

(B) Is a chemical compound with more than 12 carbon atoms, or a chemical mixture comprised solely of compounds with more than 12 carbon atoms as verified by formulation data, and the vapor pressure and boiling point are unknown.

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

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

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

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

Laundry starch product—

(i) A product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and which may also act to help ease ironing of the fabric.

(ii) The term includes fabric finish, sizing and starch.

Lawn and garden insecticide—An insecticide product labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of § 130.372 (relating to most restrictive limit), aerosol lawn and garden insecticides may claim to kill insects or other arthropods.

Liquid—

(i) A substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM D-4359-90(2000)e1, including subsequent amendments.

(ii) The term does not include powders or other materials that are composed entirely of solid particles.

Lubricant—

(i) A product designed to reduce friction, heat, noise or wear between moving parts, or to loosen rusted or immovable parts or mechanisms.

(ii) The term does not include the following:

(A) Automotive power steering fluids.

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

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

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

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

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

(i) The term includes the following:

(A) Clarifiers.

(B) Substrate-impregnated products.

(ii) The term does not include the following:

(A) Hand, face or body cleaner or soap products.

(B) Astringent/toner.

(C) Cold cream.

(D) Lotion.

(E) Antiperspirants.

(F) Products that must be purchased with a doctor's prescription.

Metal polish/cleanser—A product designed primarily to improve the appearance of finished metal, metallic or metallized surfaces by physical or chemical action by removing or reducing stains, impurities or oxidation from surfaces or by making surfaces smooth and shiny.

(i) The term includes metal polishes used on:

(A) Brass.

(B) Silver.

(C) Chrome.

(D) Copper.

(E) Stainless steel.

(F) Ornamental metals.

(ii) The term does not include the following:

(A) Automotive wax, polish, sealant or glaze.

(B) Wheel cleaner.

(C) Paint remover or stripper.

(D) Products designed and labeled exclusively for automotive and marine detailing.

(E) Products designed for use in degreasing tanks.

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Multipurpose dry lubricant—A lubricant which is:

(i) Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide (moly) or polytetrafluoroethylene or closely related fluoropolymer (Teflon) on surfaces.

(ii) Designed for general purpose lubrication or for use in a wide variety of applications.

Multipurpose lubricant—

(i) A lubricant designed for general purpose lubrication or for use in a wide variety of applications.

(ii) The term does not include the following:

(A) Multipurpose dry lubricant.

(B) Penetrant.

(C) Silicone-based multipurpose lubricant.

Multipurpose solvent—An organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials.

(i) The term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories.

(ii) The term does not include the following:

(A) Solvents used in:

(I) Cold cleaners.

(II) Vapor degreasers.

(III) Conveyorized degreasers.

(IV) Film cleaning machines.

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

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

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

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

(i) Terrazzo.

(ii) Marble.

(iii) Slate.

(iv) Granite.

(v) Brick.

(vi) Stone.

(vii) Ceramic tile.

(viii) Concrete.

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

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

Paint remover or stripper—

(i) A product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate.

(ii) The term does not include the following:

(A) Multipurpose solvent.

(B) Paint brush cleaners.

(C) Products designed and labeled exclusively as graffiti removers.

(D) Hand cleaner products that claim to remove paints and other related coatings from skin.

Penetrant—A lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation or other causes. The term does not include multipurpose lubricants that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

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

Personal fragrance product—A product which is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor.

(i) The term includes the following:

(A) Cologne.

(B) Perfume.

(C) Aftershave.

(D) Toilet water.

(ii) The term does not include the following:

(A) Deodorant.

(B) Medicated products designed primarily to alleviate fungal or bacterial growth on feet or other areas of the body.

(C) Mouthwashes, breath fresheners or deodorizers.

(D) Lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations.

(E) Products designed exclusively for use on human genitalia.

(F) Soaps, shampoos and products primarily used to clean the human body.

(G) Fragrance products designed to be used exclusively on animals.

Pesticide—

(i) A substance or mixture of substances labeled designed or intended for use in preventing, destroying, repelling or mitigating a pest, or a substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant or plant regulator.

(ii) The term does not include a substance, mixture of substances or device which the EPA does not consider to be a pesticide.

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

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

Pressurized gas duster—

(i) A pressurized product labeled to remove dust from a surface solely by means of mass air or gas flow, including surfaces like photographs, photographic film negatives, computer keyboards and other types of surfaces that cannot be cleaned with solvents.

(ii) The term does not include dusting aids.

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

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Product category—The applicable category that best describes the product as listed in this section and in § 130.211.

Product form—For the purposes of complying with § 130.391 (relating to required reporting of information to the Department), the applicable form which most accurately describes the product's dispensing form, as follows:

(i) A = Aerosol product.

(ii) S = Solid.

(iii) P = Pump spray.

(iv) L = Liquid.

(v) SS = Semisolid.

(vi) O = Other.

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Rubber and vinyl protectant—

(i) A product designed to protect, preserve or renew vinyl, rubber and plastic on vehicles, tires, luggage, furniture and household products such as vinyl covers, clothing and accessories.

(ii) The term does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

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

(i) The term does not include the following:

(A) Roof cements and roof sealants.

(B) Insulating foams.

(C) Removable caulking compounds.

(D) Clear/paintable/water resistant caulking compounds.

(E) Floor seam sealer.

(F) Products designed exclusively for automotive uses.

(G) Sealers that are applied as continuous coatings.

(H) Units of product, less packaging, which weigh more than 1 pound and consist of more than 16 fluid ounces.

(ii) For the purposes of this definition only:

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

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

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Shaving cream—

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

(ii) The term does not include shaving gel.

Shaving gel—

(i) An aerosol product which dispenses a postfoaming semisolid designed to be used with a blade, cartridge razor or other shaving system in the removal of facial or other bodily hair.

(ii) The term does not include shaving cream.

Shortfall—

(i) The ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC.

(ii) The term does not include emissions occurring prior to the date that the ACP agreement is signed by the Department.

Silicone-based multipurpose lubricant—

(i) A lubricant which is:

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

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

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

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Solid—A substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90(2000)e1, including subsequent amendments.

Special purpose spray adhesive—An aerosol adhesive that meets one or more of the following definitions:

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

(ii) *Flexible vinyl adhesive.* An aerosol adhesive designed to bond flexible vinyl to substrates. Flexible vinyl

means a nonrigid polyvinyl chloride plastic with at least 5%, by weight, of plasticizer content.

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

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

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

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

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

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

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

Specialty adhesive remover—A product designed to remove reactive adhesives from a variety of substrates.

(i) Reactive adhesives include adhesives that require a hardener or catalyst for the bond to occur. Reactive adhesives include the following:

(A) Epoxies.

(B) Urethanes.

(C) Silicones.

(ii) The term does not include gasket adhesive remover or thread locking adhesive remover.

Spot remover—

(i) A product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery and clothing, that does not require subsequent laundering to achieve stain removal.

(ii) The term does not include the following:

(A) Dry cleaning fluid.

(B) Laundry prewash.

(C) Multipurpose solvent.

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

* * * * *

Structural waterproof adhesive—An adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181D (Type 1, Grade A).

Surplus reduction—The ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in § 130.457 (relating to limited-use surplus reduction credits for early reformulations of ACP products), the term does not include emissions occurring prior to the date that the ACP agreement is signed by the Department.

* * * * *

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

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

where,

(i) MHE =

$$\frac{(\textit{Highest VOC content} \times \textit{Highest sales})}{100 \times 365} \times \textit{Missing data days}$$

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

* * * * *

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

Toilet/urinal care product—A product designed to clean or to deodorize toilet bowls, toilet tanks or urinals.

(i) The term does not include the following:

(A) Bathroom and tile cleaner.

(B) General purpose cleaner.

(ii) For the purposes of this definition, the term "toilet bowls, toilet tanks or urinals" includes toilets or urinals connected to permanent plumbing in buildings and other structures, portable toilets or urinals placed at temporary or remote locations and toilets or urinals in vehicles like buses, recreational motor homes, boats, ships and aircraft.

* * * * *

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

(i) Chlorofluorocarbons (CFCs).

(ii) Hydrochlorofluorocarbons (HCFCs).

(iii) Hydrofluorocarbons (HFCs).

Type C propellant—A propellant which is not a Type A or Type B propellant, including the following:

(i) Propane.

(ii) Isobutane.

(iii) N-butane.

(iv) Dimethyl ether (also known as dimethyl oxide).

Undercoating—

(i) An aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior or firewall of motor vehicles to prevent the formation of rust or to deaden sound.

(ii) The term includes rubberized, mastic or asphaltic products.

* * * * *

Vinyl/fabric/leather/polycarbonate coating—A coating designed and labeled exclusively to coat vinyl, fabric, leather or polycarbonate substrates.

VOC—Volatile organic compound—An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity.

VOC content—

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

(ii) For charcoal lighter material products only,

$$\text{VOC content (percent)} = \frac{(\text{Certified emissions} \times 100)}{\text{Certified use rate}}$$

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

Waterproofer—

(i) A product designed and labeled exclusively to repel water from fabric or leather substrates.

(ii) The term does not include fabric protectant.

Wax—

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

(i) Substances derived from the secretions of plants and animals such as carnuba wax and beeswax.

(ii) Substances of a mineral origin such as ozocerite and paraffin.

(iii) Synthetic polymers such as polyethylene.

* * * * *

Wood cleaner—

(i) A product labeled to clean wooden materials including the following:

(A) Decking.

(B) Fences.

(C) Flooring.

(D) Logs.

(E) Cabinetry.

(F) Furniture.

(ii) The term does not include the following:

(A) Dusting aid.

(B) General purpose cleaner.

(C) Furniture maintenance product.

(D) Floor wax stripper.

(E) Floor polish or wax.

(F) Products designed and labeled exclusively to preserve or color wood.

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

* * * * *

STANDARDS

§ 130.211. Table of standards.

Except as provided in §§ 130.331—130.338, 130.351, 130.352, 130.411—130.414 and 130.451—130.464, a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth a consumer product manufactured on or after the applicable effective date in the following table of standards which contains VOCs in excess of the limits specified in the following table of standards:

Table of Standards
(percent VOC by weight)

Product Category	*Effective Date 1/1/2005*	*Effective Date 1/1/2009*
Adhesive		
Aerosol:		
Mist Spray	65	
Web Spray	55	
Special Purpose Spray Adhesive:		
Mounting, Automotive Engine Compartment and Flexible Vinyl	70	
Polystyrene Foam and Automotive Headliner	65	
Polyolefin and Laminate Repair/Edgebanding	60	
Construction, Panel and Floor Covering	15	
Contact	80	NA
Contact Adhesive—General Purpose		55
Contact Adhesive—Special Purpose		80

Product Category	*Effective Date 1/1/2005*	*Effective Date 1/1/2009*
General Purpose	10	
Structural Waterproof	15	
Adhesive Remover		
Floor and Wall Covering		5
Gasket or Thread Locking		50
General Purpose		20
Specialty		70
Aerosol Cooking Spray	18	
Air Freshener		
Single-Phase Aerosol	30	
Double-Phase Aerosol	25	
Liquid/Pump Spray	18	
SOLID /Semisolid	3	
Antiperspirant		
Aerosol	40 HVOC 10 MVOC	
Nonaerosol	0 HVOC 0 MVOC	
Antistatic Product		
Nonaerosol		11
Automotive Brake Cleaner	45	
Automotive Rubbing or Polishing Compound	17	
Automotive Wax, Polish, Sealant or Glaze		
Hard Paste Wax	45	
Instant Detailer	3	
All Other Forms	15	
Automotive Windshield Washer Fluids	35	
Bathroom and Tile Cleaner		
Aerosol	7	
All Other Forms	5	
Bug and Tar Remover	40	
Carburetor or Fuel-Injection Air Intake Cleaner	45	
Carpet and Upholstery Cleaner		
Aerosol	7	
Nonaerosol (Dilutables)	0.1	
Nonaerosol (Ready-to-Use)	3.0	
Charcoal Lighter Material	See § 130.214	
Deodorant		
Aerosol	0 HVOC 10 MVOC	
Nonaerosol	0 HVOC 0 MVOC	
Dusting Aid		
Aerosol	25	
All Other Forms	7	
Electrical Cleaner		45
Electronic Cleaner		75
Engine Degreaser		
Aerosol	35	
Nonaerosol	4	
Fabric Protectant	60	
Fabric Refresher		
Aerosol		15
Nonaerosol		6
Floor Polish or Wax		
Products for Flexible Flooring Material	7	
Products for Nonresilient Flooring	10	
Wood Floor Wax	90	
Floor Wax Stripper		
Nonaerosol	See § 130.216	
Footwear or Leather Care Product		
Aerosol		75
All Other Forms		15
Solid		55
Furniture Maintenance Product		
Aerosol	17	
All Other Forms Except Solid or Paste	7	

Product Category	*Effective Date 1/1/2005*	*Effective Date 1/1/2009*
General Purpose Cleaner		
Aerosol	10	
Nonaerosol	4	
General Purpose Degreaser		
Aerosol	50	
Nonaerosol	4	
Glass Cleaner		
Aerosol	12	
Nonaerosol	4	
Graffiti Remover		
Aerosol		50
Nonaerosol		30
Hair Mousse	6	
Hair Shine	55	
Hair Spray	55	
Hair Styling Gel	6	
Hair Styling Product		
Aerosol and Pump Spray		6
All Other Forms		2
Heavy-Duty Hand Cleaner or Soap	8	
Insecticide		
Crawling Bug		
Aerosol	15	
All Other Forms	20	
Flea and Tick	25	
Flying Bug		
Aerosol	25	
All Other Forms	35	
Fogger	45	
Lawn and Garden		
All Other Forms	20	
Nonaerosol	3	
Wasp and Hornet	40	
Laundry Prewash		
Aerosol/Solid	22	
All Other Forms	5	
Laundry Starch Product	5	
Metal Polish/Cleanser	30	
Multipurpose Lubricant (Excluding Solid or Semisolid Products)	50	
Nail Polish Remover	75	
Nonselective Terrestrial Herbicide		
Nonaerosol	3	
Oven Cleaner		
Aerosol/Pump Spray	8	
Liquid	5	
Paint Remover or Stripper	50	
Penetrant	50	
Rubber and Vinyl Protectant		
Aerosol	10	
Nonaerosol	3	
Sealant and Caulking Compound	4	
Shaving Cream	5	
Shaving Gel		7
Silicone-Based Multipurpose Lubricant (Excluding Solid or Semisolid Products)	60	
Spot Remover		
Aerosol	25	
Nonaerosol	8	
Tire Sealant and Inflation	20	
Toilet/Urinal Care		
Aerosol		10
Nonaerosol		3
Undercoating		
Aerosol	40	
Wood Cleaner		
Aerosol		17
Nonaerosol		4

Notes: NA = Not applicable on or after January 1, 2009.

§ 130.213. Products registered under FIFRA.

For those consumer products that are registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y), the applicable effective date of the VOC standards specified in the Table of Standards is 1 year after the date specified in § 130.211 (relating to table of standards).

§ 130.214. Requirements for charcoal lighter material products.

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

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

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

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

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

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

(2) *Certification requirements.*

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

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

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

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

(i) A change in the usage directions.

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

(4) *Revocation of certification.* If the Department determines that a certified charcoal lighter material product formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol and the statistical analysis procedures contained therein, the Department will revoke or modify the certification as is necessary to assure that the charcoal lighter material product will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

§ 130.215. Requirements for aerosol adhesives.

(a) The standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial and commercial uses. Except as otherwise provided in §§ 130.331—130.338, 130.351 and 130.352 and 130.411—130.414, a person may not sell, supply, offer for sale, use or manufacture for sale in this Commonwealth an aerosol adhesive which, at the time of sale, use or manufacture, contains VOCs in excess of the specified standard.

(b) For a special purpose spray adhesive:

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

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

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

§ 130.217. Sell-through of products.

(a) *Sell-through period.* Notwithstanding the provisions of § 130.211 or § 130.215 (relating to table of standards; and requirements for aerosol adhesives), a consumer product manufactured prior to the applicable effective date in § 130.211 may be sold, supplied or offered for sale after the applicable effective date.

(b) This section does not apply to a consumer product that does not display on the product container or package the date on which the product was manufactured, or a code indicating the date, in accordance with § 130.371 (relating to product dating requirements).

EXEMPTIONS

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

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

(b) This subchapter does not apply to a consumer product that does not comply with the VOC standards specified in § 130.211 (relating to table of standards), as

long as the manufacturer or distributor of the noncomplying consumer product can demonstrate both that the noncomplying consumer product is intended for shipment and use outside of this Commonwealth, and that the manufacturer or distributor has taken reasonably prudent precautions to assure that the noncomplying consumer product is not distributed in this Commonwealth.

§ 130.332. Antiperspirants and deodorants.

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

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

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

§ 130.334. Products registered under FIFRA.

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

(b) The VOC limits specified in § 130.211 (relating to table of standards) do not apply to insecticides containing at least 98% paradichlorobenzene.

§ 130.335. Air fresheners.

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs or exempted under § 130.333 (relating to LVP-VOC).

§ 130.338. Fragrances.

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to fragrances up to a combined level of 2% by weight contained in a consumer product.

ADMINISTRATIVE REQUIREMENTS

§ 130.371. Product dating.

(a) *Product dating requirements.*

(1) Each manufacturer of a consumer product subject to §§ 130.211—130.217 (relating to standards) shall clearly display on each consumer product container or package, the day, month and year on which the product was manufactured, or a code indicating that date.

(2) A manufacturer who uses the following code to indicate the date of manufacture will not be subject to the requirements of subsection (b)(1), if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

where,

YY = two digits representing the year in which the product was manufactured

DDD = three digits representing the day of the year on which the product was manufactured, with "001" representing the first day of the year, "002" representing the second day of the year, and so forth (that is, the "Julian date").

(3) The product date or date-code required by this section must be displayed on each consumer product container or package before the consumer product is sold, supplied or offered for sale in this Commonwealth.

(4) The date or date-code information must be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cap/cover) without irreversibly disassembling a part of the container or packaging.

(5) For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

(6) The requirements of this subsection do not apply to products containing either of the following:

(i) No VOCs.

(ii) VOCs at 0.10% by weight or less.

(b) *Additional product dating requirements.*

(1) If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to §§ 130.211—130.217, an explanation of the date portion of the code must be filed with the Department before the consumer product is sold, supplied or offered for sale in this Commonwealth.

(2) If a manufacturer changes a code indicating the date of manufacture for a consumer product subject to paragraph (1), an explanation of the modified code must be submitted to the Department before products displaying the modified code are sold, supplied or offered for sale in this Commonwealth.

(3) A person may not erase, alter, deface or otherwise remove or make illegible a date or code indicating the date of manufacture from a regulated product container without the express authorization of the manufacturer.

(4) Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

§ 130.372. Most restrictive limit.

(a) *Products manufactured before January 1, 2009, and FIFRA-registered insecticides manufactured before January 1, 2010.*

(1) Notwithstanding the definition of "product category" in § 130.202 (relating to definitions), if on the principal display panel of a consumer product manufactured before January 1, 2009, or a FIFRA-registered insecticide manufactured before January 1, 2010, a representation is made that the product may be used, or is suitable for use, as a consumer product for which a lower VOC limit is specified in § 130.211 (relating to table of standards), the lowest VOC limit applies.

(2) The requirement of paragraph (1) does not apply to general purpose cleaners, antiperspirant/deodorant products or insecticide foggers.

(b) *Products manufactured on or after January 1, 2009, and FIFRA-registered insecticides manufactured on or after January 1, 2010.*

(1) Notwithstanding the definition of "product category" in § 130.202, if on the container or packaging of a consumer product manufactured on or after January 1, 2009, or a FIFRA-registered insecticide manufactured on or after January 1, 2010, or on a sticker or label affixed to the container or packaging, a representation is made that the product may be used, or is suitable for use, as a

consumer product for which a lower VOC limit is specified in § 130.211, the lowest VOC limit applies.

(2) The requirement of paragraph (1) does not apply to general purpose cleaners, antiperspirant/deodorant products or insecticide foggers.

§ 130.373. Additional labeling requirements for aerosol adhesive, adhesive remover, electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive products.

(a) In addition to the requirements specified in §§ 130.371, 130.372, 130.391 and 130.392, both the manufacturer and responsible party for each aerosol adhesive, electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive product subject to this subchapter shall ensure that all products clearly display the following information on each product container which is manufactured on or after the applicable effective date for the category specified in § 130.211 (relating to table of standards):

(1) The product category as specified in § 130.211 or an abbreviation of the category shall be displayed.

(2) The applicable VOC standard for the product that is specified in § 130.211, except for energized electrical cleaner products, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the Department, as provided in §§ 130.451—130.465 (relating to ACP for consumer products).

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

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

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

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

VARIANCES

§ 130.411. Application for variance.

(a) A person who cannot comply with §§ 130.211—130.217 (relating to standards), because of extraordinary reasons beyond the person's control, may apply in writing to the Department for a variance. The variance application must set forth:

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

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

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

(b) No later than 75 days after receipt of a complete variance application containing the information required in subsection (a), the Department will hold a public hearing in accordance with § 130.471 (relating to public hearings) to determine:

(1) Whether a variance from the requirements in §§ 130.211—130.217 is necessary.

(2) Under what conditions a variance from the requirements in §§ 130.211—130.217 is necessary.

(3) To what extent a variance from the requirements in §§ 130.211—130.217 is necessary.

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

(1) That because of reasons beyond the reasonable control of the applicant, requiring compliance with §§ 130.211—130.217 would result in extraordinary economic hardship.

(2) That the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding increased emissions of air contaminants that would result from issuing the variance.

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

§ 130.412. Variance orders.

A variance order will specify a final compliance date by which the requirements of §§ 130.211—130.217 (relating to standards) will 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, in consideration of the testimony received at the hearing, finds necessary.

§ 130.414. Modification of variance.

Upon the application of a person, the Department may review, and for good cause, modify or revoke a variance from requirements of §§ 130.211—130.217 (relating to standards) after holding a public hearing in accordance with § 130.471 (relating to public hearings).

TEST METHODS

§ 130.431. Testing for compliance.

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

(1) Using CARB Method 310, "*Determination of Volatile Organic Compounds (VOC) in Consumer Products*," adopted September 25, 1997, and as last amended on May 5, 2005, including subsequent amendments.

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

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

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

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

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

where,

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

B = total weight of all VOCs per unit

C = total weight of VOCs exempted under §§ 130.331—130.338, 130.351 and 130.352 per unit

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

(b) Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 (2000)e1, including subsequent amendments.

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

(d) Testing to determine distillation points of petroleum distillate-based charcoal lighter material products shall be performed using ASTM D86-04b, including subsequent amendments.

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

ACP FOR CONSUMER PRODUCTS

§ 130.452. Exemption.

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

§ 130.453. Request for exemption.

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

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

§ 130.454. Application for an ACP.

A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the ACP provision in Subchapter 8.5, Article 4, sections 94540—94555, of Title 17 of the CCR based on California specific data, or that has not been granted an exemption by the CARB may seek an ACP agreement by submitting an application. The application must:

(1) Identify the responsible ACP party including names, telephone numbers and addresses of the representative of the manufacturer who will be responsible for implementing the ACP requirements specified in the ACP agreement.

(2) Contain a statement of whether the responsible ACP party is a small business or a one-product business.

(3) Contain a listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, and the like), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP.

(4) Demonstrate in writing to the satisfaction of the Department that the enforceable sales records to be used by the responsible ACP party for tracking product sales provide the following information:

(i) The names, telephone numbers, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales.

(ii) The enforceable sales of each ACP product.

(iii) A written demonstration to the satisfaction of the Department regarding the validity of the enforceable sales.

(iv) The percentage of the gross Pennsylvania sales which is comprised of enforceable sales.

(v) That the ACP products have enforceable sales that are 75% or more of the gross Pennsylvania sales. Only ACP products meeting this criteria will be allowed to be sold in this Commonwealth under an ACP.

(5) Include legible copies of the existing labels for each ACP product specifying the VOC and LVP content.

(6) Report for each of the ACP products:

(i) The VOC and LVP-VOC contents of the product at the time the application for an ACP is submitted.

(ii) Changes in VOC and LVP contents of the product that have occurred within the 4 years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than 10.0% of the VOC or LVP contents reported in subparagraph (i).

(7) Contain a written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP and to display the date-code on each ACP product container or package no later than 5 working days after the date an ACP agreement is signed by the Department.

