

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CHS. 121, 129 AND 130 ]

### Adhesives, Sealants, Primers and Solvents

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 129 (relating to general provisions; and standards for sources) and to add Subchapter D (relating to adhesives, sealants, primers and solvents) to Chapter 130 (relating to standards for products), to read as set forth in Annex A.

The proposed rulemaking will add definitions to § 121.1 (relating to definitions) for approximately 56 new terms, including those that relate to the adhesive, sealant, primer and solvent product categories that will be regulated under § 129.77 (relating to control of emissions from the use or application of adhesives, sealants, primers and solvents) and Chapter 130, Subchapter D, and will amend definitions for nine existing terms to provide clarity.

The proposed rulemaking will add § 129.77 to regulate the owner or operator of a facility or stationary source that uses or applies, on or after April 15, 2010, a regulated adhesive, sealant, adhesive primer or sealant primer product. The proposal will adopt emission standards and volatile organic compound (VOC) content limits for the industrial or commercial use or application of 37 categories of adhesive, sealant, adhesive primer or sealant primer products, and adhesive or sealant products applied to particular substrates. The proposal will also include requirements for the use of surface preparation solvents and cleanup solvents. Owners and operators using noncomplying products will have the option to use add-on controls as a compliance alternative rather than switching to complying products.

The proposal will add Subchapter D to Chapter 130 to adopt emission standards and VOC content limits for the sale, supply, offer for sale, manufacture, use or application of 37 categories of adhesive, sealant, adhesive primer and sealant primer products; adhesive and sealant products applied to certain substrates; and surface preparation solvents and cleanup solvents. The requirements of the proposed Chapter 130, Subchapter D, will apply to a person who, on or after April 15, 2010, sells, supplies, offers for sale or manufactures for sale an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent product for industrial or commercial use or application in this Commonwealth. The requirements will also apply to a person who uses or applies, for compensation, an adhesive, sealant, adhesive primer or sealant primer product; adhesive or sealant products applied to particular substrates; or surface preparation solvent or cleanup solvent products in this Commonwealth.

This proposal was adopted by the Board at its meeting on December 16, 2008.

#### A. *Effective Date*

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

#### B. *Contact Persons*

For further information contact Arleen J. Shulman, Chief, Division of Air Resource Management, P. O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 772-3436, or Kristen Campfield Furlan, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (select Public Participation).

#### C. *Statutory Authority*

This proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P. S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

#### D. *Background and Purpose*

The purpose of this proposed rulemaking is to establish a program to limit the emissions of VOCs from the industrial and commercial use and application of certain adhesive, sealant, adhesive primer and sealant primer products; adhesive and sealant products applied to certain substrates; and surface preparation solvent and cleanup solvent products. This proposed rulemaking also extends these product requirements to the owners or operators of facilities that use these products as part of a manufacturing process and provides them with an alternative compliance method of using add-on air pollution controls in place of complying products. VOCs are a precursor for ozone formation. Ground-level ozone is not emitted directly by adhesives, sealants, primers and solvents to the atmosphere, but is formed by a photochemical reaction between VOCs and nitrogen oxides (NOx) in the presence of sunlight.

The United States Environmental Protection Agency (EPA) is responsible for establishing National Ambient Air Quality Standards (NAAQS) for six criteria pollutants considered harmful to public health and the environment: ozone, particulate matter, NOx, carbon monoxide, sulfur dioxide and lead. The Federal Clean Air Act (42 U.S.C. §§ 7401—7671q) established two types of NAAQS: primary standards, limits set to protect public health; and secondary standards, limits set to protect public welfare, including protection against visibility impairment and from damage to animals, crops, vegetation and buildings. In 1997, the EPA established the 8-hour ozone NAAQS, a more protective ozone primary and secondary NAAQS to protect public health and welfare.

When ground-level ozone is present in concentrations in excess of the Federal health-based 8-hour NAAQS for ozone, public health and welfare are adversely affected. Ozone exposure correlates to increased respiratory disease and higher mortality rates. Ozone can inflame and damage the lining of the lungs. Within a few days, the damaged cells are shed and replaced, much like the skin peels after sunburn. Over a long time period, lung tissue may become permanently scarred, resulting in permanent

loss of lung function and a lower quality of life. When ambient ozone levels are high, more people with asthma have attacks that require a doctor's attention or use of medication. Ozone also makes people more sensitive to allergens including pet dander, pollen and dust mites, all of which can trigger asthma attacks.