(8) Contain an operational plan covering the products identified under this section for each compliance period that the ACP will be in effect. This plan must:

(i) Identify the compliance periods and dates for the responsible ACP party to report the information required by the Department in the ACP agreement. The length of the compliance period chosen by the responsible ACP party may be no longer than 365 days.

(ii) Identify the specific enforceable sales records to be provided to the Department for enforcing this chapter and the ACP agreement. The enforceable sales records shall be provided to the Department no later than the compliance period reporting dates specified in subparagraph (i).

(iii) For a small business or a one-product business that will be relying on surplus trading to meet the ACP limits, contain a written commitment from the responsible ACP parties that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(iv) Specify the VOC content levels for each ACP product that will be applicable for the ACP product during each compliance period and identify the specific methods by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method.

(v) Estimate the projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(vi) Contain a detailed demonstration showing the combination of specific ACP reformulations or surplus trading reductions (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that reformulations or surplus trading reductions are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (that is, by ACP reformulation). This demonstration must also include all VOC content levels and projected enforceable sales for all ACP products to be sold in this Commonwealth during each compliance period.

(vii) Contain a written explanation of the date-codes that will be displayed on each ACP product container or packaging.

(viii) Contain a statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

(ix) Contain an operational plan ("reconciliation of shortfalls plan") which commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls must demonstrate how shortfalls will be reconciled within 90 working days from the date the shortfall is determined, listing the records and other information that will be used to verify that the shortfalls were reconciled.

(9) Contain a declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct under penalty of law. This declaration must certify that all reductions in the VOC content of a product will be real and actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent this chapter.

§ 130.455. Recordkeeping and availability of requested information.

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

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

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

(2) Within 15 working days after receipt of a written request from the Department.

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

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

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

(b) If requested in the application for a proposed ACP, the Department will, upon approval of the ACP, issue surplus reduction credits for early reformulations of ACP products, provided that the following documentation has been provided by the responsible ACP party to the satisfaction of the Department:

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

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

(3) Accurate sales records for the early reformulated ACP product which meets the definition of "enforceable sales records" in § 130.202 (relating to definitions), and which demonstrate that the enforceable sales for the ACP product are at least 75% of the gross Pennsylvania sales for the product.

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

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

$$SR = \frac{\text{Enforceable sales} \times ((\text{VOC content})_{initial} - (\text{VOC content})_{final})}{100}$$

where,

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

$\text{VOC content}_{initial}$ = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in § 130.211, whichever is the lesser of the two, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product.

$\text{VOC content}_{final}$ = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product.

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

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

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

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

§ 130.458. Reconciliation of shortfalls.

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

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

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

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

§ 130.460. Modifications that require Department preapproval.

The responsible ACP party may propose modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP agreement. Proposed modifications shall be fully described in writing and forwarded to the Department. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this subchapter. The responsible ACP party shall meet all applicable requirements of the existing ACP until a proposed modification is approved in writing by the Department.

§ 130.462. Modification of an ACP by the Department.

(a) The Department will modify the ACP as necessary to ensure that the ACP meets the requirements of this subchapter and that the ACP emissions will not exceed the ACP limit if the Department determines one of the following:

(1) The enforceable sales for an ACP product are no longer at least 75% of the gross Pennsylvania sales for that product.

(2) The information submitted under the approval process in § 130.454 (relating to application for an ACP) is no longer valid.

(3) The ACP emissions are exceeding the ACP limit specified in the ACP agreement.

(b) The Department will not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing in accordance with § 130.471 (relating to public hearings) to determine if the ACP should be modified.

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

§ 130.465. Other applicable requirements.

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

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

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

PUBLIC HEARING REQUIREMENTS

§ 130.471. Public hearings.

(a) Prior to issuance, extension, modification or revocation of a variance order or an ACP, the Department will hold three public hearings to take public comment on the application for a variance or on the proposed extension, modification or revocation of a variance order. The public hearings will be held in the eastern, central and western parts of this Commonwealth.

(b) The applicant shall publish notice of the time, place and purpose of the three public hearings in newspapers of general circulation at least 30 days prior to the hearings.

(c) The Department will publish notice of the time, place and purpose of the three public hearings in the *Pennsylvania Bulletin* at least 30 days prior to the hearings.

(d) At least 30 days prior to the hearings, the Department will make available to the public the following:

(1) The application for the variance or ACP or, if the hearings are for an extension, modification or revocation, the variance or ACP order.

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

Subchapter C. ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS

§ 130.602. Definitions.

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

* * * * *

VOC—volatile organic compound—An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity.

* * * * *

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Title 37—LAW

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CH. 95]

County Correctional Institutions

The Department of Corrections (Department) amends Chapter 95, relating to county correctional institutions, to read as set forth in Annex A.

A. *Statutory Authority*

The Department is acting under the authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186). Under section 506 of The Administrative Code of 1929, the Department is empowered to prescribe rules and regulations for the performance of the Department's business. A portion of the Department's business includes establishing standards for county jails and prisons, including physical facilities and standards for correctional programs of treatment, education and rehabilitation of inmates. See section 3(3) of the act of December 27, 1965 (P. L. 1237, No. 502) (Act 502) (61 P. S. § 460.3(3)). The Department is also empowered by section 3(4) of Act 502 to inspect county jails and to classify them, in accordance with the standards for county jails and prisons the Department adopted, as eligible to receive prisoners sentenced to maximum terms of 6 months or more but less than 5 years.

B. *Purpose of the Regulation*

This final-form rulemaking represents the second phase of the Department's modernizing outdated minimum standards for county prisons with regard to the physical facilities, safety and security standards, treatment programs and other correctional practices. This final-form rulemaking completely replaces 15 sections of minimum standards that have remained unchanged since promulgated in 1979. Those sections are replaced with standards consistent with current, recognized professional standards for adult local detention facilities. The final-form rulemaking also creates a new section regarding telephone communication (§ 95.233a (relating to visiting prisoners)) while an obsolete section of standards regarding community rescinding involvement (§ 95.244 (relating to community involvement)). Additionally, six other sections of minimum standards are amended to make those sections consistent with current, recognized professional standards for adult local detention facilities.

In addition to updating outdated standards, the final-form rulemaking also accomplishes a number of other important objectives. First, the final-form rulemaking establishes a formalized inspection and inspection report procedure. Second, the final-form rulemaking specifically identifies minimum standards considered essential to the safety and security of the county prison, prison staff, inmates and the public. Third, the final-form rulemaking allows the Secretary of the Department (Secretary) to act in circumstances that require more immediate action than the annual inspection process. The rulemaking allows the Secretary to order a vulnerability analysis of the county prison when a final inspection report finds violations of the essential safety and security standards and finds that those violations may immediately impact the safety and security of the county prison, prison staff, inmates or the public. Fourth, a hearing process is established so that the Department can fairly and clearly meet its statutory duty to determine if a county prison should be classified as ineligible to receive prisoners sentenced to maximum terms of 6 months or more but less than 5 years. The final-form rulemaking limits use of the hearing classification process to when a county prison has been in repeated violation of the same essential safety and security standards for three consecutive annual inspections or when a vulnerability analysis reports finds violations of the essential safety and security standards may present an immediate threat to the safety and security of the facility, the staff, inmates or the public. In summary, the inspection report process and the hearing procedures are intended to assist county prisons in meeting the essential minimum safety and security standards, encourage county prisons in meeting all of the minimum standards and to limit a classification of ineligibility to receive longer sentenced prisoners to only the most serious of safety and security violations.

C. *Public Comment*

The Department received over 30 sets of public comments. A number of the public comments submitted were from local officials directly involved in the management of county prisons such as county prison administrators, county prison boards and county commissioners, as well as Statewide organizations representing those officials that included the County Commissioners Association of Pennsylvania (CCAP), the Pennsylvania County Prison Warden's Association and the Pennsylvania Sheriff's Association. Public comments were also received from prisoner advocate organizations including the Pennsylvania Prison Society, Pennsylvania Institutional Law Project and Justice and Mercy, Inc., as well as, individuals working inside some of the county prisons. The Independent Regulatory Review Commission (IRRC) and four State legislators also submitted comments.

Through a cooperative effort between CCAP and the Department, a County-State Liaison Committee (Commit-

tee) was previously established to discuss issues of shared concern between the Department and county prisons and to foster a productive working relationship between the State and local prison officials. The Committee meets quarterly. Since the close of the public comment period, the Committee provided a venue for review of the proposed rulemaking, the public comments and suggestions for improvements to the regulations. The public comments and the Committee discussions were tremendously helpful in developing the final-form regulations.

D. *Summary of Comments, Responses and Major Changes to Proposed Rulemaking*

Following is a summary of the major comments received following publication of the proposed rulemaking and the Department's response to those comments. A summary of major changes from the proposed rulemaking is also included.

1. *Fiscal impact of the regulations*

A number of commentators disagreed with the Department's statement in the Preamble that the proposed rulemaking is not expected to have a significant fiscal impact upon the Commonwealth, its political subdivisions or the general public. The most numerous comments regarding the fiscal impact of the proposed rulemaking concerned §§ 95.241(1)(ii) and 95.243(2) and (6) (relating to security; and treatment services).

Comment—Section 95.241(1)(ii)—This subparagraph required that the county prison conduct an initial staffing analysis to determine the staffing allotment and post assignments to safely operate the prison. The proposed language further required that the "results of this annual staffing analysis must serve as the required staffing allotment designated for the prison." The commentators objected to this language because they believed it would have a significant fiscal impact by requiring the hiring of additional staff.

Response—The Department agreed that the final determination as to the number of staff hired by the prison should ultimately be a local decision based on resources and all other relevant factors. The next to the last sentence of this subparagraph in the proposed rulemaking was therefore deleted. The prison administrator, or a designee, is free to conduct that analysis in the manner deemed most appropriate to the local prison provided relief factors for each classification of staff are considered.

Comment—Section 95.243(2)—Numerous comments were received regarding the requirement in paragraph (2) that treatment services must include programming in the four areas of education, social services, alcohol and other drugs and counseling. The comments all asserted that these requirements represented an unfunded mandate for counties to provide various treatment services and that the decisions as to what services to provide should be left to the local prison authorities.

Response—The Department believes that the requirements of paragraph (2) do not represent a significant departure from the existing minimum requirements of Chapter 95 (relating to county correctional institutions) regarding treatment programming or from the current practice in virtually all of the 64 counties operating county prisons in this Commonwealth. More importantly, the Department believes these requirements allow greater flexibility to the county prison in providing treatment services than the existing standards by permitting local prison authorities to allocate financial resources for the services most appropriate to the county prison's inmate population.

When comparing the existing standards to the final-form regulation, it must be noted that the term "counseling services" is defined very broadly in paragraph (1) of the existing standard. The third sentence of that paragraph states "[C]counseling shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholic Anonymous and similar groups; testing and clinical psychological services; and psychiatric services." That broad description of "counseling" essentially includes some aspect of the four areas of treatment services required by paragraph (2) of the final-form regulation as those four areas are defined in § 95.220a. For example, "[E]education" is defined as "[A]a treatment service using formal academic education or a vocational training activity designed to improve knowledge or employment capability, or both." (emphasis added) "[S]social services" is defined as "[A]a treatment service designed to promote the welfare of the community and inmate, as through aid for physically and mentally handicapped, health maintenance, family development and employment opportunities." "[A]alcohol and other drugs treatment" is defined as "[A]a treatment service designed to address the impact and ramifications of use or abuse of alcohol and other drugs so as to prevent illegal and/or destructive conduct and avoid addiction." "[C]counseling" is defined as "[A]a treatment service using planned interpersonal relationships to promote social adjustment and provide opportunities to express feelings verbally with the goal of resolving the individuals problems." An element of all of these four treatment service areas is part of the definition as to what must be included in "counseling" under the existing standard.

The existing standard mandates the specific number of hours of "counseling" (again, as broadly defined) that must be provided based solely on the inmate population of the facility. The existing standard also mandates, to some degree, the treatment staff that must be available to provide the counseling services. Conversely, the final-form regulation does not mandate the number of hours these different treatment services must be provided, but only that some form of programming must be provided in these areas. Additionally, the final-form regulation does not mandate the manner in which the treatment services in these four areas must be provided. As with the existing standard, the final-form regulation allows these services to be provided by a treatment professional employed by the prison, someone under contract or a volunteer.

The Department believes that this new standard is not only consistent with the current recognized professional standards for adult local detention facilities, but also with the current practices in most all of this Commonwealth's county prisons. For example, all county prisons currently have some form of alcohol and other drug programming, at a minimum, in the form of 12 step programs for alcohol or drug, or both, addiction. All county prisons currently have some form of counseling services. Perhaps not all inmates, particularly short-term inmates, would have access to those services, but the final-form regulation does not mandate that. The final-form regulation leaves the decision as to which inmates receive what services largely up to the county prison.

Regarding education services, all county jails would currently be meeting the standard in the final-form regulation because all county jails make programming

available to inmates under 21 years of age to prepare for the general education development examination as mandated by State law.

Comment—Section 95.243(6)—A number of commentators objected to the requirement that a comprehensive treatment needs assessment be conducted on each inmate within 14 days following admission to the jail. The commentators asserted that such a requirement was inappropriate to the nature of short-term offenders housed in county jails and would necessitate the hiring of additional staff thereby significantly increasing the costs to the county without funding to pay for the additional expenses.

Response—Upon review of these comments and additional discussions with the Committee, the Department has substantially revised the minimum requirements for conducting a treatment needs assessment. The Department concurs that requiring an exhaustive treatment needs assessment for short-term inmates may strain county resources and result in the opposite of the intended purpose which is to make treatment services available to as many inmates as appropriate and possible. The final-form standard has therefore been changed so that paragraph (6) only requires that a treatment needs assessment be conducted within 90 days of an inmate's admission. Additionally, the follow-up treatment services recommended by the needs assessment must begin within 45 days of the needs assessment. The Department and members of the Committee reached a consensus that this revision will appropriately exclude short-term inmates (those with sentences under 3 months) from the requirement. The revision will substantially reduce or avoid any additional financial burden to the counties in conducting treatment needs assessments.

The Department also simplified the conducting of a treatment needs assessment by eliminating the more prescriptive requirements of what must be included in an assessment as listed in paragraph (6)(i)—(v). The elimination of the prescriptive requirements gives the counties flexibility in determining how those assessments should be conducted.

Comment—Additional paperwork requirements—Some commentators asserted generally that the proposed rulemaking would cause a significant burden because of required additional paperwork.

Response—There are some new provisions in the final-form regulation that require documentation of a review, action, inspection or event. The intent of these provisions, in part, is to require that the county prison record or confirm in writing that the required action took place. In most instances, that recording or written confirmation can be done in the location, manner or form that the county prison deems appropriate. The following provisions do not require a separate report or that the documentation take any particular form. The Department believes the county prisons can comply with the following documentation requirements with a minimal investment of time or effort and without any significant, additional paperwork requirements:

Section 95.221(1)—requires documentation of the training of all corrections personnel in each employee's personnel file.

Section 95.224(6)—requires documentation of the annual review of inmate rules and staff procedures.

Section 95.223(2)—requires documentation in an inmate's file that the inmate received orientation in the prison's rules, procedures and programs listed in the paragraph (1).

Section 95.230(2)—requires documentation that the person in charge of food services on any given shift, if not certified, has been trained as to food safety and sanitation procedures established in written local policy.

Section 95.241(1)(vi)—Warden Wetzel commented that this documentation requirement would increase paperwork.

Section 95.241(3)(iii)—requires documentation of an annual review of the county prison's emergency plans.

These requirements can be met by something as simple as a notation, signature and date at the bottom of a policy or on a separate sheet following the policy stating that the required review has taken place. Regarding § 95.241(1)(vi), the documentation could be as simple as a notation and signature in a block logbook that a visit or inspection has taken place. The requirement to document the training or qualification of personnel (§§ 95.221(1), 95.230(2) and 95.241(2)(ii)(H)) and the orientation of inmates can be met by having the appropriate personnel sign a receipt, acknowledgement or certification and placing that in the employee's personnel file. A similar practice would meet the requirement to document orientation of all inmates under § 95.223(2).

The documentation provisions listed may require a greater investment of time to complete than the previous provisions.

Section 95.241(2)(ii)(E)—requires a documented monthly inventory of the stored restraints, chemical agents, stun devices, batons and firearms.

Section 95.241(4)(iv)—requires documentation of a quarterly inspection of the keys, access card or other security devices.

Section 95.248(2), (3), (8) and (9)—these provisions require documentation of the required, periodic sanitation inspections, inspections of the physical plant and equipment, testing of the emergency back-up power system, fire/smoke alarms or detectors and the conducting of fire drills.

The Department believes that any additional investment of time to complete these documentation requirements is not substantial, nor unreasonable in light of the nature of the information. It is vitally important to the safe and secure operations of the prison that prison management know whether the restraints and weapons are accounted for and in usable condition. The same consideration is true for the keys, access cards or other security devices. Again, the regulation does not mandate the manner or form of the documentation. Whether the county prison creates checklists for these inventories or requires written reports to the prison administrator or some other method is a decision left to the county prison. The Department has found that most county prisons have service contracts for the maintenance and testing of major physical plant equipment such as boilers, any emergency back-up power system or the fire/smoke alarm system. The requirement to document the testing of these systems does not represent a change from the way almost all county prisons currently operate. The outside vendor's service or testing report would be sufficient documentation to meet the requirements of § 95.248(3), (8) and (9).

Section 95.246(1)(v) and (2)(v)—requires the documentation and reporting of any death and any sexual assault

or alleged sexual assault to the United States Department of Justice. Federal law mandates these additional reporting requirements.

Section 95.242—in the final-form regulation formalizes some additional informational reporting requirements beyond the existing regulation. Paragraphs (1) and (3) will require county prisons to submit a Monthly County Prison and Jail Data report and an Annual County Prison General Information Report. These paragraphs will put into regulation the Department's long-standing practice of collecting statistical information from the county prisons. With only a few exceptions, all county prisons in this Commonwealth provide this information to the Department. The Department will provide the reporting forms. The county prisons are not responsible for creating the forms. Also, the regulation has been written so that electronic filing of the information can be implemented. In that the county prisons have this information readily available and most all of the counties have been reporting this information, this requirement will not require any additional paperwork beyond existing practices.

To relieve some reporting requirements, paragraph (2) of the final-form regulation eliminated the requirement that extraordinary occurrence reports (EOR) be submitted to the Department within 48 hours of the event. The final-form regulation now requires that a County Extraordinary Occurrence Monthly Report be submitted within 30 days of the end of the reporting month. Again, the Department will supply the report form to the county prisons. The monthly report will be more of a statistical compilation of events qualifying as extraordinary occurrences as defined in paragraph (2) requiring less detail than a single EOR. The Department believes this change in reporting practice will be substantially easier for county prisons than the current 48-hour reporting provision.

2. *Reasonableness of the regulations*

Comment—Noting that a number of commentators disagreed with the Department's assertion that the amendments afford county prison administrators with greater flexibility, IRRC requested that the Department explain "how amendments to each section provide County Correctional Institutions (local prison) with greater flexibility in carrying out their duties."

Response—The Department's intent in revising the Chapter 95 regulations is first and foremost to modernize outdated standards so that the minimum requirements for county prisons in this Commonwealth are consistent with the current recognized professional standards for adult local detention facilities. In many important ways, as described, the revised standards in the final-form regulation do provide greater flexibility to county prison administrators than existing standards. As with the Phase 1 revisions promulgated in February 2000, the new standards require county prisons to develop written local policy that incorporates the minimum requirements of Chapter 95. The Department's intent is to permit county prisons maximum flexibility in establishing the details of policy and procedures most appropriate for that facility.

The Department does not assert that all of the revisions in the final-form regulations afford greater flexibility to county prison administrators than existing standards. Prison operations and administration have evolved significantly in the almost 30 years since the existing standards were promulgated. A number of the existing standards are outdated to the point of no longer providing meaningful standards for current-day prison operations. In the process of modernizing those standards, some of the revised standards are necessarily more prescriptive than existing standards. The Department's intent is to limit the instances of somewhat more stringent requirements to those standards that directly impact on safety and security. The Department does not believe that any of the more stringent requirements are unduly burdensome either operationally or financially given the importance of this goal.

Described are instances when the revised standards in the final-form regulations provide greater flexibility to county prison administrators than the existing standard:

Section 95.241—Security. The existing language of paragraph (1) requires staffing levels for a county prison based solely on the inmate population, specifically requiring a minimum staffing ratio of one officer per shift for every 15 inmates. The revised standard in paragraph (1) of the final-form regulation contains no required, specific ratio of officers to inmates. The revised provision instead requires only that the county prison conduct an initial staffing analysis, thereafter reviewed on an annual basis, which takes into consideration the logical relief and leave factors. The revised provision does not limit this determination to only a mathematical calculation, but instead allows the county prison to consider any other factors administrators deem relevant to the analysis.

Paragraph (1)(iii) in the final-form regulation gives greater flexibility to the county prison in making male and female staff assignments generally requiring that reasonable accommodation to inmate privacy be maintained. The existing standard is more restrictive by specifically limiting the movement of male officers to enter female housing only in the presence of a "matron."

One commentator objected to the requirements of paragraph (1)(v) listing the specific job duties for staff assigned to the 24 hour control center. The Department concurs with these comments. The second sentence of the provision listing specific job duties has been deleted from the provision.

Paragraph (4) regarding *access control*, is a prime example of how the revised standards in the final-form regulation replaced seriously outdated standards (see paragraph (3) of the existing standard). The existing standards concern only keys. The revised standard recognizes that many facilities now use other means of accessing secure areas.

Paragraph (6) regarding *tool/equipment control*, is another example of how the revised standards replace outdated and inadequate existing standards (see paragraph (8) of the existing standard). The existing standard does not include any minimum requirement for a county prison to inventory and safely secure tools instead addressing those issues only under "recommended guidelines."

Two commentators submitted comments objecting to the tool control provisions of § 95.242(6)(v) in the proposed rulemaking as being cumbersome and likely to require the hiring of additional staff. Upon further discussion of the issue with the Committee, the Department concurred with this concern. Paragraph (6)(v) in the final-form regulation has therefore been revised to eliminate the text that established "how" a tool inventory and receipt system had to operate. The final-form provision now only requires that an inventory and receipt system must be established by written local policy leaving the specifics as to how to implement that system to the discretion of the county prison.

Section 95.243—Treatment services. A number of comments were received concerning this provision. Most of those are discussed in the context of the comments under Comment No. 14. With regard to the issue of whether the revised standards are overly prescriptive, the Department asserts that, taken as a whole, the provisions of § 95.243 in the final-form regulation, are consistent with the current recognized professional standards for adult local detention facilities while still allowing county officials and prison administrators sufficient flexibility to make decisions appropriate to their facility.

The Department's statutory mandate found in section 3(3) of Act 502 includes establishing standards for county jails that include "standards for correctional programs of treatment, education and rehabilitation of inmates." The Department believes the treatment services requirements in the final-form regulation provide significantly more flexibility to county jails in meeting inmate treatment needs than the existing requirements of § 95.243. The existing treatment section sets very specific requirements for the number of hours of counseling services that must be provided per week as well as specific staffing requirements based solely on the jails average daily inmate population. This numbers-only approach is in fact inflexible and fails to afford county prisons with sufficient discretion to meet the treatment needs of the inmate population based on other relevant factors.

It is important to note that the term "counseling services" as used in paragraph (1) of the existing section is defined broadly so that it "shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholics Anonymous and similar groups; testing and clinical psychological services; and psychiatric services." "Counseling services" in the existing regulation encompasses, in more specific terms, much of the four areas for treatment services required in § 95.243 of the final-form regulations.

Most importantly, and contrary to the concerns of the commentators, the final-form regulation does not require how these treatment services must be provided. Section 95.243 does not specify the amount of hours that must be provided in these treatment areas, which inmates must be provided which services, nor the manner in which the treatment services are to be provided. Those decisions are left to judgment of the county jail administrators and treatment staff. As with the existing standard, the final-form regulation permits a county prison to provide these services through a person employed by the prison, someone under contract with the prison, through a volunteer or any combination thereof.

The final-form regulation also provides county prisons greater flexibility in terms of who must deliver those services. Paragraph (3) allows these services to be delivered by a treatment professional (defined in § 95.220a) or a person certified, licensed or trained to provide the programming. The existing standard requires that a qualified counselor who preferably possesses a Master's Degree, but no less than a Bachelor's degree in behavioral sciences deliver the services. Furthermore, if the treatment services are delivered by a contracting agency or a professional volunteer, those persons must still meet the standards for qualified counselor. The existing standard also requires all county jails with populations over 75 inmates, but below 175, to have two full-time treatment personnel, one of whom must be a treatment supervisor. For jails with average daily populations of 175 inmates or more, the existing standard requires providing an additional qualified counselor for every 75 inmates over the first 75. Those specific staffing mandates have all been eliminated in the final-form regulation. The Department believes the existing standards provide more of a mandate to county jails as to how to provide the required counseling services than the revised standards in the final-form regulation. The intent of the final-form treatment services provision is to establish the required areas in which treatment services must be provided, but to leave the decisions as to the level of services and how those services are provided up to the county jail administrators.

Section 95.244—Community involvement. Upon further review of this section, the Department determined that the neither the existing standards nor the requirements in the proposed rulemaking advance important interests in safety and security, programming or other operational standards and, therefore, this section is being rescinded.

Additional comments—Section 95.222(1)(iv)—Admissions. One commentator objected to the requirement that an unclothed search of an arrestee take place only when there is reasonable belief or suspicion that the arrestee be in possession of an item of contraband. The commentator stated that the requirement was impractical and unnecessary due to the unique operational considerations of that county prison system noting that all arrestees are admitted into that system postarraignment unlike other county prisons.

Response—The Department concurred that the new standard should not adversely impact the unique circumstances of that county prison system. For this reason, the specific requirements regarding the use of strip searches were eliminated and the final-form regulation now requires that written local policy state the type of search to be performed and any restrictions on the use of strip searches.

3. *Implementation procedures.*

Comment—Effective date—The Preamble to the proposed rulemaking stated that the regulations will be effective upon final-form publication in the *Pennsylvania Bulletin*. IRRC recommended that the Department consider an effective date that occurs 6 to 12 months after final-form publication to allow county prisons time to implement the new standards.

Response—The Department concurs with this recommendation. The final-form publication will establish the effective date for the new standards as 12 months after final-from publication.

Comment—Written local policy—IRRC stated its understanding of the Department's intent as requiring the county prisons to develop their own written policy that reflects the minimum requirements of Chapter 95. IRRC recommended that each paragraph begin with the phrase "Written local policy must provide . . .," or similar phrasing.

Response—The Department concurs with the recommendation. These changes have been made in the final-form regulation where necessary in §§ 95.222, 95.224, 95.229, 95.230, 95.232, 95.233, 95.233a, 95.235, 95.237, 95.239, 95.240, 95.241, 95.242, 95.243 and 95.248.

4. *Section 95.220a. Definitions—reasonableness; implementation procedures; clarity.*

Comment—IRRC listed 18 definitions that contained substantive provisions suggesting that those substantive provisions either be deleted or placed in the body of the

regulations. One commentator also objected to many of the definitions as being substantive in nature.

Response—The Department concurs with this recommendation. The following changes to definitions in the final-form regulation have been made:

Bed capacity—the substantive language "and that are only utilized in areas approved for residential occupancy by the Department of Labor and Industry or local code authority" has been deleted from the definition.

Community resources—the second sentence of the definition has been deleted.

Counseling—the second sentence and the three types of counseling have been deleted.

Financial audit—the second sentence of the definition has been placed in the body of the regulation at the end of § 95.239(3).

Health care screening—the substantive provisions in the second and third sentences of the definition have been placed in the body of the regulation in § 95.232(1).

Health care training—the second sentence of the definition has been deleted.

Major infraction—the definition has been deleted and some of the substantive language has been placed in the body of the regulation in § 95.240(2)(i).

Minor infraction—the definition has been deleted and some of the substantive language has been placed in the body of the regulation in § 95.240(2)(ii).

Noncontact visitation—the second sentence of the definition has been deleted.

Preinspection audit—the definition has been deleted. As described under Comment No. 5, the inspection process in § 95.220b has been revised so that preinspection audits have been eliminated.

Prison inspection—the second sentence of the definition has been deleted and the first sentence revised to conform to the revisions to § 95.220b.

Procedure—the second and third sentences of the definition have been deleted.

Security perimeter—the second sentence of the definition has been deleted.

Segregation—the second sentence of the definition has been deleted.

Training—the second sentence of subparagraph (i) has been placed in the body of the regulation as the second sentence in § 95.221(5). Subparagraph (ii) in the definition has been deleted.

Treatment professional—the first sentence of the definition has largely been deleted.

Treatment training—the second sentence of the definition has been deleted.

Vulnerability analysis—the second and third sentences of subparagraph (i) have been deleted and the remaining text of the definition has been combined into one sentence.

Comment—Alcohol and other drugs treatment—IRRC recommended that the phrase "or both" be deleted from the definition.

Response—The Department concurs and the phrase has been deleted.

Comment—Bed capacity—IRRC recommended that since the phrase "recognized professional standards" is referenced in the definition, the specific standards should be referenced in the definition.

Response—The Department concurs and reference has been made to the American Correctional Association's standards for adult local detention facilities.

Comment—Building code—IRRC recommended that since the definition references "Federal, state and local regulations that dictate construction of a prison," the definition should specifically reference the regulations that should be followed.

Response—This definition has been deleted as the term is used in only one instance and its usage is self-explanatory. Furthermore, each local prison would need to identify and comply with any applicable building codes separate from the applicability of these regulations.

Comment—Contraband—IRRC recommended that the phrase "or on prison grounds" be deleted from the definition since the "prison grounds" are by definition part of the prison.

Response—The Department concurs and the phrase has been deleted.

Comment—Force, use of—IRRC and numerous commentators stated that the use of force to effect compliance with an order is an accepted standard in correctional practice and should be included in the definition. The commentators further noted that this omission would make it difficult to maintain order in county prisons.

Response—This omission was an oversight. The phrase "to effect compliance with the rules and regulations of the facility when other methods of control are ineffective or insufficient" has been added to the definition. The definition is now consistent with accepted correctional practice and the Department's own use of force definition and policy.

Comment—Life safety code—IRRC recommended that the last sentence of the definition, which states, "Two chapters are devoted to correctional facilities." be deleted.

Response—The Department concurs and the sentence has been deleted.

Comment—Major infraction and minor infraction—IRRC noted that a number of commentators believed that these definitions do not provide county prisons with sufficient flexibility regarding inmate misconducts. More specifically, several commentators stated that the definitions were not consistent with common jail practices that allow for some rule violations being sanctioned in an informal manner and without hearings. IRRC also requested that the Department explain the need for including major and minor rule infractions in the regulation.

Response—As a result of discussions with the Committee and review of the public comments, the Department has revised § 95.240(2) to allow county jails greater flexibility to respond to inmate rule violations. The revision allows a county jail to define a third category of rule infractions in its written local policy by defining a category of rule infractions that do not rise to the level of major or minor infractions. A new paragraph (7) has been added allowing for informal resolution of this third category of rule infractions. Paragraph (7) also requires that an inmate's participation in the informal resolution of these rule infractions be on a voluntary basis only.

The concept of breaking down inmate rule violations into major and minor infractions is consistent with the current recognized professional standards for adult local detention facilities and in fact gives county jails greater

flexibility in responding to inmate rule violations. The current standard in § 95.240 required that discipline for the violation of any prison rule could not be imposed unless the basics of due process were provided to the inmate. Those basic due process requirements found in paragraph (2) are that the inmate be informed of the offense charged in writing, has had an opportunity to present a defense and has been found guilty of the charge by an impartial party or board designated by the prison administrator. The existing standard requires these procedures regardless of the gravity of the rule violation or the level of the sanction imposed. The final-form regulation eliminates the across-the-board procedural requirements by tying the level of procedure due for a rule violation to the seriousness of the violation and the level of the sanction that can be imposed.

Comment—Prison administrator—IRRC recommended that the phrase "regardless of local title" be deleted from the definition as unnecessary.

Response—The Department concurs and the phrase has been deleted.

Comment—Restraint—Since the definition references devices as "authorized," IRRC recommended that the term should either be deleted or the regulation specify how a device is authorized.

Response—The Department concurs. The phrase "authorized by written local policy that is" has been added to the definition to clarify that the written local policy needs to specify which restraints are authorized for use in the county jail.

Comment—Treatment services—IRRC recommended that this term be defined since it is used throughout the proposed rulemaking.

Response—The Department concurs with this recommendation. A definition of the term has been added to the final-form regulation.

5. *Section 95.220b. Scope—statutory authority; reasonableness; implementation procedures; clarity.*

The Department received extensive comments on § 95.220b from IRRC and a number of commentators. All of the comments were submitted under the three general topics discussed as follows:

Comment—Inspection and declassification process—IRRC or the commentators, or both, stated six common objections to the inspection and declassification process described in the proposed rulemaking:

(a) IRRC and a number of commentators suggested that the term "declassification" was unclear and should be defined.

(b) Commentators objected to the lack of consultation with, and an appeal process for, county prisons found to be in noncompliance of the standards. IRRC noted its agreement with the commentators and recommended that both a consultation and appeals process be included in the final-form regulation.

(c) Two commentators and IRRC objected to the proposed rulemaking because it allowed for the possibility that a county prison could be declassified for noncompliance with standards not related to security. It was recommended that "declassification" be limited to noncompliance with the same safety and security-related standards that could trigger a vulnerability analysis under paragraph (6) of the proposed rulemaking. IRRC also recommended that the final-form regulation specify that declassification occur only in instances when there is noncompliance with security standards.

(d) IRRC recommended that the language of the final-form regulation describe who will pay for mandatory and voluntary vulnerability analyses.

(e) A number of commentators objected to the proposed rulemaking because it failed to clarify what would happen with pretrial detainees and inmates if a local prison is "declassified."

(f) IRRC commented that this section lacked specificity regarding preinspection audits and time frames for certain actions in the inspection and declassification process.

Response—Inspection and declassification process—The Department found the public comments and the subsequent discussions with the Committee on these issues to be extremely valuable. That process resulted in important revisions to this section that the Department believes clarify the intent of the process and the procedures themselves. The Department's overriding goal in establishing the inspection and classification procedures is to ensure that county prisons are meeting the minimum standards that it believes are essential to the safe and secure operation of those facilities. The Department is fully cognizant that these are the same goals of the county prison administrators, county prison boards and the staff working at those facilities. A second objective of the inspection and classification procedures, as revised, is to assist county prisons in complying with the minimum standards so that the common goal of safe and secure correctional facilities is achieved. To that end, § 95.220b in the final-form regulations have been revised as explained:

(a) The Department concurs with the comments that use of the term "declassification" in the proposed rulemaking has caused confusion, particularly since that specific term is not used in the authorizing statute itself. The term "declassification" is therefore not used in the final-form regulation. The Department believes the section is clarified by instead using the language of the authorizing statute. Paragraphs (11)—(13) now describe the purpose of a hearing as determining whether a county prison should be "classified as ineligible to receive prisoners with a sentence of 6 months or more but less than 5 years."

(b) The Department agrees with the recommendations of IRRC and the commentators to include an appeal or consultation, or both, process in the final-form regulation. Paragraph (3) of the final-form regulation establishes a procedure that allows for input from the county prison before a final inspection report is issued. Specifically, the regulation requires the Department's inspector to issue the preliminary findings of the inspection to the county prison administrator and the governing county prison authority. The governing county prison authority or designee will then have up to 30 days to submit a written reply to the preliminary findings to the Deputy Secretary for Administration. The Deputy Secretary then has preliminary findings and a response from the county prison, which may include any relevant documentation, before issuing a final inspection report. The Department agrees that allowing input from the county prison will result in a fairer and more complete process. The written response offers the county prison an opportunity to dispute the preliminary findings or to explain other policies or practices that could mitigate the preliminary findings of the inspector. The regulation does not include an appeal from the final inspection report issued by the Deputy Secre-

tary. A county prison cannot be classified as ineligible to receive certain inmates based solely on the findings in an inspection report. That classification cannot happen without a hearing and resulting order with specific findings by the Secretary. Should such an order be issued, the county prison would have the right to appeal that order to the Commonwealth Court under 42 Pa.C.S. § 5105 (relating to right to appellate review). The Department also believes that the changes permitting a response by the county prison to preliminary findings, including the submission of documentation, allows the Department to consider any unique circumstances faced by a particular county before issuing inspection report findings.

(c) The Department agrees with the recommendation of IRRC and various commentators to limit an "ineligibility" classification of a county prison to noncompliance with safety and security related standards. Paragraph (2) of the final-form regulation now lists the specific sections and paragraphs that are deemed to be essential to the safety and security of the county prison, prison staff, inmates and the public. The provisions that follow establish that only a violation of an essential standard could lead to a classification hearing by the Department. The final-form regulation limits the possibility of a classification hearing even further by requiring not only a violation of an essential safety and security standard, but a finding by that this violation constitutes an "immediate threat to the safety and security of the county prison, prison staff, inmates or the public."

(d) The Department agrees with IRRC's recommendation that the final-form regulation describe who is responsible for paying the costs of a mandatory or voluntary vulnerability analysis (VA). Under paragraph (8) of the final-form regulation, the Department bears the costs of the VA when the Department orders the VA. Under paragraph (10) of the final-form regulation, the county bears the costs of the VA when it is requested by the county. The Department has offered several training sessions to teach county prison officials how to conduct a VA. A number of county prison officials and staff have been participating with the Department in planning and offering additional VA training sessions.

(e) The section 3(3) of Act 502 authorizes the Department to establish standards, inspect and classify the county jails according to those standards as eligible to "receive prisoners sentenced to maximum terms of six months or more but less than five years." The statute does not specifically address what happens to those inmates if a jail is classified as ineligible to receive these prisoners. The Department believes that the appropriate reading of the statute restricts a classification action to limiting a county prison from receiving additional prisoners with the defined sentences. The statute does not authorize that all prisoners with the defined sentences already in the prison be removed. In discussions with the Committee, the Department stated that if a county prison is classified as ineligible to receive these prisoners, that county remains responsible for arranging for incarceration of individuals sentenced by the county's court of common pleas in another facility. Pennsylvania law (61 P. S. § 72) permits the transfer of inmates in a county prison to another county "upon such terms and conditions as the counties may determine." It is not an uncommon practice for a one county to pay another county to house a prisoner sentenced by the initial county's court of common pleas when there is no space in the county prison.

(f) The Department agrees with IRRC's recommendation to provide for specific steps and time frames for the inspection and declassification process. As described in part in subsection (b) of this response, the final-form regulation contains specific time frames that define each step of the inspection process (see paragraphs (1), (3), (4) and (9)). The inspection procedures have also been greatly simplified by eliminating the differing prison inspection cycles consisting of preinspection audits and prison inspections, which were described in paragraphs (1)—(4) of the proposed rulemaking. Each county prison is now subject to an annual prison inspection. County prisons are only subject to a biannual inspection if the county prison is in full compliance with all of the minimum requirements of Chapter 95.

Comment—(2)—Statutory authority—A number of commentators questioned the Department's statutory authority to promulgate standards for county jails generally and to establish declassification procedures specifically. The commentators stated that the Department's promulgating standards and a scheme to declassify county jails for violation of those standards directly conflicts with statutory provisions granting local prison boards the authority to operate county jails. Similar objections were made regarding the Department's authority to order a vulnerability analysis.

Response—Statutory authority—The Department is empowered by section 506 of The Administrative Code of 1929 to prescribe rules and regulations for the performance of the Department's business. The Department's business includes establishing standards for county jails and prisons, including physical facilities and standards for correctional programs for treatment, education and rehabilitation of inmates. See section 3(3) of Act 502. Section 3, paragraph (4) of Act 502 empowers the Department to inspect county jails and to classify them, in accordance with the standards the Department adopted, as eligible to receive prisoners sentenced to maximum terms of 6 months or more but less than 5 years. The language of these statutory provisions is straightforward and unambiguous. The statute states that the Department has the duties of establishing standards, inspecting according to those standards and classifying them in accordance with those standards. The Department's authority to classify county jails is limited to determining if the jail is eligible "to receive prisoners" with sentences within the parameters designated in the statute.

The Department disagrees with the commentators' assertion that the Department necessarily lacks these powers because they conflict with the statutory authority granted to local prison boards to operate county jails. These various statutory provisions are not in conflict either logically or according to the rules of statutory construction. The object of statutory construction is to give effect to the intent of the General Assembly. Section 1921 of the Statutory Construction Act of 1972, 1 Pa.C.S., states that "every statute shall be construed, if possible, to give effect to all its provisions." It is not problematic to give full meaning to the above-cited duties of the Department and the statutory provisions granting a local prison board the authority to operate and manage the county jail. Act 502 grants the Department oversight on county prisons that is limited to the establishment of standards, inspection according to those standards and classifying the jails as eligible to receive the defined class of inmates. The local prison boards are empowered with operating and managing county jails within those standards established by the Department. These differing statutory powers are not incompatible.

The Department also disagrees with the commentators' assertion that the Department does not have the author-

ity to conduct a VA. The final-form regulation has been intentionally structured so that the VA process is an extension of the inspection process. A VA is authorized based on findings of noncompliance with the essential standards and a finding that the noncompliance may present an immediate threat to the safety and security of the facility. The Department believes the VA process provides a very important supplement to the routine inspection-classification process by allowing the Department to respond quickly to those situations when a final inspection report finds serious and immediate safety and security problems at a facility. A VA report will, in the short term, identify actions the county prison can take to mitigate or eliminate any immediate threat to safety and security. If the county prison is unable or unwilling to take those actions, the VA process allows the Department to move to a classification hearing, if necessary, far more quickly under paragraph (11) instead of proceeding through the 3-year, progressive inspection process described in paragraphs (6) and (7). More importantly, the Department believes that the issuance of a VA report is more likely to result in identifying practices and actions that can be taken by the county prison to mitigate or eliminate any immediate threats to safety and security, thus avoiding the need for a classification hearing.

Comment—(3)—Elimination of ADA/NCCHC accreditation waiver—The proposed rulemaking eliminated a waiver of the subchapter in its entirety for those counties achieving American Correctional Association (ACA) accreditation using adult local detention facilities standards. Also eliminated was a waiver of the requirements of § 95.232 (relating to medical and health services) for those counties achieving National Commission on Correctional Health Care (NCCHC) accreditation. A number of commentators objected to the elimination of these waivers claiming that the standards for both ACA and NCCHC accreditation were far more exacting than the standards of this chapter. They claimed that the standards were therefore unnecessary for those counties achieving either of these accreditations.

Response—There are several reasons for eliminating the waiver provisions. Foremost, the Department believes that its statutory duty is to establish standards and inspect according to those standards and that those duties should not be relinquished to a nongovernment entity. While the ACA and NCCHC standards are equivalent to or exceed the standards established by the Department, the accreditation process takes place every 3 years. The accreditation process may therefore not discover newer, problematic developments. Additionally, only one county prison in this Commonwealth has ever sought and received ACA accreditation. Although a number of counties are accredited by the NCCHC, the Department believes there is value to conducting a full inspection of all aspects of a county prison's operations including its health care facilities.

6. *Section 95.224. Inmate rules and staff procedures—reasonableness.*

Comment—Paragraph (2) stated that new or revised rules shall be disseminated to staff, and when appropriate, to inmates prior to implementation. IRRC recommended that the final-form regulation specify when it would not be appropriate to disseminate new or revised rules to inmates.

Response—The phrase "when appropriate" has been deleted so that new inmate rules shall be disseminated to inmates in all instances.

7. *Section 95.229. Bedding—reasonableness.*

Comment—As noted by IRRC, some commentators expressed concern that these provisions fail to recognize the need for temporary bedding when a county prison must process a large number of inmates in a short period of time. In those circumstances, the county prison may need to use temporary bedding that does not meet the requirement that the bedding be at least 12 inches off the floor. IRRC recommended that the regulation include an exception to the 12-inch requirement for a limited time to manage a dramatic increase in population.

Response—The Department concurs with this recommendation. The final-form regulation contains a new paragraph (2) that allows for an exception to the requirements of paragraph (1) in emergency circumstances. Consistent with the intent of the Chapter 95 regulation, the revised provision requires the county prison to establish written local policy that defines the emergency circumstances that would require the use of temporary bedding. As a result of discussions with the Committee, the revised regulation places two reasonable time limits on the use of the emergency exceptions to the bedding requirements. An individual inmate may not be subject to temporary bedding for a period exceeding 30 days. The regulation limits the use of any temporary bedding arrangements to no more than 90 consecutive days in recognition that long-term use of temporary bedding arrangements by a county jail may create additional operational problems.

8. *Section 95.230. Food services—clarity.*

Comment—IRRC suggested that paragraph (2) of the regulation specify what type of certification will be acceptable.

Response—The Department concurs and the regulation has been revised. The fourth sentence of paragraph (2) has been revised to specify that the certification be "in accordance with 3 Pa.C.S §§ 6501—6510 (relating to the food employee certification act).

9. *Section 95.232. Medical and health services—clarity.*

Comment—IRRC recommended that the reference to "certifying health organization" under paragraph (8) be more specific.

Response—The Department concurs and the regulation has been revised. County jails utilize various health organizations to directly conduct basic first aid and cardiopulmonary resuscitation training to its employees or to certify county jail employees as trainers. To allow county jails the choice of obtaining these training services from different organizations, the last sentence of paragraph (2) was revised to state that all corrections personnel be certified "by the organization that conducts the training."

Comment—IRRC also recommended that the references to State and Federal law in paragraph (9)(ii) include specific citations to the applicable laws.

Response—The Department concurs with this recommendation. The appropriate statutory reference has been added to paragraph (9)(ii).

10. *Section 95.235. Work programs—clarity.*

Comment—Paragraph (3) requires local prisons to provide "some form of compensation" to inmates participating in work programs. IRRC noted that since the term compensation is defined, the phrase "some form of" should be deleted.

Response—The Department concurs with the recommendation. The phrase "some form of" has been deleted from paragraph (3).

Comment—Paragraph (4) states that inmate working conditions comply with "all applicable federal, state or local work safety laws and regulations." Also, paragraph (5) references "applicable law." IRRC recommends that the regulation should include references specific citations to those laws and regulations.

Response—Upon further review of the Department's inspection practice, reference to inmate working conditions complying with all applicable Federal, State or local work safety laws and regulations has been deleted from the final-form regulation. The Department believes that the applicability of various Federal, State and local laws is open to interpretation and may vary from county to county. Department inspectors would not be qualified to resolve those questions of law. The Department's interests in conducting inspections in this area is to insure that the county prison's written local policy address that inmates be issued appropriate clothing and tools for particular work and that they are given appropriate direction on the proper use of equipment and tools.

Comment—Two commentators objected to the last sentence of paragraph (5) believing that it required county jails to have the same work programs for both male and female inmates and that it would not be possible to comply with such a requirement.

Response—The Department recognizes that county prisons housing both male and female inmates cannot practically offer identical work programs for male and female inmates. To clarify that paragraph (5) does not establish such a requirement, the Department has deleted the second sentence of paragraph (5). The remaining language requires that county prisons establish a written local policy prohibiting discrimination regarding access to a work program.

11. *Section 95.237. Religion—need; implementation procedures.*

Comment—Some commentators objected to the language in paragraph (1) of the proposed rulemaking as too broad and possibly establishing an inmate's right to participate in any religious activities a matter of choice.

Response—The Department concurred with the commentators concerns that the previous requirement of paragraph (1) was too broadly stated. The first sentence of paragraph (1) was therefore revised to revert to the existing standard with added language requiring that the requirement be put into written local policy. This change will result in keeping the decision-making process as to accommodating religious activities requests with the local prison management.

Comment—Numerous commentators questioned the need for the paragraph (2) requirement that individuals seeking to provide religious guidance to inmates must have clinical pastoral education or equivalent specialized training and endorsement by the appropriate religious certifying body. The commentators expressed concern that these requirements would limit religious programming in some jails because religious activities are provided by volunteers without the training.

Response—The Department understands and concurs with these stated concerns. The educational, training and certification requirement have been deleted from the final-form regulation.

12. *Section 95.240. Inmate disciplinary procedures—need; implementation procedures.*

Comment—As noted in IRRC's comments on the definitions of major and minor infractions, IRRC suggested that the Department explain the need for including two levels of infractions.

Response—See the Response in Comment No. 4 previous—*major infraction and minor infraction.*

13. *Section 95.241. Security—need; implementation procedures; clarity.*

Comment—Paragraph (1) Supervision of inmate—IRRC noted that subparagraph (ii) requires an initial staffing analysis to be conducted and that the results of the annual staffing analysis be available at all times. IRRC suggested that the final-form regulation specify who conducts the staff analysis and who has access to it.

Response—The Department concurs with the recommendation. Subparagraph (ii) of the final-form regulation requires that the staffing analysis be conducted by the prison administrator or a designee and that the information on the number and type of positions filled and vacant be available for review by the Department's inspectors.

Comment—Paragraph (1) supervision of inmates—IRRC questioned the need the need for the subparagraph (v) requirement that local prisons maintain a permanent log to record routine information, as well as other information.

Response—The Department recognizes this concern. To allow for the varying practices in county prisons, the specific requirement to maintain a permanent log and shift reports to record the listed information is deleted from the final-form regulation.

Comment—Paragraph (2)(i) use of force—As with IRRC's comment regarding the definition of "force, use of," IRRC recommended that paragraph (2) be amended to allow force to effect compliance with an order.

Response—The Department concurs. See the Response to Comment No. 4 for—Force, use of.

Comment—IRRC noted that the terms "authorized equipment" and "recognized certification period" used in paragraph (2)(ii)(H) are vague and recommended that those terms be defined.

Response—The Department concurs. Paragraph (2) in the final-form regulation clarifies the use of those terms. Paragraph (2)(ii) adds the term "authorized equipment such as" to clarify that the county prison's written local policy must specify the equipment that prison staff may use in applying force (such as, the physical restraints, chemical agents, stun devices, batons and firearms).

Use of the term "recognized certification period" is deleted and paragraph (2)(ii)(H) is revised to clarify that all prison staff authorized to use the equipment listed in policy must demonstrate competency in use of the equipment in accordance with the training or certification standards recommended by the manufacturer of that equipment.

Comment—Paragraph (5) contraband control. Subparagraph (ii) stated that individuals "entering or leaving" the prison will be subject to search. IRRC asked if the local prison had discretion in this area, or did the Department intend to have individuals searched before "entering and leaving."

Response—The Department's intent in stating the individuals are "subject" to search when entering or leaving the facility is that the local prison has discretion as to when an individual entering or leaving the prison is searched.

14. *Section 95.243. Treatment services—fiscal impact; need; clarity.*

Comment—A number of commentators objected to the treatment mandates of this section. The commentators' objections were directed exclusively at the requirements of paragraphs (2) and (6).

Paragraph (2) of the proposed regulation required treatment services to include programs in education, social services, alcohol and other drugs and counseling services. The commentators all objected to these requirements as unfunded mandates. Some commentators stated the requirements actually dictated how treatment services should be delivered and that such a decision should be left to the county jail.

Response—The Department is cognizant of the concerns of the commentators. The Department believes that the requirements of paragraph (2), when read with all of the provisions of § 95.243 in the final-form regulations, are consistent with the current recognized professional standards for adult local detention facilities while allowing county officials and jail administrators flexibility to make decisions appropriate to their facility.

The Department's statutory mandate found in section 3(3) of Act 502, includes establishing standards for county jails that include "standards for correctional programs of treatment, education and rehabilitation of inmates." The Department believes these treatment services requirements provide significantly more flexibility to county jails in meeting inmate treatment needs than the existing requirements of § 95.243. The existing section sets very specific requirements for the number of hours of counseling services that must be provided by a county jail per week as well as certain staffing requirements based solely on the jails average daily inmate population.

It is important to note that the term "counseling services" as used in paragraph (1) of the existing section is defined broadly so that it "shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholics Anonymous and similar groups; testing and clinical psychological services; and psychiatric services." "Counseling services" in the existing regulation encompasses, in more specific terms, much of the four areas for treatment services required in § 95.243 of the final-form regulations.

Perhaps most importantly, and contrary to the concerns of the commentators, the final-form regulation does not require how these treatment services must be provided. Section 95.243 does not specify the amount of hours that must be provided in these treatment areas, which inmates must be provided which services, nor the manner in which the treatment services are to be provided. Those decisions are fully left to discretion of the county prison administrators. As with the existing regulation, the final-form regulation permits a county prison to provide these services through a person employed by the prison, someone under contract with the prison, through a volunteer or any combination thereof.

Section 95.243 in the final-form regulations also provides county prisons greater flexibility in terms of who must deliver those services. Paragraph (3) allows these services to be delivered by a treatment professional (defined in § 95.220a) or a person certified, licensed or trained to provide the programming. The existing standard requires that the services be delivered by a qualified counselor who preferably possesses a Master's Degree, but no less than a Bachelor's degree in behavioral sciences. If the treatment services are delivered by a contracting agency or a professional volunteer, those persons must still meet the standards for qualified counselor. The existing standard also requires all county jails with populations over 75 inmates, but below 175, to have two full-time treatment personnel, one of whom must be a treatment supervisor. For jails with average daily populations of 175 inmates or more, the existing standard requires providing an additional qualified counselor for every 75 inmates over the first 75. Those specific staffing mandates have all been eliminated in the final-form regulation. While well-intentioned, the existing standards provided far more of a mandate to county jails as to how to provide the required counseling services than the new § 95.243 in the final-form regulations. The intent of the final-form treatment services provision is to establish the required areas in which treatment services must be provided, but to leave the decisions as to the level of services and how those services are provided up to county prison administrators.

As discussed previously under Comment No. 2, significant changes have been made to paragraph (6). The requirement that all inmates be given a treatment needs assessment within 14 days of admission has been significantly changed so that the assessment must be conducted within 90 days of an inmate's admission to the jail. Additionally, the treatment services recommended by the assessment must begin within 45 days of the assessment. The Department and member of the Committee believe that these changes will allow county prisons to focus treatment service resources on those inmates who are there for longer terms of incarceration.

Finally, it should be noted that the significant interest in assuring that treatment services are provided to any inmate, short term or long term, in need of immediate services is met by paragraphs (4) and (5) of this section.

Comment—IRRC noted that the terms "treatment services" and "treatment programs" are used in this section and recommended that one term be used and defined.

Response—The Department concurs with this recommendation. The provision has been revised so that all references are now to "treatment services." As explained, that term has also been defined.

15. *Section 95.244. Community involvement—clarity.*

Comment—IRRC suggested that the Department define the term "community involvement" to assist the regulated community with developing a written policy that would meet the requirements of this section.

Response—For the reasons discussed in the response in Comment No. 2, this section is rescinded in its entirety.

16. *Section 95.246. Investigations—death sexual assaults/threats—clarity.*

Comment—IRRC questioned the need for the language in subparagraph (ii) requiring written local policy to specify who is responsible for contacting the coroner and law enforcement when subparagraph (i) specifically required the prison administrator to notify the coroner and appropriate law enforcement agency in the case of a death. IRRC noted similar language in paragraph (2), pertaining to sexual assaults/threats.

Response—The Department concurs. Both paragraphs (1) and (2) were revised to state that written local policy must specify the procedure in the event of a death or an allegation of sexual assault, respectively, involving an inmate, prison employee, volunteer, contractor or visitor. Both paragraphs then list the elements that the written local policy must address.

Comment—IRRC noted an inconsistency between the language of subparagraph (ii) which requires the reporting of sexual assaults and threats and the statistical/informational reporting requirements of § 95.242. That section requires the reporting of assaults, but not the threat of sexual assaults on a monthly report filed with the Department. IRRC questioned how local prisons are to report the threat of sexual assaults.

Response—The Department concurs. Paragraph (2) of this section was revised to clarify that county prisons establish procedures, through written local policy, to address all allegations of sexual assault and not threats of assault. Additionally, § 95.242(3)(iii) was revised to include the requirement to report sexual assaults and allegations of sexual assaults on the County Extraordinary Occurrence Monthly Report to the Department.

17. *Section 95.248. Sanitation, maintenance and safety—clarity.*

Comment—IRRC recommended that paragraph (1) be revised to include a specific citation to the "applicable governmental regulations" that must be adhered.

Response—The Department does not believe it is possible or practical to list all of the applicable regulations to sanitation or safety. To add clarity, the revised paragraph references Department of Labor and Industry regulations and any applicable local code authorities. The existence of any municipal sanitation and safety codes varies from county to county.

Comment—IRRC noted that paragraphs (2), (3) and (9) required written local policy to "identify" plans or programs related to sanitation, maintenance and fire emergency/evacuation. IRRC asked if the intent was for county prisons to simply identify the plans or programs or must they be incorporated into the written local policy.

Response—The word "identify" was deleted from paragraphs (2), (3) and (9) to clarify that the county prisons must incorporate the required elements of the identified program or plan into written local policy.

18. *Miscellaneous clarity.*

Comment—IRRC recommended that the phrase "including, but not limited to," as nonregulatory language be deleted from §§ 95.220b(1), 95.221(8), 95.232(12), 95.235(1), 95.241(1)(ii), 95.243(2), 95.243(4) and 95.243(6).

Response—The Department concurs. The phrase has been deleted in each instance.

Comment—IRRC recommended that the reference to "generally accepted accounting procedures" in § 95.239(3) be changed to "generally accepted accounting principles."

Response—The Department concurs. The phrase has been changed as recommended.

Comment—IRRC noted that § 95.241(2)(ii)(F) appeared to be an incomplete sentence.

Response—The Department concurs. Section 95.241(2)(ii)(F) has been revised to read "Circumstances and types of force requiring specific authorization and who shall authorize the use of the force."

Comment—IRRC recommended that the phrase "prison administration" in § 95.241(3)(ii) be revised to "prison administrator."

Response—The Department concurs. The phrase has been changed as recommended in what is now subparagraph (iii) because of the addition of new language as subparagraph (ii).

Comment—IRRC recommended that the phrase "or designee" should be added to § 95.246(1)(i) after the word "administrator."

Response—The Department concurs. The phrase "or a designee" has been added as recommended.

Comment—IRRC noted that the second sentence of § 95.248(9) contained a typographical error in using the word "departments" instead of the singular "department."

Response—The Department has corrected the error.

E. *Fiscal Impact*

The amendments are not expected to have any significant negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

F. *Paperwork Requirements*

The amendments are not expected to have any significant effect on the paperwork requirements of the Commonwealth, its political subdivisions or the public.

G. *Contact Person*

Interested persons are invited to submit in writing any questions regarding the amendments to David B. Farney, Assistant Counsel, Department of Corrections, Office of Chief Counsel, 55 Utley Drive, Camp Hill, PA 17011, (717) 731-0444.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of its notice of proposed rulemaking, published at 36 Pa.B. 3094 (June 24, 2006), to IRRC and the Chairperson of the House Judiciary Committee and the Senate Judiciary Committee (Committees) for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received.

In preparing these final-form regulations the Department has considered all comments received from IRRC, the Committees and the public.

This final-form regulations were deemed approved by the Committee on August 6, 2008. IRRC met on August 7, 2008, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

I. *Effective Date*

The amendments shall take effect on October 13, 2009.

Findings

The Department finds that:

(1) Notice of proposed rulemaking was published at 36 Pa.B. 3094, as required 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) A public comment period was provided as required by law and all comments were considered.

(3) The adoption of these amendments in the manner provided by this order is necessary and appropriate for the administration and enforcement of the authorizing acts.

Order

(a) The regulations of the Department, 37 Pa. Code Chapter 95, are amended by amending §§ 95.220a, 95.220b, 95.221—95.224, 95.229, 95.230, 95.232, 95.233, 95.235, 95.237, 95.239—95.243 and 95.245—95.248; by adding § 95.233a; and by deleting § 95.244 to read as set forth in Annex A.

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

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* as required by law.

(d) This order shall take effect October 13, 2009.

JEFFREY A. BEARD, Ph.D.,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 4693 (August 23, 2008).)

Fiscal Note: Fiscal Note 19-7 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 95. COUNTY CORRECTIONAL INSTITUTIONS

Subchapter B. ADMINISTRATIVE STANDARDS, REGULATIONS AND FACILITIES

§ 95.220a. Definitions.

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

Alcohol and other drugs treatment—A treatment service designed to address the impact and ramifications of use or abuse of alcohol and other drugs so as to prevent illegal or destructive conduct and avoid addiction.

Alternative menu—Meal plans that are prepared and served as an alternative to the regular meal plan.

Bed capacity—The number of beds that a prison may utilize consistent with the American Correctional Association's "Standards for Adult Local Detention Facilities" on unencumbered space and that are only utilized in areas approved for residential occupancy by the Department of Labor and Industry or local code authority.

Classification—A process for determining an inmate's needs and requirements and for assigning the inmate to appropriate housing units and programs according to the inmate's needs and existing resources.

Code of conduct and ethics—A set of rules describing acceptable standards of conduct for all prison staff.

Community resources—Human service agencies, service clubs, citizen interest groups, self-help groups and individual citizen volunteers that offer services, facilities or other functions that assist inmates.

Compensation—Incentives such as monetary compensation, extra privileges, good time credits, credit toward applicable fines and costs or other items of value that are given for inmate participation in a work program.

Contact visitation—A program inside or outside the prison that permits inmates to visit with designated persons without obstacles or barriers to physical contact.

Contraband—An item possessed by an individual or found within the prison that is prohibited by law or expressly prohibited by those legally charged with the administration and operation of the prison.

Counseling—A treatment service using planned interpersonal relationships to promote social adjustment and provide opportunities to express feelings verbally with the goal of resolving the individual's problems.

Department—The Department of Corrections of the Commonwealth.

Education—A treatment service using formal academic education or a vocational training activity designed to improve knowledge or employment capability, or both.

Financial audit—An examination of prison records or accounts to check their accuracy conducted by persons not directly involved in the creation and maintenance of these records or accounts.

First aid—Care for a condition that requires immediate assistance from an individual trained in first aid care and the use of the prison's first aid kits.

Force, use of—Physical force used in instances of justifiable self-defense, protection of others, protection of property, prevention of escape or to effect compliance with the rules and regulations of the facility when other methods of control are ineffective or insufficient.

Force option—Actions beginning with the least amount of force necessary and progressing through the degrees of nondeadly and deadly force, as necessary.

Governing county prison authority—The individual or board, established by law, having administrative oversight and policy-setting responsibility for the county prison.

Grievance—A formal written complaint by an inmate related to a problem encountered during the course of his confinement.

Grievance process—The procedure established to review and respond to inmate grievances.

Health care professional—A medical doctor, doctor of osteopathy, physician's assistant, registered nurse or licensed practical nurse licensed by the appropriate licensing board of the Department of State, Bureau of Professional and Occupational Affairs.

Health care provider—An employee or contractor of the prison who is responsible for ensuring that adequate health care is provided to inmates.

Health care screening—A process developed by the prison's health care provider to assess inmates upon admission as set forth in written local policy.

Health care training—Training required by the county prison's health care provider as part of the prison's health care delivery system as set forth in written local policy.

Inmate—An individual who is legally confined in a county prison.

Intake interview—A process developed by the prison's treatment services provider to assess inmates upon admission as set forth in written local policy.

Life safety code—A manual published and updated by the National Fire Protection Association specifying minimum standards for fire safety necessary in the public interest.

Noncontact visitation—A program that restricts inmates from having physical contact with visitors by the use of physical barriers such as screens or glass, or both.

Preventive maintenance—A system designed to enhance the longevity and usefulness of buildings and equipment in accordance with a planned schedule.

Prison—A place, institution, building (or part thereof), set of buildings or area (whether or not enclosing a building or set of buildings) that is used for the lawful custody of individuals.

Prison administrator—The official who has the day-to-day responsibility for managing and operating the county prison.

Prison inspection—An onsite visit of a county prison by one or more Department inspectors to determine whether the county prison is in compliance with the minimum requirements of this chapter.

Procedures—The detailed and sequential actions that must be executed to ensure that a policy is implemented.

Restraints—Any device authorized by written local policy that is used to prevent escapes, prevent an inmate from injuring himself or other persons or prevent property damage.

Secretary—The Secretary of the Department.

Security devices—

(i) Locks, gates, doors, bars, fences, screens, ceilings, floors, walls and barriers used to confine and control inmates.

(ii) The term also includes electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies and other equipment used to maintain prison security.

Security perimeter—The outer portions of a prison that provide for secure confinement of prison inmates.

Segregation—The separation of an inmate from the general population for disciplinary or administrative reasons.

Social services—A treatment service designed to promote the welfare of the community and the inmate, as through aid for physically and mentally handicapped, health maintenance, family development and employment opportunities.

Training—An organized, planned and evaluated activity designed to achieve specific learning objectives and enhance the job performance of personnel.

Training plan—A set of long-range or short-range training activities that equip staff with the knowledge, skills and attitudes they need to accomplish the goals of the organization.

Treatment professional—An individual who possesses a bachelor's degree and advanced training in the social or behavioral sciences.

Treatment services—Alcohol and other drugs treatment, counseling, education or social services provided to an inmate during his confinement in the county prison.

Treatment services provider—An employee or contractor of the county prison who is responsible for providing treatment services to inmates.

Treatment training—Training required by the county prison's treatment services provider as part of the prison's treatment delivery system as set forth in local written policy.

Unclothed search—An examination of an inmate's unclothed body for weapons, contraband and physical abnormalities.

Vulnerability analysis—A systematic and measurable performance-based evaluation of a prison that includes a prison analysis, planning, prison characterization, threat definition, identification of undesirable events, performance-testing physical protection systems, generation of adversary sequence diagrams, scenario development, timeline development and determination of risk for worst-case scenarios.

Work release—An arrangement sanctioned by law that enables an inmate to be released into the community to maintain approved employment or other approved activity, or both.

Written local policy—Local policy that clearly explains practices and procedures to be followed, requires compliance therewith, and provides for enforcement thereof. The Department will review the policies when inspecting county prisons.

§ 95.220b. Scope.

Each section sets forth minimum requirements, which are mandatory.

(1) Every county prison shall be subject to an annual prison inspection, except as described in paragraph (4), to determine if the prison is in compliance with the minimum requirements established by this chapter. An immediate prison inspection may be ordered by the Secretary following an emergency situation at a county prison, including a riot or disturbance, an escape from secure detention, a fatality following a serious assault or an assault by an inmate using a deadly weapon resulting in serious injury. An immediate prison inspection ordered under these circumstances shall be conducted to determine if the county prison is in compliance with the minimum requirements.

(2) The mimimum requirements in this paragraph and paragraphs (3)—(13) are deemed to be essential to the safety and security of the county prison, prison staff, inmates and the public:

(i) Section 95.221(1)—(3) and (8) (relating to personel).

(ii) Section 95.222(2) (relating to admission).

(iii) Section 95.224(1), (3)—(5) (relating to rules and regulations).

(iv) Section 95.225(1) and (2) (relating to classification).

(v) Section 95.226(1)—(4) (relating to housing).

(vi) Section 95.230(1)—(5) (relating to food services).

(vii) Section 95.232(1)—(4) and (8)—(12) (relating to medical health services).

(viii) Section 95.240(1) and (9) (relating to inmate disciplinary procedures).

(ix) Section 95.241 regarding security.

(x) Section 95.243(4), (5) and (7) (relating to treatment services).

(xi) Section 95.248(2), (4), (5) and (7)—(9) (relating to treatment services).

(3) Within 20 days of completing any prison inspection under paragraph (1), the Department's inspector will issue the preliminary findings of the inspection to the county prison administrator and the governing county prison authority. The governing county prison authority or designee may submit a written response to those preliminary findings to the Deputy Secretary for Administration or designee. Any written response shall be submitted within 30 days of receipt of the preliminary findings. The county prison administrator may include documentation in support of the written response.

(4) The Deputy Secretary for Administration will issue a final inspection report within 20 days of receipt of the written response from the county prison administrator or within 30 days of issuance of the written preliminary findings if no written response thereto is submitted. The final inspection report will state findings on whether the county prison is in compliance with each of the minimum requirements. If the final inspection report finds that a minimum requirement has not been met, the report will also include reference to whether the county prison administrator disputed the preliminary finding of noncompliance.

(5) If the final inspection report concludes that the county prison is in full compliance with all of the minimum requirements of this subchapter, the subsequent annual prison inspection will be waived and the county prison will be inspected on a biannual basis.

(6) If a final inspection report finds that the county prison is in violation of any of the minimum requirements not set forth in paragraph (2), a notice of deficiency will be issued to the county prison administrator and the governing county prison authority along with the final inspection report.

(7) If a final inspection report finds that the county prison is in violation of one or more of the essential minimum requirements in paragraph (2), a citation of noncompliance will be issued to the county prison administrator and the governing county prison authority along with the final inspection report.

(i) If a final inspection report finds that the county prison remains in violation of any of the same essential minimum requirements for a second consecutive prison inspection, the county prison administrator and the governing county prison authority will be issued a second citation of noncompliance.

(ii) If a compliance report finds that the county prison remains in violation of any of the same essential minimum requirements for a third consecutive prison inspection, the county prison administrator and the governing county prison authority will be issued a third citation of noncompliance.

(8) The Secretary may authorize the conducting of a vulnerability analysis of a county prison when a final inspection report finds one or more violations of the essential minimum requirements in paragraph (2) and the report concludes that those violations may immediately impact the safety and security of the county prison, prison staff, inmates or the public. The Department will be responsible for the costs of a vulnerability analysis authorized by the Secretary.

(9) Within 15 days of completing a vulnerability analysis, a vulnerability analysis report will be issued to the governing county prison authority and the county prison administrator. The report will present an analysis of the overall operations of the prison and an analysis of potential threats to the safety and security of the county prison, prison staff, inmates and the public.

(10) A governing county prison authority may at any time request the Department to conduct a vulnerability analysis to assist in evaluating the operations of the county prison. The county prison shall be responsible for the costs of a vulnerability analysis conducted at the request of the governing county prison authority.

(11) The Secretary may order a hearing to determine whether a county prison should be classified as ineligible to receive prisoners sentenced to a maximum term of 6 months or more but less than 5 years under the following conditions:

(i) If a vulnerability analysis report finds one or more violations of the essential minimum requirements in paragraph (2) and concludes that those violations may immediately threaten the safety and security of the county prison, prison staff, inmates or public safety.

(ii) If the county prison has been issued a third citation of noncompliance in accordance with paragraph (7)(ii).

(12) A hearing ordered under paragraph (11) will be scheduled promptly, but in no event sooner than 20 days after receipt of the hearing notice. The proceedings will be conducted in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The hearing will be held to determine whether the conditions at the county prison violating the essential minimum requirements constitute a significant and immediate threat to the safety and security of the county prison, prison staff, inmates or the public. The county prison shall be permitted to present evidence disputing that any significant and immediate threat exists, including evidence that measures have been taken to eliminate or minimize the threat to safety and security.

(13) The hearing will result in one of the following:

(i) Upon finding that conditions at the county prison violate the essential minimum requirements and that those violations constitute a significant and immediate threat to the safety and security of the county prison, prison staff, inmates or the public, an order will be issued classifying the county prison as ineligible to receive any additional prisoners sentenced to a maximum term of 6 months or more but less than 5 years until further order of the Department. If such an order is issued, the county prison remains responsible for arranging incarceration at another correctional facility for those inmates committed by the county's court of common pleas to a sentence of greater than 6 months but less than 5 years to a county prison under 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement).

(ii) Upon finding that conditions at the county prison violate the essential minimum requirements, but that those violations do not currently constitute a significant and immediate threat to the safety and security of the county prison, prison staff, inmates or the public, an order will be issued stating that the citation of noncompliance remains in effect and that the county prison is subject to a follow-up prison inspection in a time frame deemed appropriate to determine if the county prison has corrected the instances of noncompliance with the essential minimum requirements. If the subsequent final inspection report finds the county prison to be in violation of some or all of the essential minimum requirements for which the hearing was conducted, the Secretary may order another hearing in accordance with paragraph (10).

(iii) Upon finding that the county prison is now in compliance with the minimum requirements, an order will be issued rescinding the citation of noncompliance. The county prison shall then be subject to an annual prison inspection consistent with paragraph (1).

§ 95.221. Personnel.

The following minimum requirements apply to personnel at county prisons:

(1) Before being assigned duties, all corrections personnel shall be given training as to the contents/application of this chapter and in their general and specific responsibilities, including the use of force, prohibition on the seeking and dispensing of favors to and from the inmate population and instruction in the prison's code of conduct and ethics. A record of this training shall be documented in each employe's personnel file.

(2) Full time corrections personnel shall receive basic training from a training program approved by the Department within 12 months of assuming their duties.

(3) Part-time corrections personnel shall be provided training required under paragraph (1). Part-time corrections personnel who have not completed an approved training program under paragraph (2) may not be permitted to work without close supervisory direction by a person who has received the training.

(4) Written local policy must provide for training and staff development as described in paragraphs (1)—(3).

(5) An annual training plan shall be prepared that identifies the subjects and number of hours required for preassignment, basic and staff development training. Training may occur onsite, at an academy or training center, during professional meetings, through supervised on-the-job training or computer-based training. The training plan shall be reviewed annually by the prison administrator or designee.

(6) Written local policy must provide for a personnel policy manual that is available for employee reference. This manual must include, but not be limited to:

(i) Organizational chart.

(ii) Recruitment and promotion.

(iii) Job specifications and qualifications.

(iv) Code of conduct and ethics.

(v) Sexual harassment/sexual misconduct provisions.

(vi) Employe evaluation.

(vii) Staff disciplinary process.

(viii) Grievance and appeals process.

(7) The prison administrator or a designee shall conduct a documented review of the prison personnel policy manual annually and revise as needed.

(8) Written local policy must mandate a drug-free workplace for all prison staff including the following:

(i) Prohibition on the use of illegal drugs.

(ii) Prohibition of possession of any illegal drug except in the performance of job duties.

(iii) Procedures to ensure compliance.

(iv) Availability of treatment or counseling, or both, for drug abuse.

(v) Penalties for violation of the policy.

(9) Written local policy must specifically and strictly prohibit sexual misconduct and sexual harassment by prison staff. Written local policy must inform prison staff that they may be subject to disciplinary action or criminal charges, or both, if found to have engaged in that conduct.

§ 95.222. Admission and release.

The following are the minimum requirements applicable to admissions and releases:

(1) *Admission.* Written local policy must provide for the following:

(i) With all admissions to the prison, commitment under proper legal authority and completeness of paperwork shall be verified.

(ii) An inmate may not be admitted into the prison when it is determined that the inmate is in need of medical treatment that cannot be provided by the prison. In those cases, a written verification of treatment from a medical doctor shall be provided by the transporting authority prior to admission.

(iii) Admission procedures relating to property disposition, notification and medical assessments and personal hygiene must be specified in written local policy.

(iv) The type of contraband search to be performed, including a restriction as to the use of an unclothed search on an arrestee.

(v) As part of the admission process, basic personal information shall be obtained for identification and classification purposes. This basic information must include:

(A) Name of the inmate.

(B) Date of birth.

(C) Race.

(D) Gender.

(E) Social Security number.

(F) State identification number (SID).

(G) Country of birth.

(H) Citizenship.

(I) Any aliases.

(J) Previous address of the inmate.

(K) Physical description of the inmate, including height, weight, hair, eye color and any scars or tattoos.

(L) Occupation of the inmate.

(M) Education.

(N) Offense committed and a summary of the facts of the crime committed.

(O) Religious affiliation.

(P) Date of commitment.

(Q) Committing county.

(R) Authority for the commitment.

(S) Previous criminal record and any detainers.

(T) Name and address of the person to be contacted in event of an emergency.

(U) Marital status and any children.

(V) Medical history, including any substance abuse.

(W) Name and address of the inmate's attorney.

(vi) Upon admission, a copy of the rules of the prison shall be provided to each inmate.

(vii) How an inmate can notify a relative of the inmate's location.

(viii) When non-United States citizens are detained, the detainee shall be advised of the right to have the detainee's consular officials notified or the nearest consular officials shall be notified of the detention, if required by the Vienna Convention. Consular officials shall be given access to non-United States citizen detainees and shall be allowed to provide consular assistance. Consular officials shall also be notified in the event of the death of a non-United States citizen detainee.

(2) *Release.* Written local policy must provide for the following:

(i) With all releases from the prison, release under proper legal authority and completeness of paperwork shall be verified.

(ii) Release procedures must include the following:

(A) Proper identification of inmate.

(B) Review of inmate file for detainers.

(C) Disposition of prison and personal property.

(D) Information exchange.

(E) Medication supply and medication instructions, as required.

(F) Victim notification.

§ 95.223. Orientation.

The following are the minimum requirements applicable to the orientation of inmates:

(1) Written local policy must require orientation for every inmate within 14 days of admission as to the following:

(i) Prison rules of conduct.

(ii) Consequences for violation of the rules of conduct.

(iii) Mail, visiting and telephone procedures.

(iv) Access to medical care.

(v) Fees, charges or co-payments that may apply.

(vi) Prison grievance process.

(vii) Available treatment programs.

(viii) Available work programs.

(2) Written local policy must provide for the orientation of illiterate and non-English speaking inmates. Orientation of each inmate shall be documented in the inmate file. Orientation may be in written, oral, audio or video format.

(3) Written local policy must describe an inmate grievance process. The policy must include:

(i) The methods available for submitting a grievance.

(ii) The staff persons responsible for responding to a grievance. Grievances must have a written response for record.

(iii) An appeal process of at least one level.

(iv) Time frames for responses and appeals.

(4) Written local policy must permit every inmate to make a request or submit a grievance to the prison administration, the judiciary or other proper authorities without censorship as to substance.

§ 95.224. Inmate rules and staff procedures.

The following are the minimum requirements applicable to inmate rules and staff procedures:

(1) Written local policy must specify inmate rules that insure the security, control, safety and orderly administration of the county prison. These rules must indicate to both inmates and staff what inmate behavior is unacceptable and the consequences of unacceptable behavior.

(2) Written local policy must specify that inmates and staff have access to inmate rules. New or revised inmate rules shall be disseminated to staff and inmates prior to implementation.

(3) Written local policy must specify procedures that direct staff in the operation and maintenance of the county prison. The procedures must contain general and specific instructions for each duty post for the prison. The instructions must include the methods, techniques and time frames necessary to perform the duties of a particular duty post.

(4) Written local policy must specify procedures that direct staff in the event of fire emergencies, escapes and riots. These procedures must direct staff as to what actions are to be performed in a given duty assignment or duty post in these situations. These procedures must instruct staff as to the methods, techniques and time frames necessary to carry out the assigned duties.

(5) Written local policy must specify that operation and maintenance procedures and emergency procedures be disseminated to staff prior to implementation. Staff shall have ongoing access to these procedures.

(6) Written local policy must specify that inmate rules and staff procedures be reviewed by the prison administration on an annual basis. This review must determine if updates are necessary due to operational changes, changes in the law, constitutional standards or recognized professional standards. The annual review and updates shall be documented.

§ 95.229. Bedding.

The following are the minimum requirements applicable to bedding:

(1) Written local policy must specify that inmates be provided a bed, mattress (not to exclude a mattress with integrated pillow), bed sheet, pillow, pillowcase, towel and blanket. The bed must be a sleeping surface and mattress that allows the inmate to be at least 12 inches off the floor. The mattress and pillow must have a waterproof and fire retardant cover. The bed must be located in an area preapproved for residential occupancy by the Department of Labor and Industry or local code authority.

(2) Written local policy must define emergency circumstances that would require the use of temporary bedding arrangements that may not meet the requirements of paragraph (1). An inmate may not be subject to temporary bedding arrangements for a period exceeding 30 consecutive days. Temporary bedding arrangements may not be utilized by the county prison for a period exceeding 90 consecutive days.

(3) Written local policy must provide that the prison administrator has discretion to issue bedding items to or removing bedding items from an inmate when possession of those items by the inmate could compromise the order, security or safety of the prison.

(4) Written local policy must provide that each mattress and pillow is sanitized chemically or by another acceptable method and is in usable condition before

reissue to another inmate. Each in-use mattress and pillow shall be sanitized at least annually.

(5) Written local policy must provide for the laundering of bed sheets, pillowcases, towels and blankets before reissue to another inmate. In-use bed sheets, pillowcases and towels shall be laundered on a weekly basis. In-use blankets shall be laundered at least quarterly.

§ 95.230. Food services.

The following are the minimum requirements applicable to food services:

(1) Written local policy must specify that each inmate be provided a daily diet that is nutritionally adequate for the maintenance of good health. Written local policy must recognize dietary requirements for those inmates whose medical condition requires prescribed therapeutic attention, for those inmates whose religious beliefs require adherence to specified and approved religious dietary law and for those inmates under segregation or disciplinary status, or both, whose behavior requires a different meal consistency. Regular and alternative menus shall be approved and signed by a registered dietician or licensed physician, or both, and the prison administrator on an as needed basis, but no less than on an annual basis.

(2) Written local policy must provide that food is prepared and served in a sanitary manner. The prison food preparation areas and food distribution areas shall be maintained in a safe and clean condition at all times. Food shall be stored and prepared in a proper manner to assure freshness and to prevent spoilage and damage from insects and rodents. Appropriate food service head cover, beard/facial hair cover and gloves shall be worn by staff, food service contractor and inmates engaged in food preparation or distribution, or both. Written local policy must require that one supervisory food service employe become certified in food safety and sanitation in accordance with 3 Pa.C.S. §§ 6501—6510 (relating to food employee certification). There shall always be a "person in charge" present during all hours of operations. If the "person in charge" is not certified, that person shall receive documented training as to the food safety and sanitation procedures as established by written local policy.

(3) Written local policy must provide for the control and use of culinary equipment. All culinary equipment shall be identified and accounted for on an inventory list. In addition, cutlery items shall be documented as to being checked in and out, to control use at all times. When not in use, cutlery shall be stored in a secure manner.

(4) Written local policy must establish preassignment and periodic medical clearance for staff, food service contractor and inmate food service workers. Food handlers shall wash their hands upon reporting to duty and after using toilet facilities.

(5) Written local policy must identify the methods available to clean, rinse and sanitize prison-issued eating and drinking utensils at least weekly. These eating and drinking utensils shall be cleaned, rinsed and sanitized before being reissued to another inmate.

(6) Written local policy must provide that compartmented trays, plastic ware and paper products be utilized to serve the food. More than one type of food may not be served in a noncompartmented container during normal feeding operations. Food shall be served as promptly as possible, at the proper temperature.

§ 95.232. Medical and health services.

The following are the minimum requirements applicable to medical and health services:

(1) Written local policy must specify that all inmates admitted to the prison receive a health care screening performed and recorded by a person with health care training within 24 hours of admission. The health care screening must include a structured inquiry and observation designed to identify newly-committed inmates who pose a health or safety threat to themselves or others. Screening can be performed by health care professionals or by health-trained correctional staff at the time of admission. A record of the result of the examination shall be kept as a part of the permanent prison document.

(2) Written local policy must specify that an inmate determined upon admission not to be in good health be assessed by a health care professional within 24 hours.

(3) Written local policy must specify that following review of the initial commitment screening by a health care professional, a medical history and physical examination be performed by the prison health care provider within 14 days following admission.

(4) Written local policy must specify routine screening procedures utilized for infectious diseases, acute illness and suicide risk.

(5) Written local policy must designate a health care provider responsible for control of the delivery of health care services including mental health services. A health care provider or professional shall have sole province on matters involving medical judgment.

(6) Written local policy must provide that the health care provider report in writing on the health care delivery system to the prison providing information sufficient to demonstrate that adequate health care is being provided to inmates and review findings with prison administrators annually.

(7) Written local policy must provide for an annual documented review of a prison's health care delivery system by the prison and when necessary, revisions shall be made to each health care procedure and program by the prison.

(8) Written local policy must provide for access to emergency care 24 hours a day for all inmates. A written plan must outline onsite treatment, evacuation, transportation and security procedures and designate emergency facilities to be utilized. All corrections personnel shall be certified in basic first aid and cardiopulmonary resuscitation in accordance with the time frames established by the organization that conducts the training.

(9) Written local policy must provide for the management of pharmaceuticals. The policy must include:

(i) Formulary and prescription practices.

(ii) Medication procurement, receipt, dispensing, distribution, storage and disposal, as supervised by properly licensed personnel in accordance with The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

(iii) Secure storage and inventory of all controlled substances, syringes and needles.

(10) Written local policy must provide for a suicide prevention and intervention program and outline the program review mechanisms utilized and staff training procedures for program implementation. Staff training must occur on an annual basis.

(11) Written local policy must provide that medical and dental instruments, equipment and supplies be controlled and inventoried.

(12) Written local policy must specify the scope of dental treatment to be provided to an inmate. This treatment must include extraction and other work of an emergency nature as needed. Written local policy must specify how an inmate is to obtain the available dental treatment.

§ 95.233. Visiting.

The following are the minimum requirements applicable to inmate visiting:

(1) Written local policy must explain inmate visiting procedures, including:

(i) Availability of contact or noncontact visitation, or both.

(ii) Visitor approval procedure.

(iii) Frequency and duration of visits.

(2) Written local policy must require that visitors register upon admission to the prison. Written local policy must describe the circumstances and the types of searches under which visitors are subjected.

(3) Written local policy must require that each inmate be permitted at least 30 minutes of visitation time weekly. Restrictions may be placed on visiting, including denial of a visit, when, in the discretion of the prison administrator, the restrictions are necessary to maintain the safety or security of the prison.

(4) Written local policy must, in accordance with the Official Visitation of Prisons Act (61 P. S. §§ 1091—1095), provide for visits by official visitors. Written local policy must require that accommodations be made to provide for the privacy of conversation during these official visits.

(5) Written local policy must allow for visits by an inmate's attorney or clergy. Written local policy must require that accommodations be made to provide for the privacy of conversation during these visits.

(6) Written local policy must require that each inmate be provided inmate visiting information upon admission. This information must also be made available to the public.

§ 95.233a. Telephone communication.

The following are the minimum requirements applicable to telephone communication:

(1) Written local policy must specify whether inmates are permitted telephone communication. If so, the policy must explain telephone procedures, including:

(i) Hours during which telephone communication is available.

(ii) Any limitations on calls.

(iii) Cost/method of payment.

(2) Written local policy must, in accordance with 18 Pa.C.S. § 5704 (relating to the exceptions to prohibition of interception and disclosure of communications), specify whether inmate telephone conversations are subject to intercepting, recording, monitoring or divulging. If so, the policy must establish the guidelines which permit those activities.

(3) Written local policy may allow for restrictions to be placed on telephone communication, including denial of telephone usage, when, in the discretion of the prison administrator, the restrictions are necessary to maintain the safety or security of the prison.

(4) Written local policy must require that each inmate be provided information about telephone communication upon admission. This information must also be made available to the public.

§ 95.235. Work programs.

The following are the minimum requirements applicable to inmate work programs:

(1) Written local policy must identify any authorized inmate work programs such as work assignment program, industries program, public works/community service program or work release program. Written local policy must specifically prohibit prison staff from using their official position to secure privileges for themselves or others in association with an inmate work program.

(2) Written local policy must identify whether sentenced inmates may be required to participate in a work program based upon availability. Unsentenced inmates may not be required to participate in a work program, but may request involvement in a work program.

(3) Written local policy must require that inmates who participate in a work program (other than personal housekeeping and housing area cleaning) receive compensation. Written local policy must specify the type and amount of compensation.

(4) Written local policy must require that inmates be provided appropriate clothing, supplies and tools for any work assignment program, industries program or public works/community service program. The inmate must receive direction on the proper use of any equipment or tools to be used by the inmate during any work assignment program, industries program or public works/community service program.

(5) Written local policy must specify that there may be no discrimination regarding access to a work program based on an inmate's race, religion, national origin, gender or disability.

§ 95.237. Religion.

The following are the minimum requirements applicable to religion:

(1) Written local policy must provide that each prisoner shall be allowed to satisfy the needs of his religious life consistent with the orderly administration of the prison.

(2) Written local policy must require that individuals seeking to provide religious guidance to inmates be screened and selected by the prison administrator or a designee.

(3) Written local policy must provide for the accommodation of religious practices consistent with the security needs and orderly administration of the prison. The policy must describe the procedure for reviewing an inmate request for accommodation of a religious practice or activity.

(4) Written local policy must provide that inmates are permitted to possess religious objects consistent with the security needs and orderly administration of the prison. The policy must describe the procedure for reviewing an inmate request to possess religious objects that would otherwise be considered contraband.

(5) Written local policy must provide for the accommodation of special foods, diets and fasts as part of an inmate's religious practices consistent with the security needs and orderly administration of the prison. The policy must describe the procedure for reviewing an inmate request for accommodation of these practices.

§ 95.239. Commissary and other funds.

The following are the minimum requirements that apply to commissaries and other funds:

(1) County prisons may provide commissary services if the county so chooses.

(2) Written local policy must require that funds associated with commissary services be audited and reported on an annual basis by an independent party using generally accepted accounting principles.

(3) Written local policy must describe a fiscal system that accounts for all income and expenditures on an ongoing basis. Methods for collecting, safeguarding and disbursing moneys must comply with generally accepted accounting principles. A financial audit of the prison shall be conducted annually by a certified, independent party using generally accepted accounting principles. The financial audit must result in an opinion that either affirms or disaffirms the accuracy of the records or accounts.

(4) Written local policy must require that funds associated with inmate telephone services be audited and reported to the governing county prison authority on an annual basis by an independent party using generally accepted accounting principles.

(5) Written local policy must require that funds associated with an industries program and a work release program be audited and reported to the governing county prison authority on an annual basis by an independent party using generally accepted accounting principles.

§ 95.240. Inmate disciplinary procedures.

The following are the minimum requirements applicable to inmate disciplinary procedures:

(1) Written local policy must identify a disciplinary process that provides clear notice of prohibited behavior and consistently applied sanctions for violations of prison rules. Disciplinary procedures governing inmate rule violations must address the following:

(i) Rules.

(ii) Minor and major infractions.

(iii) Criminal offenses.

(iv) Disciplinary reports.

(v) Prehearing actions.

(vi) Prehearing detention.

(vii) Appeal of disciplinary decisions.

(2) Written local policy must identify violations of prison rules that are designated as a major infraction, a minor infraction or those not rising to the level of a major or minor infraction.

(i) A major infraction involves a grievous loss and requires use of a hearing procedure for resolution. Major infractions include:

(A) Violations that may result in disciplinary detention or administrative segregation.

(B) Violations for which punishment may tend to increase an inmate's sentence, such as extending parole eligibility.

(C) Violations that may result in forfeiture, such as loss of earned time.

(D) Violations that may be referred for criminal prosecution.

(ii) A minor infraction charge may be resolved without a hearing procedure and without the imposition of serious penalties. Minor infractions do not violate any State or Federal statutes and may be resolved informally by reporting staff.

(3) Written local policy must provide that discipline for a minor infraction may not be imposed unless a written statement as to the rule violated is prepared and a person not involved in the rule violation reviews the statement and makes a decision as to guilt.

(4) Written local policy must provide that discipline for a major infraction may not be imposed unless the inmate has been informed of the offense charged in writing, has had an opportunity to present a defense and has been found guilty of the charge by an impartial party or board designated by the prison administrator. Findings of guilt or innocence must be expressed in writing and based on information presented. Written findings of guilt must state the reasons for the finding.

(5) Written local policy must provide that disciplinary charges and written findings relative to a major infraction be recorded and made a permanent part of an inmate's prison file.

(6) Written local policy must provide that disciplinary sanctions imposed after a finding of guilt for a major infraction may include loss of privileges, segregation or other sanctions as set forth in written local policy.

(7) Written local policy may allow for informal resolution of rule infractions not rising to the level of a major or minor infraction. Participation by an inmate in informal resolution of a rule infraction shall be on a voluntary basis only.

(8) Written local policy must provide that when an inmate in disciplinary status is deprived of any usual authorized items or activity, a report of the action is to be made to the prison administrator. If an inmate in disciplinary status uses food or food service equipment in a manner that is hazardous to self, staff or other inmates, an alternative meal may be provided, upon the approval of the prison administrator or designee and responsible health care provider.

(9) Written local policy must provide that the imposition of discipline not violate an inmate's right to be free from cruel and unusual punishment.

§ 95.241. Security.

The following are the minimum requirements applicable to security:

(1) *Supervision of inmates.* Written local policy must provide for the following:

(i) The number of staff required to maintain care, custody and control of the inmate population on a 24-hour basis. Staff used to maintain the care, custody and control of the inmate population shall meet the minimum training requirements of § 95.221 (relating to personnel).

(ii) An initial staffing analysis shall be conducted by the prison administrator or a designee to determine the staffing allotment and post assignments necessary to safely operate the prison. In determining the number of staff needed, relief factors are to be calculated for each classification of staff that is assigned to relieve posts or positions. The staffing analysis shall be reviewed and documented on an annual basis by the prison administrator. Information on the number and type of positions filled and vacant shall be available for review by the Department's inspectors.

(iii) Assignments/posts shall be staffed without regard to gender except where reasonable accommodation to inmate privacy cannot be maintained. Prison staff of the opposite gender to that of the inmate population may not be given assignments/posts that require continuous and open viewing of unclothed inmates. When both male and female inmates are housed in the prison, at least one male corrections staff member and one female corrections staff member shall be on duty at all times.

(iv) Inmates may never be permitted to assume any authority over other inmates. Inmates may not be permitted access to prison employe records, the records of other inmates or other prison records.

(v) The prison shall maintain a 24-hour secure control center for monitoring and coordinating the prison's security, life safety and communications systems.

(vi) The prison administrator or assistant prison administrator and management staff designated by the prison administrator shall visit the prison's living and activity areas at least monthly to encourage contact with staff and inmates and observe living and working conditions. The visit shall be documented.

(2) *Use of force.* Written local policy must provide for the following:

(i) Force shall be restricted to instances of justifiable self-defense, protection of others, protection of property, prevention of escapes, and to effect compliance with the rules and regulations of the facility when other methods of control are ineffective or insufficient and only the least amount of force necessary to achieve that purpose is authorized. Force may not be used as a means of punishment or revenge.

(ii) Written local policy must specifically identify the following:

(A) Authorized purposes allowing for the use of force.

(B) Authorized equipment such as physical restraints, chemical agents, stun devices, batons or firearms permitted for use by prison staff.

(C) The appropriate limitations for the authorized use of force.

(D) A force option, beginning with the least amount of force necessary and progressing through the degrees of nondeadly and deadly force.

(E) Secure storage arrangements for restraints, chemical agents, stun devices, batons and firearms. A written record shall be maintained as to the distribution of these items. A documented inventory of these items shall be conducted on a monthly basis to determine accountability and condition.

(F) Circumstances and types of force requiring specific authorization and who shall authorize the use of the force.

(G) Medical consultation, review and treatment required when use of force occurs.

(H) Training for staff in the use of force. The training must occur before staff is assigned to a post involving the possible use of authorized equipment. This training must cover the use, safety and care of the equipment and the limitations on its use. The prison staff authorized to use the equipment shall demonstrate competency in its use in accordance with the training or certification standards recommended by the manufacturer of the equipment. The competency must be documented.

(iii) Law enforcement personnel conducting official business on prison premises who have in their possession equipment or weapons not permitted into the prison shall be provided a locked security area to properly secure the equipment or weapons.

(iv) Each prison staff member involved in any use of force for other than routine inmate movement/escort/transportation shall submit a written report to the prison administrator or a designee. In addition, this information shall be documented and reported to the Department, as required under § 95.242 (relating to statistical/informational reporting).

(3) *Emergency plans.* Written local policy must provide for the following:

(i) Establishment of emergency plans for responding to emergency incidents, including escape, fire, disturbances, hostage taking, bomb threat, terrorism, biological/chemical incidents, utility outages, natural disasters and evacuation/relocation. The emergency plans must contain basic information and instructions for all prison staff including:

(A) To whom the emergency shall be reported.

(B) Chain of command during an emergency.

(C) Outside agencies to be contacted for response to an emergency.

(D) A description of duties of staff for each type of emergency.

(E) Identification of emergency keys/security devices and access location. There shall be a means for the immediate release of inmates from locked areas and provisions for a back-up system.

(F) Evacuation plan.

(G) How to use emergency equipment.

(H) Training for staff to handle emergencies. Prison personnel shall be trained annually in the implementation of the emergency plans. The training shall be documented.

(I) The written agreements with other jurisdictions for handling emergency incidents and the possible evacuation of inmates.

(ii) To be in alignment with the *National Response Plan* and the *Commonwealth of Pennsylvania Emergency Operations Plan*, written local policy must also require the prison to institute an all-hazards approach to incident response and incorporate the principles of the National Incident Management System into its operations and operations plans. Additionally, written local policy must require that the prison coordinate with the county emergency management agency about the hazards to which the prison and prison population may be vulnerable as known and documented in the county hazard vulnerability analysis.

(iii) Emergency plans shall be reviewed by the prison administrator or a designee on an annual basis. This review must determine if updates are necessary due to operational changes, changes in the law, changes in constitutional standards or in recognized professional standards. The annual review and updates shall be documented.

(iv) Any emergency shall be documented and reported to the Department, as required under § 95.242.

(4) *Access control.* Written local policy must identify:

(i) Current listing of all keys/access cards.

(ii) Storage/back-up/protection arrangements for keys/access cards and accessible security devices. Keys/access cards shall be stored in a secure location when not in use. A set of emergency prison keys/access cards shall be stored in a controlled location outside the secure perimeter.

(iii) Criteria for use of keys/access cards and security devices.

(iv) Security measures required for the installation/maintenance/repair/replacement of keys/access cards and security devices. An inspection of all keys/access cards and security devices shall be conducted quarterly to determine status, condition and need for action. The results of this inspection shall be documented and submitted to the prison administrator or a designee.

(v) Staff responsible for authorizing use of applicable keys/access cards and security devices. Inmates may not be permitted access to keys/access cards and security devices.

(vi) An inventory and receipt system to account for keys. Keys/access cards shall be checked out and checked in. A record shall be maintained to identify keys/access cards issued, identifying the person possessing and returning the key/access card. The record must allow a current accounting as to the location and possessor of keys/access cards.

(vii) Staff training required to use keys/security devices, particularly the ability to release inmates in the event of a fire or other emergency.

(5) *Contraband control.* Written local policy must describe time, methods and techniques and identify:

(i) What is considered contraband.

(ii) Procedures for conducting personal searches of inmates, vendors, volunteers, visitors and staff. All individuals shall be subject to search upon entering or leaving the prison. Inmates permitted to leave the prison for any reason shall be searched prior to reentering the prison.

(iii) Procedures for conducting cell/dormitory/area searches. Searches of all cell/dormitory/area locations shall be conducted at least twice annually to determine the presence of contraband and the security status of bars, doors and windows. The results shall be documented and submitted to the prison administrator or a designee.

(iv) Procedures for conducting security checks of the interior and the security perimeter of the prison. At least one daily security check shall be conducted of all interior areas and the security perimeter to determine matters such as staff and inmate concerns and faulty or unsafe conditions. The results of this security check shall be documented and submitted to the prison administrator or a designee.

(v) Staff training required to conduct searches/security checks.

(6) *Tool/equipment control.* Written local policy must identify:

(i) The current listing of authorized tools/equipment.

(ii) Security measures required for the maintenance/repair/replacement of tools/equipment. An inspection of all tools/equipment shall be conducted semiannually to determine status, condition and need for action. The results of this inspection shall be documented and submitted to the prison administrator or designee.

(iii) The staff responsible for authorizing use of tools/equipment. Inmates may not be permitted access to these items, except as issued by authorized prison staff.

(iv) The storage arrangements for tools/equipment. Tools/equipment shall be stored in a secure locker or area when not in use. These items shall be stored so that their presence or absence can be immediately determined.

(v) An inventory and receipt system to account for all tools/equipment. Inmates may not have access to the tool storage area without staff supervision.

(vi) The direction given to staff and inmates in the use of tools/equipment.

(vii) The safety procedures to protect persons who use tools/equipment.

(viii) Inmates given assignments in the work assignment program, industrial program or the public works/community service program shall be supervised by persons designated by the prison administrator or a designee. These inmates shall be subject to searches as prescribed by procedure.

(7) *Count control.* Written local policy must require that at least one formal, physical inmate headcount be conducted for each shift, with at least three head counts being completed within each 24-hour period. Each head count shall be documented in the prison's records. In the performance of the formal inmate head counts, each inmate in attendance shall be observed as to flesh and movement. There shall be strict accountability for all temporary absences from the prison by an inmate. Only prison staff trained to conduct a formal inmate head count shall perform such a count. Written local policy must describe time, methods and techniques to be followed in making any counts and remedying count discrepancies.

(8) *Inmate transportation.* Written local policy must identify the circumstances and means for transporting inmates, including specifying the vehicles and persons authorized for that purpose. Written local policy must identify what restraint and search techniques are to be used and any special precautions. Written local policy must include contingency plans to be followed in the event of an accident, escape/security breach or medical emergency during transportation.

§ 95.242. Statistical/informational reporting.

The following are the minimum requirements applicable to the collection of statistics and other information by the Department:

(1) *Monthly county prison and jail data.* Written local policy must provide that a completed County Data Monthly Report (Population Information) be submitted to the Department on designated report forms or by other available approved methods. The County Data Monthly Report (Population Information) shall be submitted within 30 days of the end of the reporting month.

(2) *Report of extraordinary occurrence.* Written local policy must provide for the following:

(i) County prisons shall submit to the Department a completed County Extraordinary Occurrence Monthly Report (Incident Information) on designated report forms or by other available approved methods. The County Extraordinary Occurrence Monthly Report (Incident Information) shall be submitted within 30 days of the end of the reporting month.

(ii) An incident qualifies as an extraordinary occurrence when an incident involves one or more of the following and meets the associated conditions:

TYPE OF INCIDENT		*ONLY COMPLETE IF*
Death Natural Accidental Homicide Suicide	—	All cases
Escape Actual Walk-a-Way Attempt	—	Law enforcement referral
Infectious Diseases/ Communicable Diseases	—	Department of Health reporting required
Mental Health Commitment Mental Health 302 Mental Health 304	—	All cases
Attempted Suicide	—	Medical treatment beyond immediate first aid or mental health referral or both
Use Of Force Physical Restraints Chemical agent Stun device Baton Firearms	—	Whenever utilized for other than routine use of restraints during inmate movement/escort/transportation
Assault On Staff By Inmate On Inmate By Staff On Inmate By Inmate	—	Medical treatment beyond immediate first aid or law enforcement referral or both
SexualL Assault/ Allegation of Sexual ASSAULT On Inmate by Inmate On Inmate by Staff	—	*All Cases*
Emergency Fire Disturbance Hostage Bomb threat Terrorism Biological/chemical Utility outages Evacuation/relocation	—	Outside agency assistance or law enforcement referral or both

(iii) An incident qualifies as an extraordinary occurrence when an incident involves an inmate, prison employe, contractor, volunteer or visitor in a situation occurring within the prison, on prison property or while an inmate is under custody of the prison, or during the performance of a prison employe's official duties.

(3) Written local policy must provide that a completed Annual County Prison General Information Report be submitted to the Department on designated report forms or by means of other available approved methods. The Annual County Prison General Information Report for the preceding calendar year shall be submitted by the first Monday in March of each year.

(4) The data and information submitted to the Department in the County Data Monthly Report, the County Extraordinary Occurrence Monthly Report and the An-

nual County Prison General Information Report will be collected for statistical, analytical and trending purposes only.

(5) Information required upon commitment of offender to the Department.

(i) Written local policy must establish the procedure necessary to ensure that the information which must accompany an inmate upon commitment to the custody of the Department is provided to the Department as required under 42 Pa.C.S. § 9764(a) (relating to information required upon commitment and subsequent disposition). The policy must also specify the person responsible for collecting the information and ensuring that it is submitted to the Department as required by law.

(ii) Written local policy must establish the procedure necessary to ensure that the additional information regarding an inmate, which is provided by the court to the county prison in accordance 42 Pa.C.S. § 9764(b), is transmitted to the State correctional facility, as required under 42 Pa.C.S. § 9764(c), following transfer of that inmate from the county prison. The policy must also specify the person responsible for collecting the information and ensuring that it is submitted to the Department as required by law.

§ 95.243. Treatment services.

The following are the minimum requirements applicable to treatment services:

(1) Written local policy must:

(i) Designate that the delivery of treatment services shall be supervised by a treatment professional who is employed by the prison, someone under contract with the prison or who serves as a volunteer.

(ii) Identify treatment services.

(iii) Designate who is responsible to provide each treatment service.

(iv) Identify the number of hours provided per week for each treatment service and the total number of hours provided per week for all treatment services.

(2) Written local policy must require treatment services to include the following:

(i) Education.

(ii) Social services.

(iii) Alcohol and other drugs.

(iv) Counseling services.

(3) Written local policy must require treatment services to be provided by a treatment professional or a person certified, licensed or trained to provide that programming who is employed by the prison, under contract with the prison or who serves as a volunteer, or by any combination thereof.

(4) Written local policy must specify that inmates admitted to the prison receive a treatment intake screening, performed and recorded by a person with treatment training. This screening must include the determination of current mental and emotional stability, medical status, immediate personal/family issues, the identification of legal representation, and the obtaining of the name of a relative or other person for notification in the event of an emergency. A record of the screening shall be kept as part of the permanent prison document.

(5) Written local policy must require that an inmate determined upon admission to be in need of immediate treatment services be assessed by a treatment professional within 7 days.

(6) Written local policy must require that a treatment needs assessment be conducted by a treatment professional within 90 days following admission. This assessment must identify individual treatment needs and, within available prison and community resources, provide for access to supportive and rehabilitative services. The assessment shall be recorded as part of the inmate's file. Follow-up available treatment services shall begin within 45 days of the treatment needs assessment.

(7) Written local policy must identify the procedures for evaluating whether an inmate is mentally ill and proceedings under the Mental Health Procedures Act (50 P. S. §§ 7101—7503) should be initiated.

(8) Written local policy must provide that inmates shall have the option to refuse treatment services except when subject to an involuntary commitment under the Mental Health Procedures Act or unless otherwise directed by court order.

(9) Written local policy must specify that there is no discrimination regarding treatment services access based on an inmate's race, religion, national origin, gender, or disability. If both genders are housed in the prison, all available services and programs shall be comparable.

§ 95.244. (Reserved).

§ 95.245. Incoming publications.

The following are the minimum requirements applicable to incoming publications:

(1) Written local policy must specify the procedure for receiving, reviewing and allowing publications into the prison, including the searching of incoming publications for contraband.

(2) Written local policy must establish the criteria for prohibiting a publication from coming into the prison, including the defining of obscene material. Incoming publications may be read and examined by the prison administrator or a designee. The criteria for prohibiting a publication from coming into the prison must be related to maintaining the order, security or safety of the prison or the exclusion of obscene material.

(3) Written local policy must identify the procedure for allowing access to both recreational and instructional reading materials for use by inmates.

§ 95.246. Investigations; deaths and sexual assaults/allegations.

The following are the minimum requirements for investigation of:

(1) *Deaths*. Written local policy must provide for the procedure to be followed in the event of the death of an inmate, prison employe, volunteer, contractor or visitor. The policy must provide for the following:

(i) Immediate notification of the coroner and the appropriate law enforcement agency by the prison administrator or a designee when an inmate dies within the prison, on prison property or while in the custody of prison staff.

(ii) Immediate notification of the coroner and the appropriate law enforcement agency by the prison administrator or a designee when a prison employe, volunteer, contractor or visitor dies within the prison, on prison property or while in the performance of official duties.

(iii) Identification of the coroner and the law enforcement agency to be notified.

(iv) Identification of the staff person responsible for coordinating investigative efforts with the coroner and the law enforcement agency and completing and submitting a report to the governing county prison authority.

(v) Documentation and reporting of any death to the Department and the United States Department of Justice.

(2) *Sexual assaults/allegations.* Written local policy must describe the procedure to be followed in the event of an allegation of a sexual assault involving an inmate, prison employe, volunteer, contractor or visitor. The policy must provide for the following:

(i) The prison administrator or a designee shall immediately direct an investigation of all allegations of sexual assault occurring within the prison, on prison property or while an inmate was in the custody of prison staff.

(ii) The designated law enforcement agency shall be notified and an investigation requested when a sexual assault occurs within the prison, on prison property or while in the custody of prison staff.

(iii) Identification of the law enforcement agency to be notified.

(iv) Identification of the staff person responsible for contacting the law enforcement agency, coordinating investigative efforts with that agency and completing and submitting a report to the governing county prison authority.

(v) Documentation and reporting of a sexual assault or allegation of sexual assault to the Department and the United States Department of Justice.

§ 95.247. Notification.

The following are the minimum requirements applicable to notification:

(1) Written local policy must provide for prompt notification by prison authorities of an inmate's listed emergency contact in the event of the inmate's death, serious illness or serious injury. The policy must also provide for prompt notification to an inmate in the event of the death, serious illness or serious injury to the inmate's immediate family member.

(2) Written local policy, in accordance with the sections 201 and 214 of the Crime Victims Act (18 P. S. §§ 11.201 and 11.214), must establish a victim notification procedure. The procedure must identify how victims register for notification, the circumstances for which victims are notified, how this information will be maintained in a confidential manner and who is responsible for notifying the victim. If the inmate is a State prisoner on writ for local court proceedings, the county prison shall immediately contact the State correctional institution from which the inmate was transferred when circumstances exist requiring notification of the victim. In this instance, disclosure to the victim will then be handled by the Department.

§ 95.248. Sanitation, maintenance and safety.

The following are the minimum requirements applicable to sanitation, maintenance and safety:

(1) Written local policy must require the prison to adhere to applicable Department of Labor and Industry regulations regarding sanitation, maintenance and safety or any applicable local code inspections.

(2) Written local policy must identify a sanitation and housekeeping plan. This plan must address all prison areas and provide for daily housekeeping and regular maintenance by assigning specific duties and responsibilities to staff and inmates. Inmates shall be required to maintain their immediate living area and adjacent general space in a sanitary condition. The control of vermin and pests shall be addressed on a monthly basis by a qualified person, with documentation of the application of any pest or vermin control treatment. A sanitation inspection shall be conducted of all prison areas on a monthly basis to determine the health and safety status of the prison and the need for action. The results of this inspection shall be documented and submitted to the prison administrator or designee.

(3) Written local policy must identify a preventive maintenance program for the physical plant of the prison. This program must ensure the regular care and inspection of equipment that is essential for safe and efficient operation. A qualified person shall conduct an inspection of all equipment, at least semiannually, as specified by the manufacturer, to determine condition and need for action. The results of this inspection shall be documented and submitted to the prison administrator or designee.

(4) Written local policy must provide for the inventory, control, storage and clean-up of toxic, caustic and flammable substances. Written local policy must also specify an exposure control plan for governing the handling of blood-born pathogens.

(5) Written local policy must require that prison operational support areas, to include laundry room, janitorial closets, mechanical room, electrical room, boiler room, maintenance room and storage room be maintained in a safe and clean condition at all times.

(6) Written local policy must require that the prison administrator maintain any required licenses or documentation of the prison's compliance with an applicable building code/life safety code. Current licenses or certificates of occupancy, or both, shall be available for inspection in the prison.

(7) Written local policy must require that the approved bed capacity be specified annually. The actual in-house population may not exceed the prison's approved bed capacity. The in-house population shall be calculated as the average daily inmate population for the 6 calendar months prior to the date of the prison inspection.

(8) Written local policy must require that an emergency power back-up system be available and in operational condition. This system shall be load tested at least on an annual basis, with this load test and the operating status of the system documented.

(9) Written local policy must identify a fire emergency/evacuation plan. This plan shall be reviewed annually by the prison administrator or a designee and identify an existing agreement with a responding fire department. Staff training for the implementation of this plan shall be provided on an annual basis. All areas of the prison shall

be involved and participate in fire drill exercises at least once each year, with all fire drills being documented. Written local policy must also provide for a system of inspection, testing and certification by a qualified person of all fire/smoke detectors, fire/smoke alarms and panels and fire fighting equipment on an annual basis.

[Pa.B. Doc. No. 08-1844. Filed for public inspection October 10, 2008, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a, 435a, 439a, 441a, 461a, 461b, 463a, 465a, 503a AND 511a]

Preliminary Provisions; Employees; Junket Enterprises; Slot Machine Licenses; Slot Machine Testing and Control; Technical Standards; Possession of Slot Machines; Accounting and Internal Controls; and Self-Exclusion and Persons Required to be Excluded

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1207, 1311, 1321, 1322 and 1522, amends Chapters 401a, 435a, 439a, 441a, 461a, 461b, 463a, 465a, 503a and 511a to read as set forth at 38 Pa.B. 1151 (March 8, 2008) and in Annex A.

Purpose of the Final-Form Rulemaking

This final-form rulemaking reflects organizational changes, requires the display of Board credentials, adds new slot machine design standards, deletes a technical standard that is outdated, makes a number of changes to existing accounting and internal control requirements, revises the jackpot payout procedures and expands the provisions related to merchandise jackpots.

Explanation of Amendments to Chapters 401a, 435a, 439a, 441a, 461a, 461b, 463a and 465a

Throughout this rulemaking, references to the Board have been replaced with more specific references to the bureau or office that is involved.

In § 401a.3 (relating to definitions), the definition of "BCCIC" has been deleted because that Bureau of Corporate Compliance and Internal Controls no longer exists.

In § 435a.6(c) (relating to Board credentials), the requirement that a slot machine licensee's employees carry their Board credential has been changed to require that the Board credential be displayed.

In Chapter 439a (relating to junket enterprises), references to the Bureau of Corporate Compliance and Internal Controls have been replaced with references to the Office of Gaming Operations.

Section 441a.19 (relating to notice of employee misconduct and offenses) has been amended to require slot machine licensees to notify the Bureau of Licensing of the resignation of any key employee. This will provide the Board with an opportunity to conduct an exit interview with the key employee.

In Chapter 461a (relating to slot machine testing and control), the Board has made a number of changes. In § 461a.1 (relating to definitions), the definition of "asset number" has been expanded to include associated equipment and the definition of "merchandise jackpot" has been revised to correspond to changes to § 465a.28 (relating to merchandise jackpots) which will require slot machine licensees to offer a cash payment in lieu of the merchandise.

In § 461a.7 (relating to slot machine minimum design standards), the Board has amended subsection (b)(3) to conform with the change made to § 465a.28 discussed previously. Additionally, a new standard related to the service button on slot machines has been added. It requires that the service button be easily accessible to the patron playing the slot machine and that activating the service button trigger a signal on the tower light that is consistent with the technical standards in § 461b.2 (relating to slot machine tower lights and error conditions).

The third change in § 461a.7 moves a requirement that was in the technical standards in § 461b.1 (relating to slot machine minimum design standards) as a statement of policy into the regulations. This standard requires that slot machines be configured to use any noncashable credits available for play before it uses any cashable credits. Because the Board is moving this requirement into the regulations, the technical standard in § 461b.1 has been deleted.

The final change in § 461a.7 requires labels on slot machines containing the asset number and gaming floor location. Similar requirements have also been added to §§ 461a.10 and 461a.22 (relating to automated gaming voucher and coupon redemption machines; and automated jackpot payout machines).

In § 461a.16 (relating to player tracking systems), a provision has been added prohibiting slot machine licensees from having anyone under 21 years of age in a player tracking system. Since these individuals can not participate in gaming, they should not be participating in any player programs. A new subsection (c) has also been added which requires anyone who has access to the information contained in the player tracking system must hold a key employee license or occupation permit. This was done to protect the personal information of individuals who elect to participate in any player programs.

The last revision to Chapter 461a is in § 461a.25 (relating to disputes). This section, which sets forth the process for addressing patron disputes, has been revised to match the process that is currently being used. When a disputes arises which can not be resolved by the slot machine licensee, the slot machine licensee will notify the casino enforcement agents at the licensed facility. A casino enforcement agent will attempt to resolve the dispute, and if unsuccessful, will assist the patron in filing a complaint. When complaints are filed, the Bureau of Investigations and Enforcement (BIE) will conduct an investigation.

In Chapter 463a (relating to possession of slot machines), a number of changes have been made to further clarify how certain requests are to be filed and what bureaus should receive copies of various filings. In § 463a.1 (relating to possession of slot machines generally), subsection (c) has been revised to require requests to possess slot machines to be filed as a petition. Additionally, a new subsection (e) has been added requiring anyone authorized to possess slot machines under subsection (d) to obtain Board approval for the offsite storage of the slot machines.

Section 463a.2 (relating to transportation of slot machines into, within and out of this Commonwealth) has been amended to require that the notice that is sent to

the Bureau of Gaming Laboratory Operations when a slot machine is going to be moved, also be sent the Office of Gaming Operations.

In § 463a.5 (relating to slot machine master list), subsection (a) has been amended to require a copy of the slot machine master list to be filed with the Office of Gaming Operations as well as the Bureau of Gaming Laboratory Operations.

In § 463a.7 (relating to off premises storage of slot machines), subsection (b) has been amended to require requests for off premises storage of slot machines to be filed as a petition under § 493a.4.

In Chapter 465a (relating to accounting and internal controls), numerous changes have been made concerning where filings should be made, eliminating unnecessary filings, clarifying various requirements and adding new procedures.

In § 465a.2 (relating to internal control systems and audit protocols), references to the Board, the Bureau of Corporate Compliance and Internal Controls and BCCIC have been replaced with the Office of Gaming Operations which is now responsible for these functions. In subsection (f), provisions have been added to clarify that requests for changes to a slot machine licensee's internal controls are to be filed using an Amendment and Waiver Request Form. Also, subsection (j) has been revised to require the retention of required attestations for 5 years.

In § 465a.3 (relating to forms, records and documents), the reference to the "Bureau" has been deleted. The Board does not need to routinely receive copies of these occurrences.

In § 465a.4 (relating to standard financial and statistical reports), subsections (a) and (b) have been deleted. The Board has determined that these required filings are duplicative or unnecessary for the Board to monitor the financial integrity of slot machine licensees.

In § 465a.5 (relating to annual audit; other reports; suspicious activity and currency transaction reporting), references to the Bureau of Corporate Compliance and Internal Controls, BCCIC and Board have been replaced with the Bureau of Licensing throughout this section except in subsections (k) and (m) where "Board" is replaced with "BIE" and in subsection (n) where "Board" is replaced with the "Office of Gaming Operations." In subsections (d) and (e), the phrase "independent certified public accountant or" has been added to be consistent with the language used in subsection (a).

In subsections (d), (g) and (h), only one copy of the specified reports will have to be filed, instead of two or three copies.

In § 465a.7 (relating to complimentary services or items), "Board" has been replaced with "BIE" in subsection (e).

In § 465a.8 (relating to licensed facility), "or floor" has been added to subsection (d)(2) and "facilitating" has been replaced with "providing" in subsection (d)(6).

In § 465a.9 (relating to surveillance system; surveillance department control; surveillance department restrictions), a number of editorial changes have been made. In subsection (a) a general requirement that the surveillance system must be in compliance with the requirements of 18 Pa.C.S. Chapter 5 (relating to Wiretapping and Electronic Surveillance Control Act) has been added.

In subsection (b), the phrase "upon request" has been deleted because it is not necessary.

In subsection (c)(4), the requirement for audio surveillance capability in the count room has been revised to require that it be in conformance with 4 Pa.C.S. § 1522 (relating to interception of oral communications). Additionally, the phrase "and elsewhere in the licensed facility as required by the Board" in subsection (c)(5) has been deleted. This language is not needed because all of the activities that require surveillance are covered in paragraph (1).

In subsection (c)(4)(ii), the word "facilitate" has been replaced with "provide."

In subsections (h) and (i), the references to "Bureau" have been replaced with "casino enforcement agents at the licensed facility" and "casino enforcement supervisor at the licensed facility" respectively. This will provide clearer direction to the slot machine licensees concerning who they should notify in these circumstances.

In subsection (o), a reference to § 493a.4 (relating to petitions generally) has been added to clarify that a surveillance department employee must file a petition when requesting an exemption from the 1-year restriction on accepting employment with another department at the licensed facility.

In § 465a.11 (relating to slot machine licensee's organization), the references to "Bureau" in subsections (b)(1)(viii) and (5)(x) and (xi), have been replaced with "casino enforcement agents . . . at the licensed facility" and subsection (b)(5)(x) has been split into two subparagraphs, subparagraphs (x) and (xi).

In subsection (c), a new option has been added for reporting by the supervisors of the surveillance and internal audit departments.

In § 465a.12 (relating to access badges and temporary access credentials), "licensed manufacturer designees" were added to the list of entities that must be covered by a slot machine licensee's temporary access badge procedures.

In § 465a.13 (relating to possession of deadly weapons within a licensed facility), the prohibition on deadly weapons has been expanded to include stun guns or other devices that are designed to injure or incapacitate a person. This is intended to provide additional protection of patrons at licensed facilities.

In § 465a.16 (relating to accounting controls for the cashiers' cage), the phrase "and nongaming" has been deleted from subsections (c)(1)(ii) and (2)(i) and (iii) to make these provisions consistent with the language used in § 465a.20 (relating to personal check cashing).

In § 465a.18 (relating to transportation of slot cash storage boxes to and from bill validators; storage), "Board" has been replaced with "Office of Gaming Operations" in subsections (a) and (b). Additionally, a new subsection (f) has been added that requires the casino enforcement agents to be contacted prior to the commencement of the drop if the central control computer is not online and that a casino enforcement agent witness and certify the drop. This is intended to provide greater security for and integrity of the collection of the slot cash storage boxes.

In § 465a.20 (relating to personal check cashing), subsection (b)(6) has been amended to allow the amount of a check being cashed to be put in a customer deposit account as well as immediately being paid in cash to the

patron. This will provide greater convenience and safety for patrons. A new subsection (f) has also been added requiring any slot machine licensee that charges a fee for cashing checks to comply with the Check Casher Licensing Act (63 P. S. §§ 2301—2334).

In § 465a.23 (relating to customer deposits), subsections (a) and (b) were revised to allow checks to be accepted for customer deposits consistent with the changes made to § 465a.20. The phrase "subsequent use for gaming purposes" has been replaced with the broader phrase "subsequent use at the licensed facility" again for the convenience of the patrons.

In § 465a.25 (relating to counting and recording of slot cash storage boxes), the first reference to the "Board" in subsection (a) has been replaced with the "Office of Gaming Operations" and the second reference to the "Board" has been replaced with the "Office of Gaming Operations and the casino enforcement supervisor at the licensed facility." Existing subsection (j) has been deleted; the Board does not need to routinely receive these reports. A new subsection (j) has been added which requires notice to and the presence of someone from BIE in the count room before the count commences when the central computer control system is down.

Section 465a.26 (relating to jackpot payouts) has been totally rewritten. While many of the previous requirements remain, the procedures have been revised to provide greater flexibility as to who may verify the winning combination and to provide better accountability in the actual payment of the jackpots.

In § 465a.27 (relating to annuity jackpots), the phrase "a banking institution in this Commonwealth" has been added to subsection (e)(1)(iii). This will allow trusts established to pay annuity jackpots to be placed with banks in addition to being maintained by a slot machine licensee or slot system operator.

In § 465a.28, the provisions governing merchandise jackpots have been expanded to provide additional guidance to the slot machine licensees. Provisions have been added specifying how a slot machine licensee is to determine the cash equivalent value of the merchandise and what supporting documentation a slot machine licensee is required to maintain. Slot machine licensees will also be required to offer optional cash payment that the winner may elect to receive in lieu of the merchandise being offered. The additions also provide that merchandise jackpots are considered winnings for the purpose of calculating gross terminal revenue and how the amount of the winnings is to be determined. Minimum requirements governing advertising of merchandise jackpots and technical requirements related to slot machines offering merchandise jackpots have also been included.

In § 465a.29 (relating to automated teller machines), a new subsection (b) has been added that requires a label on the top and front of automated teller machines that displays a unique identification number of the automated teller machine. This will make it easier for surveillance to identify individual automated teller machines and their location in the licensed facility.

In § 465a.31 (relating to gaming day), subsection (c) has been revised to require that changes in a slot machine licensee's hours of operation be submitted as a change to the slot machine licensee's internal controls under the procedures outlined in § 465a.2(f).

Comment and Response Summary

Notice of proposed rulemaking was published at 38 Pa.B. 1151.

The Board received comments from Downs Racing L.P. (Downs), International Gaming Technology (IGT), Greenwood Gaming and Entertainment, Inc. (Greenwood) and Washington Trotting Association, Inc. (WTA) during the public comment period. On May 7, 2008, the Independent Regulatory Review Commission (IRRC) also filed comments on the proposed rulemaking. All of these comments were reviewed by the Board and are discussed in detail as follows.

Downs commented that requiring display of the Board credential exposes personal information of employees and detracts from the refined professional image desired. They suggested that employees just be required to carry their credentials.

The Board disagrees with this comment. The personal information (other than the name) on an employee's credential is on the back of the credential and therefore not seen by the patrons. While the credential may detract somewhat from the uniform worn by the employee, this is outweighed by the improved ability to insure that all employees have their credentials.

Concerning the revision to § 441a.19, Downs argued that 5 days is too short. They suggested that 15 days, which is the current practice and which was approved by the Board, is more reasonable. IRRC asked if the new regulation would supersede previously approved procedures and if so, suggested that clarifying language be added.

The Board does not believe that 5 days is an unreasonable time period. As noted in the preamble of the proposed rulemaking, the Board has set the 5-day reporting period to allow the Board to promptly conduct an exit interview. Furthermore, this requirement is consistent with § 441a.10 (relating to notification of anticipated or actual changes in principals or key employees) which requires a slot machine licensee to provide written notice "as soon as it becomes aware" and gives slot machine licensees a clear, definitive standard to determine when notice must be provided.

Because a regulation has the same force and effect of a statute, previously approved procedures or internal controls are superseded by the new regulation. Accordingly, slot machine licensees will be required to revise any previously approved procedures that do not conform to the requirements in the Board's regulations.

In § 461a.1, Greenwood and WTA suggested that the definition of "asset number" be revised further so that it only applies to slot machines, gaming voucher redemption machines and automated teller machines.

The proposed definition simply indicates what an asset number is and that asset numbers may appear on pieces of associated equipment. It does not require that all items that are associated equipment must have an asset number. Only those pieces of associated equipment that the regulations require to have an asset number will be required to have one.

Concerning § 461a.7(x), IGT and IRRC suggested that the proposed provision be revised so that a service button is not required when a machine requires a full-time attendant for operation.

The Board agrees with this suggestion and has modified the final regulation to incorporate this change.

The provision published as § 461a.7(y)(3), should be § 461a.7(z). On this provision, and §§ 461a.10 and 461a.22, Greenwood commented that they did not object to this labeling requirement, but noted that if they had to

replace existing labels to meet the new requirements, it would cost $9,000. IRRC asked what the approval process is for alternate labels and whether labels currently in use would have to be approved or replaced. IRRC also suggested that the Board replace the phrase "may not be easily removed" with a more definitive phrase.

Use of an alternate labeling scheme is typically discussed with and approved by the Board's Office of Gaming Operations' opening team at the licensed facility during construction. Approval would be given verbally so long as the alternate labeling was easily readable by the surveillance cameras. Since the readability of existing labels was verified as part of the opening process at each licensed facility currently operating, no existing labels will have to be replaced.

The Board has not replaced the phrase "may not be easily removed" as IRRC suggested. Slot machine licensees have not had problems complying with this standard, so the Board does not believe additional clarification is necessary.

In § 463a.7(b), WTA suggested that the Board retain the existing "writing request" provision as opposed to being required to file a petition which they believe is more cumbersome and time consuming. IRRC asked what changes in terms of time for review and cost to the slot machine licensee would result from this change.

The Board uses the petition process as the general procedure for most matters that require Board approval. The information a slot machine licensee would be required to include in a petition is essentially the same as what a slot machine licensee would have to include in a written request. Furthermore, the Board's internal review process would be the same for a petition or written request. For these reasons, the Board anticipates that there will be no significant increases in costs or time for review as a result of this amendment.

Concerning § 465a.2(f), WTA noted that the Amendment and Waiver Request Form on the web site requires submission to the Board, but the regulation is replacing Board with the Office of Gaming Operations. WTA also asked if these forms can be submitted electronically to both the Board and the Department of Revenue.

The Board is currently revising the internal control Amendment and Waiver Request Form and its procedures so that the entire submission to the Office of Gaming Operation will be done electronically. However, the submission to the Department of Revenue will still be done by means of a written submission. Revisions have been made to subsection (f) to reflect these changes.

In § 463a.2(j), IRRC and IGT suggested that subsection (j) be revised to allow electronic as well as paper copies for record retention.

The Board has not adopted this suggestion because electronic copies can be more easily modified. The Board has however reworded this section. The original attestations, not copies, are what the Board is requiring slot machine licensees to keep for 5 years.

In § 465a.9, WTA believed there is no need for or benefit from subsection (o) and suggested that it be deleted entirely.

The Board disagrees that there is no need for this provision. Activities and procedures used by the surveillance department are designed to monitor critical activities within the licensed facilities. If a former surveillance employee takes another job at the licensed facility, the integrity of the surveillance process could be compromised. Therefore, the Board believes that Board review of waiver requests is appropriate and the existing provision has been retained.

Concerning § 465a.11(c)(5), WTA noted its general objections to the requirement for an independent audit committee and the existing reporting requirements for the directors of the surveillance and internal audit departments.

This amendment does not create a new requirement to have an independent audit committee. That requirement is the subject of another proposed rulemaking. This amendment merely gives slot machine licensees another option for meeting the existing reporting requirement for the directors of the surveillance and internal audit departments. Therefore, the Board has made no changes to the proposed language.

In § 465a.13, IRRC noted that the phrase "or other device that could injure or incapacitate a person" is vague; many common items a person might carry "could" cause injury.

IRRC's point is correct. While many devices "could" injure or incapacitate a person, the Board's intent was to ban devices that are "designed to" injure or incapacitate. The words "that could" have been replaced with "designed to" throughout this section.

On the revisions to § 465a.26, IRRC had three concerns. First, IRRC asked if all slot machine licensees would be required to have "lead slot attendants." Second, IRRC asked why two-part manual and electronic jackpot payout receipts are needed. Finally, IRRC suggested that the phrase "if the jackpot is between $10,000 or more but less than $25,000" could be clearer.

Slot machine licensees are not required to have lead slot attendants. However, because of the tax reporting requirements associated with jackpots equal to or exceeding $1,200, the Board believes that verification should be done by someone above the entry level of slot attendant. For that reason, the Board used the phrase "lead slot attendant or above." Where there are no lead slot attendants, slot supervisors or above will be required to witness jackpots of $1,200 or more.

Both electronic and manual forms are used to insure that the information generated by the slot machine licensee's electronic system matches what was recorded by the slot attendant from the slot machine. Additionally, some of the information on the manual form does not appear on the electronic form. A two-part form is used to protect the integrity of the payout process and provide an audit trail. This is done by having the forms witnessed and by having the witness and the slot attendant independently deposit copies of the forms in the lock box for slot accounting.

To address IRRC's final concern, the phrase "if the jackpot is between $10,000 or more but less than $25,000" in subsections (b)(4) and (7)((vii)(C) has been replaced with "if the jackpot is between $10,000 and $24,999.99."

Greenwood also voiced several concerns with the proposed version of § 465a.26. These included: the concern over having to have lead slot attendants; the jackpot level at which approval by someone above a slot attendant would be required; the need for the patron to sign the manual jackpot payout receipt as required by subsection (b)(9)(ii); and the need to notify surveillance when a jackpot payout is $1,200 or more.

As stated previously, this regulation does not require that each slot machine licensee have lead slot attendants; instead it requires someone above the level of slot attendant to witness jackpot payouts of $1,200 or more. Greenwood also argues that slot attendants should be able to act as witnesses for any jackpot that is less than $10,000. The Board disagrees. While slot attendants are trained to do all types of jackpot payouts, the additional forms that must be completed when a jackpot is $1,200 or more warrant review by more experienced personnel.

The Board also disagrees that the patron signature is not needed; the signature is important to assure proper payment and to eliminate patron disputes over improper payment. Accordingly, this provision remains unchanged. For the same reason and to correct an oversight, subsection (b)(7) is being amended to add the patron's signature.

Because of the potential for patron disputes or procedural errors in jackpot payouts, the Board believes that notice to surveillance for jackpots of $1,200 or more is a prudent business practice. This will insure that there is a video record of these jackpot payouts.

Greenwood also suggested some clarifying language and that the regulations incorporate provisions for the use of WIZ machines if the slot computer system is offline or an electronic jackpot payout slip can not be created.

The Board has added some of the clarifying language that was suggested. However, the Board has not added language to address the use of WIZ machines. While WIZ machines were commonly used in the past, current practice in casinos now is to use the three-part manual jackpot payout books. If Greenwood desires to continue using WIZ machines, the Board suggests that they file a waiver request under § 465a.30 (relating to waiver of requirements).

In § 465a.28, IGT suggested that subsection (k) be revised to allow greater flexibility in game offerings.

The Board has elected not to add the suggested language because this could be confusing to patrons.

In § 465a.29, IRRC asked why the language in this section differed from the language in §§ 461a.7 and 461a.22.

The inconsistency in the language was a drafting error. The final-form regulations have been amended to parallel the language used in §§ 461a.7 and 461a.22.

On this same section, Downs commented that the new label requirement would create a significant expense to purchase and replace existing labels.

As discussed previously, existing labels that have already been reviewed will not have to be replaced. So Downs will not incur additional costs as a result of this regulation.

Additional Revisions

In addition to renumbering the provision published as § 461a.7(y)(3) to § 461a.7(z), the duplicate phrase "or other color combination approved by the Office of Gaming Operations" in this subsection has been deleted.

At proposed, in § 465a.5(h), the Board reduced, from three to one, the number of copies of reports or forms filed with the Securities and Exchange Commission or other regulatory agencies that had to be filed with the Bureau of Licensing. Because this information is now available by means of the Internet, the Board no longer believes it is necessary for copies of these items to be filed with the Board. Instead, slot machine licensees will only be required to provide notice that a filing has been made. This should reduce paperwork requirements for both the slot machine licensees and the Board.

The Board has also inserted the word "manual" in several places in § 465a.26 to enhance the clarity of this section.

Finally the Board had added the titles "casino enforcement agent" and "casino enforcement supervisor" in various sections of the proposed rulemaking to clarify who was responsible for performing certain functions. After the publication of the proposed rulemaking, these titles were changed to "casino compliance representative" and "casino compliance supervisor" to better reflect the nature of their duties. Corresponding changes to these titles have also been made in the final-form rulemaking in the proposed sections and in §§ 435a.7, 503a.4(a)(ii) and 511a.8(d)(1) (relating to emergency credentials; and duties of slot machine licensees).

Affected Parties

Slot machine licensees will have to comply with the new design standards and labeling requirements for slot machines, and changes in the patron dispute process and the surveillance requirements. Slot machine licensees will also have to comply with the new jackpot payout procedures and will have clearer guidance on the payment of and how merchandise jackpots are to be administered.

Fiscal Impact

Commonwealth

Because most of the revisions in this final-form rulemaking reflect current Board practice, there will be no significant costs or savings to the Board or other State agencies as a result of these revisions.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Slot machine licensees will experience some slight savings from reduced filing requirements and from being required to submit fewer copies of a number of reports. Slot machine licensees may experience some costs related to the new design standards and labeling requirements for slot machines and associated equipment. Additionally, slot machine licensees may experience some increased cost to comply with the new requirements related to jackpot payouts and merchandise jackpots.

General Public

This final-form rulemaking will have no fiscal impact on the general public.

Paperwork requirements

This final-form rulemaking eliminates the requirement that slot machine licensees file a report with the Board on patron disputes that are not resolved within 7 days. It also eliminates a number of financial reports that are not needed and reduces the number of copies of other reports slot machine licensees must submit. These amendments will require more detailed filings of information related to merchandise jackpots.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 21, 2008, the Board submitted a copy of this proposed rulemaking, published at 38 Pa.B. 1151 and a copy of the Regulatory Analysis Form to IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee (Committees).

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), 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 the final-form rulemaking, the Board has considered all comments received from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the Committees on August 20, 2008. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 21, 2008 and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments 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 the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 401a, 435a, 439a, 441a, 461a, 461b, 463a, 465a, 503a and 511a, are amended by amending §§ 401a.3, 435a.6, 439a.7, 439a.8, 439a.10, 439a.11, 441a.19, 461a.1, 461a.10, 461a.16, 461a.22, 463a.1, 463a.2, 463a.5, 463a.7, 465a.3, 465a.4, 465a.7, 465a.8, 465a.12, 465a.16, 465a.20, 465a.23, 465a.27—465a.29 and 465a.31 and by deleting § 461.b.1 to read as set forth 38 Pa.B. 1151; and by amending §§ 435a.7, 461a.7, 461a.25, 465a.2, 465a.5, 465a.9, 465a.11, 465a.13, 465a.18, 465a.25, 465a.26, 503a.4 and 511a.8 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall certify this order, 38 Pa.B. 1151 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

MARY DIGIACOMO COLINS,
Chairperson

(*Editor's Note*: The admendment of §§ 503a.4 and 511a.8 were not included in the proposed rulemaking at 38 Pa.B. 1151.)

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 4961 (September 6, 2008).)

Fiscal Note: Fiscal Note 125-79 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 435a. EMPLOYEES

§ 435a.7. Emergency credentials.

(a) A principal, key employee, gaming employee or nongaming employee of the slot machine licensee who does not have the credential issued to him on his person, or whose credential has been stolen, lost or destroyed, may obtain an emergency credential from the Board to enable the employee to perform the employee's duties at the licensed facility.

(b) An employee seeking an emergency credential shall present himself to a casino compliance representative at the Board office at the licensed facility. Prior to issuing the emergency credential, the casino compliance representative will verify:

(1) The identity of the individual requesting the emergency credential.

(2) That the employee holds a valid license, permit or registration.

(3) That fewer than 12 emergency credentials have been issued to the employee in the past 12 months.

(c) The following provisions apply to emergency credentials:

(1) They will be valid for a time period not to exceed 72 hours.

(2) They shall be returned to the Board office at the licensed facility.

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 461a. SLOT MACHINE TESTING AND CONTROL

§ 461a.7. Slot machine minimum design standards.

* * * * *

(b) The calculation of the theoretical payout percentage will not include:

(1) The amount of any progressive jackpot in excess of the initial or reset amount.

(2) A cash or noncash complimentary issued under § 465a.7 (relating to complimentary services or items).

(c) A play offered by a slot machine may not have a theoretical payout percentage which is less than, when calculated to one hundredth of a percentage point, the theoretical payout percentage for any other play offered by that slot machine which is activated by a slot machine wager in a lesser amount than the slot machine wager required for that play. Notwithstanding the foregoing, the theoretical payout percentage of one or more particular plays may be less than the theoretical payout percentage of one or more plays which require a lesser wager provided that:

(1) The aggregate total of the decreases in the theoretical payout percentage for plays offered by the slot machine is not more than 1/2 of 1%.

(2) The theoretical payout percentage for every play offered by the slot machine is equal to or greater than the theoretical payout percentage for the play that requires the lowest possible wager that will activate the slot machine.

* * * * *

(w) A slot machine that does not require a full-time attendant for operation must be equipped with a service button designed to allow the player of a slot machine to request assistance. The service button must:

(1) Be visible to and within easy reach of the player of the slot machine.

(2) Communicate directly or through the slot machine to the slot machine's tower light which will provide a signal that is in compliance with the technical standards on slot machine tower lights under § 461b.2 (relating to slot machine tower lights and error conditions).

(x) A slot machine approved for use in a licensed facility must be configured to wager credits available for play in the following order:

(1) Noncashable credits.

(2) Cashable credits.

(y) A slot machine on the gaming floor must have a label on the top of the slot machine and on the front of the slot machine near the bill validator that displays the asset number and the gaming floor plan location number of the slot machine. The labels must have white lettering on a black background or other color combination approved by the Office of Gaming Operations, may not be easily removed and must be easily visible to the surveillance department. The label on the top of the slot machine must be at least 1.5 inches by 5.5 inches and the label on the front of the slot machine must be at least 1 inch by 2.5 inches.

§ 461a.25. Disputes.

(a) If a dispute arises with a patron concerning payment of alleged winnings, the slot machine licensee shall attempt to resolve the dispute. If the dispute can not be resolved, the slot machine licensee shall notify the casino compliance representatives at the licensed facility who will attempt to resolve the dispute. If the dispute is not resolved, the casino compliance representative will provide the patron with a Board Patron Dispute/Complaint Form and Instructions for Submitting a Patron Dispute/Complaint and assist the patron in completing the Board Patron Dispute/Complaint Form.

(b) When a patron files a complaint, BIE will conduct an investigation of the complaint.

CHAPTER 465a. ACCOUNTING AND INTERNAL CONTROLS

* * * * *

§ 465a.2. Internal control systems and audit protocols.

* * * * *

(f) If a slot machine licensee intends to make a change or amendment to its system of internal controls, it shall submit the change or amendment electronically to the Office of Gaming Operations using the Amendment and Waiver Request Form posted on the Board's web site (www.pgcb.state.pa.us). A request for a change or amendment must include electronic copies of the attestations required under subsections (b)(1) and (2). The slot machine licensee shall also submit a written copy of the change or amendment and the required attestations to the Department. The slot machine licensee may implement the change or amendment on the 30th calendar day following the filing of a complete submission unless the slot machine licensee receives a notice under subsection (g) tolling the change or amendment.

(g) If during the 30-day review period in subsection (f), the Office of Gaming Operations preliminarily determines that a procedure in a submission contains a substantial and material insufficiency likely to have a direct and materially adverse impact on the integrity of slot operations or the control of gross terminal revenue, the Office of Gaming Operations, by written notice to the slot machine licensee, will:

* * * * *

(i) When a change or amendment has been tolled under subsection (g), the slot machine licensee may submit a revised change or amendment within 30 days of receipt of the written notice from the Office of Gaming Operations. The slot machine licensee may implement the revised change or amendment on the 30th calendar day following the filing of the revision unless it receives written notice under subsection (g) tolling the change or amendment.

(j) A current version of the internal controls of a slot machine licensee shall be maintained in or made available in electronic form through secure computer access to the accounting and surveillance departments of the slot machine licensee and the Board's onsite facilities required under § 465a.8 (relating to licensed facility). The slot machine licensee shall also maintain a copy, either in paper or electronic form, of any superseded internal control procedures for a minimum of 5 years. The original signed two attestations required under subsection (b)(1) and (2) shall also be maintained for a minimum of 5 years. Each page of the internal controls must indicate the date on which it was approved by the Board.

§ 465a.5. Annual audit; other reports; suspicious activity and currency transaction reporting.

* * * * *

(d) One copy of the audited financial statements, together with any management letter or report prepared thereon by the slot machine licensee's independent certified public accountant or independent registered public accounting firm, shall be filed with the Bureau of Licensing not later than 60 days after the end of the licensee's fiscal year.

(e) The slot machine licensee shall require the independent certified public accountant or independent registered public accounting firm auditing its financial statements to render the following additional reports:

* * * * *

(f) The slot machine licensee shall prepare a written response to the independent certified public accountant's or independent registered public accounting firm's reports required by subsection (e)(1) and (2). The response must indicate, in detail, corrective actions taken. The slot machine licensee shall submit a copy of the response to the Bureau of Licensing within 90 days of receipt of the reports.

(g) The slot machine licensee shall file with the Bureau of Licensing one copy of the reports required by subsection (e), and one copy of any other reports on internal controls, administrative controls, or other matters relative to the slot machine licensee's accounting or operating procedures rendered by the licensee's independent certi-

fied public accountant or independent registered public accounting firm within 120 days following the end of the licensee's fiscal year or upon receipt, whichever is earlier.

(h) If the slot machine license, or a licensed holding company, licensed intermediary or licensed principal entity of the slot machine licensee, is publicly held, the slot machine licensee shall submit a notice to the Bureau of Licensing when it files any report, including forms S-1, 8-K, 10-Q, 10-K, proxy or information statements and registration statements, required to be filed by the slot machine licensee, licensed holding company, licensed intermediary or licensed principal entity of the slot machine licensee, with the SEC or other domestic or foreign securities regulatory agency. The notice must include a listing of the reports or forms filed and the date of the filing. The notice to the Bureau of Licensing shall be made within 10 days of the time of filing with the applicable Commission or regulatory agency.

(i) If an independent certified public accountant or independent registered public accounting firm who was previously engaged as the principal accountant to audit the slot machine licensee's financial statements resigns or is dismissed as the slot machine licensee's principal accountant, or another independent certified public accountant or independent registered public accounting firm is engaged as principal accountant, the slot machine licensee shall file a report with the Bureau of Licensing within 10 days following the end of the month in which the event occurs, setting forth the following:

* * * * *

(j) The slot machine licensee shall request the former accountant to furnish to the slot machine licensee a letter addressed to the Bureau of Licensing stating whether he agrees with the statements made by the slot machine licensee in response to subsection (i)(2). The letter shall be filed with the Bureau of Licensing as an exhibit to the report required by subsection (i)(2).

(k) The slot machine licensee shall file with BIE a copy of any Suspicious Activity Report-Casino (SARC) it is required to file under 31 CFR 103.21 (relating to reports by casinos of suspicious transactions). Each SARC shall be filed with BIE concurrently with the Federal filing.

* * * * *

(m) The slot machine licensee shall file with BIE a copy of any Currency Transaction Report by Casino (CTRC) it is required to file under 31 CFR 103.22 (relating to reports of transactions in currency). Each CTRC shall be filed with BIE concurrently with the Federal filing.

(n) Prior to commencing gaming operations, a slot machine licensee shall file with the Office of Gaming Operations, in a manner to be prescribed by the Office of Gaming Operations, a copy of its compliance program required under 31 CFR 103.64 (relating to special rules for casinos). Thereafter, a slot machine licensee shall file with the Office of Gaming Operations any amendment or supplement to its compliance program on or before the effective date of the amendment or supplement.

§ 465a.9. Surveillance system; surveillance department control; surveillance department restrictions.

(a) The surveillance system of a licensed facility must comply with 18 Pa.C.S. Chapter 57 (relating to Wiretapping and Electronic Surveillance Control Act) and section 1522 of the act (relating to interception of oral communications) and shall be submitted to and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols). The Bureau will review surveillance system specifications, inclusive of the camera configuration and any changes or modifications to the system specifications, to determine whether the system provides the adequate and effective surveillance of activities inside and outside the licensed facility mandated by section 1207(11) of the act (relating to regulatory authority of board). A slot machine licensee may not commence gaming operations until its surveillance system is approved by the Board.

(b) A slot machine licensee shall at all times provide the Board and the Pennsylvania State Police with access to its surveillance system and its transmissions. Each member of its surveillance department shall comply with any request made by the Board or the Pennsylvania State Police to:

* * * * *

(c) The surveillance system required in this section must include the following:

* * * * *

(4) Audio capability in the count room installed in a manner that conforms to section 1522 of the act.

(5) One or more monitoring rooms in the licensed facility which shall be staffed by employees of the slot machine licensee's surveillance department who shall at all times monitor the activities enumerated in paragraph (1). Each monitoring room shall be equipped with or serviced by:

* * * * *

(ii) Computer terminals which provide read only access to any computerized slot monitoring system or casino management system, or both, used by the slot machine licensee in its gaming operation.

* * * * *

(h) The casino compliance representatives at the licensed facility shall be notified within 30 minutes of any incident of equipment failure as noted in subsection (f) including the time and cause of the malfunction, if known, the time the slot machine licensee's security department was notified of the malfunction and the nature of communications with the security department relating to the malfunction.

(i) The casino compliance supervisor at the licensed facility shall be notified at least 48 hours in advance of the following:

(1) Relocation of an approved camera.

(2) Change in an approved camera's specifications.

(3) Change in lighting for areas required to be subject to camera coverage.

(4) Addition or change to the surveillance system.

* * * * *

(o) A present or former surveillance department employee may not accept employment as a key employee or gaming employee with the same slot machine licensee for whom he was previously employed as a surveillance department employee unless 1 year has passed since the former surveillance department employee worked in the surveillance department. The present or former surveillance department employee may file a written petition as required under § 493a.4 (relating to petitions generally) requesting the Board to waive this restriction and permit the employment of a present or former surveillance

department employee in a particular position. The Board may grant or deny the waiver upon consideration of the following factors:

* * * * *

§ 465a.11. Slot machine licensee's organization.

* * * * *

(b) A slot machine licensee's system of internal controls must also include, at a minimum, the following departments and supervisory positions, each of which must be categorized as mandatory and must cooperate with, yet perform independently of, other mandatory departments and supervisory positions of the slot machine licensee. Notwithstanding the foregoing, a department or supervisor of a slot machine licensee that is not required or authorized by this section may operate under or in conjunction with a mandatory department or supervisor provided the organizational structure is consistent with the standards contained within the act and subsection (a). Mandatory departments and supervisory positions are:

(1) A surveillance department supervised by a person located at the licensed facility who functions, for regulatory purposes, as the director of surveillance. The director of surveillance shall be subject to the reporting requirements specified in subsection (c) and shall be licensed as a key employee. The surveillance department shall be responsible for the following:

* * * * *

(iv) The video recording of activities in the count room and the video recording of movements of cash and slot cash storage boxes.

* * * * *

(vi) The detection of the presence of any person who may or is required to be excluded or ejected from the licensed facility under section 1514 or 1515 of the act (relating to regulation requiring exclusion of certain persons; and repeat offenders excludable from licensed gaming facility) and Chapters 511a and 513a (relating to persons required to be excluded; and underage gaming), or is self excluded from the gaming floor and gaming activities at all licensed facilities under section 1516 of the act (relating to list of persons self excluded from gaming activities) and Chapter 503a (relating to self-exclusion).

* * * * *

(viii) The provision of immediate notice to supervisors designated in the internal controls, the casino compliance representatives and the Pennsylvania State Police at the licensed facility upon detecting, and also upon commencing video recording of, a person who is engaging in or attempting to engage in, or who is suspected of cheating, theft, embezzlement, a violation of this part or other illegal activities, including a person who is required to be excluded or ejected from the licensed facility under section 1514 of the act, who may or is required to be excluded or ejected from the licensed facility under section 1514 or 1515 of the act and Chapters 511a or 513a or is self excluded from the gaming floor and gaming activities at all licensed facilities under section 1516 of the act and Chapter 503a.

* * * * *

(5) A security department supervised by a person located at the licensed facility who functions, for regulatory purposes, as the director of security. The director of the security department shall be licensed as a key employee and be responsible for the overall security of the licensed facility including the following:

* * * * *

(ix) The provision of immediate notice to the Pennsylvania State Police upon detecting the presence in the licensed facility of a person possessing a weapon in violation of § 465a.13 (relating to possession of weapons within a licensed facility).

(x) The provision of immediate notice to supervisors designated in the internal controls and the casino compliance representatives and the Pennsylvania State Police at the licensed facility upon detecting any person who is engaging in or attempting to engage in, or who is suspected of cheating, theft, embezzlement, a violation of this part or other illegal activities.

(xi) The provision of immediate notice to supervisors designated in the internal controls and the casino compliance representatives and the Pennsylvania State Police at the licensed facility upon detecting any person who is required to be excluded or ejected from the licensed facility who may or is required to be excluded or ejected from the licensed facility under section 1514 or 1515 of the act and Chapter 511a or 513a or is self-excluded from the gaming floor and gaming activities at all licensed facilities under section 1516 of the act and Chapter 503a.

* * * * *

(c) The supervisors of the surveillance and internal audit departments required by subsection (b) shall report directly to one of the following persons or entities regarding matters of policy, purpose, responsibility and authority, which persons or entities shall also control the hiring, termination and salary of each supervisor:

* * * * *

(5) An independent audit committee or other persons designated by the Board in the slot machine licensee's Statement of Conditions under § 423a.6 (relating to license, permit, registration and certification issuance and statement of conditions).

§ 465a.13. Possession of weapons within a licensed facility.

(a) Individuals, including security department personnel, are prohibited from possessing any deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions), stun gun or other device designed to injure or incapacitate a person within a licensed facility without the express written approval of the Board.

(b) The prohibition in subsection (a) does not apply to:

(1) Pennsylvania State Police assigned to its Gaming Enforcement Office.

(2) An on-duty officer or agent of any local, State or Federal law enforcement agency when the officer or agent is acting in an official capacity.

(c) To obtain approval for the possession of a deadly weapon, stun gun or other device designed to injure or incapacitate a person within a licensed facility, an individual shall be required to submit a written request to the Board which includes:

(1) An explanation of the compelling need for the possession of the deadly weapon, stun gun or device designed to injure or incapacitate a person within the licensed facility.

(2) If the request is for possession of a firearm as defined in 18 Pa.C.S. § 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), proof that the individual holds a valid license to possess the firearm.

(d) A slot machine licensee shall post in a conspicuous location at each entrance to the licensed facility signs that may be easily read stating the following:

The possession of a deadly weapon, stun gun or other device designed to injure or incapacitate a person by any person within this licensed facility without the express written permission of the Pennsylvania Gaming Control Board is prohibited.

§ 465a.18. Transportation of slot cash storage boxes to and from bill validators; storage.

(a) Slot machine licensees shall file with the Office of Gaming Operations a schedule setting forth the specific times at which slot cash storage boxes will be brought to or removed from the bill validators along with specifications as to what areas of the gaming floor will be dropped on each pick-up day and the specific transportation route to be utilized from the gaming floor to the count room.

(b) Slot machine licensees shall maintain immediately available to the Office of Gaming Operations and the Pennsylvania State Police, a current list, with credential numbers, of all employees participating in the transportation of slot cash storage boxes. Any deviation from the schedule setting forth the specific times at which slot cash storage boxes will be brought to or removed from the bill validators, change in the areas to be dropped or the transportation route to the count room shall be noticed to the Office of Gaming Operations in advance.

(c) Slot cash storage boxes removed from bill validators shall be transported directly to, and secured in, the count room or a trolley storage area located immediately adjacent thereto, configured and secured by a minimum of three employees, at least one of which is a member of the security department and at least one of which is a member of the finance department.

(1) Upon its removal from a bill validator, a slot cash storage box shall be placed immediately in an enclosed trolley which is secured by two separately keyed locks. The keys shall be maintained and controlled as follows:

(i) The key to one lock shall be maintained and controlled by the finance department.

(ii) The key to the second lock shall be maintained and controlled by the security department. Access to the security department's key shall be controlled, at a minimum, by a sign-out and sign-in procedure. The security department key shall be returned to its secure location immediately upon the completion of the collection and transportation of the slot cash storage boxes.

(2) Prior to the movement of any trolley containing slot cash storage boxes from the gaming floor into the count room, the drop team supervisor shall verify that the number of slot cash storage boxes being transported from the gaming floor equals the number of slot cash storage boxes scheduled to be collected that day.

(3) A slot cash storage box being replaced by an emergency slot cash storage box shall be transported to, and secured in, the count room by a minimum of three employees, at least one of which is a member of the finance department and at least one of which is a member of the security department.

(d) Slot cash storage boxes not contained in a bill validator, including emergency slot cash storage boxes that are not actively in use, shall be stored in the count room or other secure area outside the count room approved by the Board, in an enclosed storage cabinet or trolley and secured in the cabinet or trolley by a separately keyed, double locking system. The keys shall be maintained and controlled as follows:

(1) The key to one lock shall be maintained and controlled by the finance department.

(2) The key to the second lock shall be maintained and controlled by a security department. Access to the security department's key shall be limited to a supervisor of that department.

(e) Notwithstanding subsection (c), the security department may, immediately prior to the commencement of the count process, issue its key to the storage cabinet or trolley to a count room supervisor for the purpose of allowing count room personnel to gain access to the slot cash storage boxes to be counted. A key transferred from the custody of the security department to the count room supervisor shall be returned immediately following the conclusion of the count of the slot cash storage boxes and the return of the empty emergency drop boxes and slot cash storage boxes to their respective storage cabinet or trolley by the count room supervisor. The security department shall establish a sign-out and sign-in procedure which includes documentation of this transfer.

(f) If the central computer control system is not online prior to commencement of the drop of the slot cash storage boxes, a drop team supervisor shall contact the casino compliance representatives at the licensed facility to witness and certify the drop. The drop may not commence until a casino compliance representative is present.

§ 465a.25. Counting and recording of slot cash storage boxes.

(a) A slot machine licensee shall file with the Office of Gaming Operations a schedule setting forth the specific times during which the contents of slot cash storage boxes are to be counted and recorded. Any deviation from the schedule shall be noticed to the Office of Gaming Operations and the casino compliance supervisor at the licensed facility at least 48 hours in advance.

(b) Computerized equipment utilized to count and strap currency, gaming vouchers and coupons must:

(1) Automatically provide two separate counts of the funds at different stages of the count process and, if the separate counts are not in agreement, document the discrepancy.

(2) Be capable of determining the value of a gaming voucher or coupon by independently examining information printed on the gaming voucher or coupon. The information is used by the counting equipment to either calculate the value internally or obtain the value directly from the gaming voucher system or coupon system in a secure manner. If the gaming voucher system is utilized to obtain the value of a gaming voucher or coupon, the gaming voucher system must perform a calculation or integrity check to ensure that the value has not been altered in the system in any manner since the time of issuance.

(c) Persons accessing the count room when uncounted funds are present shall wear clothing without any pockets or other compartments with the exception of representatives of the Board, the Department, the Pennsylvania State Police, the security department and the internal audit department.

(d) Persons present in the count room may not:

(1) Carry a handbag or other container unless it is transparent.

(2) Remove their hands from or return them to a position on or above the count table or counting equipment unless the backs and palms of the hands are first held straight out and exposed to the view of other members of the count team and a surveillance camera.

(e) Immediately prior to the commencement of the count, a count room employee shall notify the surveillance department that the count is about to begin to facilitate the recording, under § 465a.9(e) (relating to surveillance system; surveillance department control; surveillance department restrictions), of the entire count process.

(f) Prior to commencing gaming operations, a slot machine licensee shall establish a comprehensive system of internal controls addressing the opening, counting and recording of the contents of slot cash storage boxes. The internal controls shall be submitted to and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols).

(g) The internal controls developed and implemented by the slot machine licensee under subsection (f) must include a description of all computer equipment used in the counting and recording process and other systems, if any, that communicate with that computer equipment for purposes related to the counting of gross terminal revenue.

(h) A gaming voucher or coupon deposited in a slot cash storage box shall be counted and included in the calculation of gross terminal revenue without regard to the validity of the gaming voucher or coupon.

(i) A coupon which has not already been canceled upon acceptance or during the count shall be canceled prior to the conclusion of the count.

(j) If the central computer control system is not online prior to commencement of the count of the slot cash storage boxes, a count room employee shall contact the casino compliance representatives at the licensed facility to witness and certify the count. The count may not commence until a casino compliance representative or other BIE employee is present.

§ 465a.26. Jackpot payouts.

(a) Prior to commencing gaming operations, a slot machine licensee shall establish a comprehensive system of internal controls addressing jackpot payouts that are not paid directly from a slot machine. The internal controls may include procedures by which a slot attendant, in the presence of a member of the security department or another member of the slot operations department, utilizes an imprest inventory of funds secured in a pouch or wallet to pay a jackpot of less than $1,200. The internal controls shall be submitted to and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols).

(b) The internal control procedures developed and implemented by the slot machine licensee under subsection (a) must, at a minimum, include:

(1) The use of a two-part manual jackpot payout receipt and a two-part electronically generated jackpot payout slip created by a slot attendant or slot supervisor, evidencing the observation by the slot attendant or slot supervisor of the winning combination of characters or a code corresponding to the winning combination of characters on the slot machine and a determination as to the appropriate amount of the jackpot payout based on the observed winning combinations.

(2) A requirement that the electronically generated jackpot payout slip not be susceptible to any changes or deletion from the slot computer system by any personnel after preparation.

(3) A requirement that if the jackpot range is $1,200 to $9,999.99, the witness on the two-part manual jackpot payout receipt and the two-part electronically generated jackpot payout slip be a lead slot attendant or above.

(4) A requirement that if the jackpot is between $10,000 and $24,999.99, the witness on the two-part manual jackpot payout receipt and the two-part electronically generated jackpot payout slip be a slot supervisor or above.

(5) A requirement that if the jackpot amount is $25,000 or more, a slot shift manager or above shall sign the manual jackpot payout receipt attesting that the winning combination of characters or a code corresponding to the winning combination of characters on the slot machine and the amount to be paid match those which appear on the two-part manual jackpot payout receipt. The two-part manual jackpot payout receipt shall then be immediately returned to the preparer.

(6) A requirement that if the amount is $1,200 or more the slot attendant shall immediately transport the original of the manual jackpot payout receipt and the original of the electronically generated jackpot payout slip to the cashiers' cage.

(7) A requirement that the following information be on the two-part manual jackpot payout receipt:

(i) The date and time of the jackpot.

(ii) The asset number of the slot machine on which the jackpot was registered.

(iii) The winning combination of characters constituting the jackpot or a code corresponding to the winning combination of characters constituting the jackpot.

(iv) The amount of the jackpot payout.

(v) The method of payment requested by the patron (cash or slot licensee check).

(vi) The signature or identification code of the preparer.

(vii) The signature of the patron who received the jackpot payout.

(viii) If the slot machine or the progressive meter is reset prior to the patron being paid or if payment is made directly to the patron by a slot attendant, the following additional signatures or identification codes:

(A) The signature or identification code of a security department member or slot operations department member other than the preparer attesting to the winning combination of characters or a code corresponding to the winning combination of characters constituting the jackpot and the amount of the jackpot payout when the amount is below $1,200.

(B) The signature or identification code of a lead slot attendant or above attesting to the winning combination of characters or a code corresponding to the winning combination of characters constituting the jackpot and the amount of the jackpot payout when the jackpot amount is between $1,200 and $9,999.99.

(C) The signature or identification code of a slot shift supervisor or above attesting to the winning combination of characters or a code corresponding to the winning combination of characters constituting the jackpot and

the amount of the jackpot payout when the jackpot amount is between $10,000 and $24,999.99.

(D) The signature or identification code of a slot shift manager or above attesting to the winning combination of characters or a code corresponding to the winning combination of characters constituting the jackpot and the amount of the jackpot payout when the jackpot amount is $25,000 or more.

(8) A requirement that the following information be on all two-part electronically generated jackpot payout slips:

(i) The date on which the jackpot occurred.

(ii) The asset number of the slot machine on which the jackpot was registered.

(iii) The winning combination of characters constituting the jackpot or a code corresponding to the winning combination of characters constituting the jackpot.

(iv) The type of win (that is, Progressive or Jackpot).

(v) The amount that is to be paid to the winning patron. This amount may, at the slot machine licensee's discretion, be rounded up to the nearest whole dollar.

(vi) A unique number generated by the slot computer system.

(vii) The signature or identification code of the preparer.

(viii) The signature or identification code of the witness on the duplicate copy only.

(ix) The signature or identification code of the cashier providing the funds to the preparer.

(9) A requirement that whenever a winning patron is paid directly by a slot attendant's imprest fund, the following procedures shall be followed:

(i) A two-part electronic jackpot payout slip is generated and a two-part manual jackpot payout receipt is completed in accordance with paragraph (1).

(ii) Before payment is made to the winning patron, the manual jackpot payout receipt shall be signed by the patron in the presence of the slot attendant and a witness.

(iii) After the slot attendant determines that the required signatures verifying the winning combination of characters or a code corresponding to the winning combination of characters on the slot machine and the amount to be paid have been placed on the manual jackpot payout receipt, the slot attendant shall pay the winning patron in the presence of the witness.

(iv) Once payment has been made and all required signatures obtained, the slot operations department member or security department member witnessing the payment shall obtain the duplicate copy of the manual jackpot payout receipt and immediately deposit it into a locked accounting box.

(v) The slot attendant shall attach the original manual jackpot payout receipt to the original electronically generated jackpot payout slip and forward both forms, by the end of the slot attendant's shift, to the cashiers' cage for reimbursement. The duplicate of the electronically generated jackpot payout slip should be deposited into a locked accounting box immediately after obtaining the funds from the cashier's cage.

(10) When jackpot payouts are made from slot attendants' imprest funds, procedures for the replenishment of the imprest funds and the reconciliation process to be used by the slot attendants.

(11) A requirement that the two-part manual jackpot payout receipt and the two-part electronically generated jackpot payout slip be distributed as follows:

(i) Both the original and duplicate of the manual jackpot payout receipt shall be handed to the witnessing slot operations department member or security department member by the preparer for verification and signature.

(ii) The duplicate of the manual jackpot payout receipt shall be presented to the winning patron who shall be required to present the duplicate to the witness before being paid the jackpot.

(iii) The original of the manual jackpot payout receipt shall be attached to the original electronically generated jackpot payout slip and forwarded to the cashiers' cage for payment of the funds.

(iv) The duplicate of the manual jackpot payout receipt shall be placed into a secured lock box for slot accounting by the witness.

(v) The duplicate of the electronically generated jackpot payout slip shall be placed inside a secured lock box for slot accounting by the generating slot attendant.

(12) A requirement that the slot machine licensee's accounting department perform, at the conclusion of each gaming day, effective audit procedures over the issuance of jackpot payouts including adequate comparisons to gaming voucher system data.

(13) Detailed procedures on the processing of all system overrides or adjustments in regards to jackpot payouts.

(14) A requirement that any person that witnesses a jackpot payout may not be permitted to override the jackpot payout.

(15) A requirement that when the slot computer system is offline or an electronic jackpot payout slip can not be created, a three-part manual jackpot payout book shall be utilized. The three-part manual jackpot payout book must contain preprinted, serial numbered three-part manual jackpot payout slips that include all of the information that is required on the two-part manual jackpot payout receipt in accordance with paragraph (7).

(16) A requirement that unused manual jackpot payout books be maintained in a secured locked cabinet, that the key to the cabinet be controlled by the security department and that the manual jackpot payout books can only be signed out by the slot shift manager when the slot computer system is offline.

(17) A requirement that a slot machine licensee maintain a manual jackpot payout book log for each gaming day or portion thereof that the slot computer system is offline that includes the following information:

(i) The slot machine licensee's name preprinted on the top of the log.

(ii) The gaming day.

(iii) The signature and identification code of the slot attendant assigned the three-part manual jackpot payout book.

(iv) The date and time of issuance of the three-part manual jackpot payout book.

(v) The series of numbers preprinted on the three-part manual jackpot payout book.

(vi) The signature and identification code of the slot shift manager issuing the manual jackpot payout book.

(vii) The date and time the three-part manual jackpot payout book is returned.

(viii) The series of numbers preprinted on the three-part manual jackpot payout book that were completed by the slot attendant.

(ix) The signature and identification code of the slot shift manager receiving the returned manual jackpot payout book.

(18) A requirement that the three-part manual jackpot payout slips be distributed as follows:

(i) The original shall be given to the cashiers' cage to obtain the funds to pay the jackpot to the winning patron or to replenish the imprest funds of the slot attendant that paid the winning patron.

(ii) The second copy shall be retained by the witness of the payout. The witness shall immediately transport the second copy to a locked accounting box.

(iii) The third copy shall be maintained in the manual jackpot payout book. At the end of the slot attendant shift, the manual jackpot payout book shall be turned into the slot shift manager and the manual jackpot payout book log shall be completed.

(19) A requirement that the original manual jackpot payout book log be forwarded to the accounting department at the end of the gaming day and that the slot operations department retain a copy of the manual jackpot payout book log.

(20) A requirement that the manual jackpot payout books turned into the slot shift manager at the end of each slot attendant's shift be forwarded to the accounting department; that the accounting department ensure that all three copies of the manual jackpot payout slips contain the same information; and that any discrepancies between the three copies are researched, documented and reported.

(21) A requirement that the manual jackpot payout books are audited to the manual jackpot payout book log and that any discrepancies between the manual jackpot payout books and the manual jackpot payout book log are researched and documented.

(22) A requirement that the surveillance department is notified of all jackpot payouts when the amount of the jackpot payout is $1,200 or more. The surveillance department shall log all calls regarding jackpot payouts in the surveillance log.

Subpart I. COMPULSIVE AND PROBLEM GAMBLING

CHAPTER 503a. SELF-EXCLUSION

§ 503a.4. Duties of slot machine licensees.

(a) A slot machine licensee shall train its employees and establish procedures that are designed to:

(1) Identify a self-excluded person when present in a licensed facility and, upon identification, immediately notify the following persons:

(i) Employees of the slot machine licensee whose duties include the identification and removal of self-excluded persons.

(ii) Casino compliance representatives at the licensed facility.

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Subpart J. EXCLUSION OF PERSONS

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

§ 511a.8. Duties of slot machine licensees.

(a) Slot machine licensees shall establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG 30 days prior to initiation of gaming activities at the licensed facility. A slot machine licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The slot machine licensee may not commence operations until the Director of OCPG approves its procedures. Amendments to these procedures must be submitted to and approved by the Director of OCPG prior to implementation.

(b) A slot machine licensee shall have the responsibility to distribute copies of the exclusion list to the appropriate employees. Additions, deletions or other updates to the list shall be distributed by a slot machine licensee to its employees within 2 business days of the slot machine licensee's receipt of the updates from the Board.

(c) A slot machine licensee shall exclude or eject the following persons from its licensed facility:

(1) An excluded person.

(2) A person known to the slot machine licensee to satisfy the criteria for exclusion in section 1514 of the act (relating to regulation requiring exclusion of certain persons) and § 511a.3 (relating to criteria for exclusion).

(d) If an excluded person enters, attempts to enter, or is in a licensed facility and is recognized by employees of the slot machine licensee, the slot machine licensee shall:

(1) Immediately notify the BIE agents at the licensed facility.

(2) Notify the Director of OCPG in writing within 24 hours.

(e) It shall be the continuing duty of a slot machine licensee to inform the Bureau, in writing, of the names of persons the slot machine licensee believes are appropriate for placement on the exclusion list or a person who has been excluded or ejected under subsection (c)(2) and the reason for placement on the exclusion list.

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