The EPA has concluded that there is an association between high levels of ambient ozone and increased hospital admissions for respiratory ailments including 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. High levels of ozone also affect animals in ways similar to humans.

In addition to causing adverse human and animal health effects, the EPA has concluded that ozone affects vegetation and ecosystems, leading to reductions in agricultural crop and commercial forest yields by destroying chlorophyll; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests, and other environmental stresses, including harsh weather. In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of parks and recreation areas. Through deposition, ground-level ozone also contributes to pollution in the Chesapeake Bay. The economic value of some welfare losses due to ozone can be calculated, such as crop yield loss from both reduced seed production and visible injury to some leaf crops, including lettuce, spinach and tobacco, as well as visible injury to ornamental plants, including grass, flowers and shrubs. Other types of welfare loss may not be quantifiable, such as the reduced aesthetic value of trees growing in heavily visited parks.

High levels of ground-level ozone can also cause damage to buildings and synthetic fibers, including nylon, and reduced visibility on roadways and in natural areas. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health and welfare, animal and plant health and welfare and the environment.

In 2004, the EPA designated 37 counties in this Commonwealth as 8-hour ozone nonattainment areas for the 1997 8-hour ozone NAAQS. The proposed rulemaking will support the 8-hour ozone NAAQS attainment demonstrations for the Philadelphia 5-county area (comprising Bucks, Chester, Delaware, Montgomery and Philadelphia Counties) and the 7-county Pittsburgh-Beaver Valley Area. The proposed rulemaking will also provide additional reductions to support the maintenance plans for the remaining areas recently redesignated to attainment of the 8-hour ozone health-based standard.

Further, the proposed rulemaking will provide additional reductions of VOC emissions to meet the revised 8-hour ozone standard of 0.075 part per million (ppm), down from 0.08 ppm, promulgated by the EPA on March 27, 2008 (73 FR 16436). Recommendations for attainment, nonattainment and unclassifiable areas under the new, more stringent 8-hour ozone standard must be submitted to the EPA in March 2009; final action by the

EPA is anticipated in March 2010. The designations will take effect 60 days after the EPA publishes a notice in the *Federal Register*.

There are no Federal limits for the larger container sizes of adhesive, sealant, adhesive primer and sealant primer products that will be subject to regulation under this proposed rulemaking. The staff of the Ozone Transport Commission (OTC) and Member States and the District of Columbia formed a workgroup to discuss control measures for the sale, offer for sale, supply, manufacture, industrial use and commercial application of solvent-based adhesives, sealants and primers during a series of conference calls and workshops held from the spring of 2004 through the autumn of 2006. The OTC workgroup collected and evaluated information regarding emission benefits, cost-effectiveness and implementation issues.

This proposed rulemaking is based on emission reduction measures recommended by the OTC in its 2006 Model Rule for adhesives, sealants and primers, which is based on the 1998 reasonably available control technology (RACT) and best available retrofit control technology (BARCT) determination by the California Air Resources Board (CARB) for the industrial and commercial use and application of adhesives, sealants and primers. The Department has reviewed the OTC 2006 Model Rule and the CARB RACT/BARCT for their applicability to the ozone reduction measures necessary for this Commonwealth.

The OTC workgroup received comments on the 2006 Model Rule from the National Paint and Coatings Association, the Adhesive and Sealant Council, Inc., and LORD Corporation. The Department reviewed these comments for applicability to the development of this Pennsylvania-specific proposed rulemaking.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on the proposed rulemaking on March 27 and May 23, 2008. The AQTAC unanimously concurred with the Department's recommendation to seek the Board's approval of the proposed rulemaking, asking the Department to consider reducing recordkeeping requirements for some product users and the special needs of segments of the roofing industry. The Department also consulted with the Citizen's Advisory Council on March 18 and May 20, 2008, and with the Small Business Compliance Advisory Committee on April 23, 2008.

The proposed rulemaking is reasonably necessary to achieve and maintain the health-based 8-hour ozone NAAQS in this Commonwealth. This proposed rulemaking is consistent with regulatory initiatives that will be undertaken by other jurisdictions in the Ozone Transport Region (OTR). The proposed rulemaking, when adopted, will be submitted to the EPA as a revision to the Commonwealth's State Implementation Plan.

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

This proposed rulemaking amends the definitions in § 121.1 (relating to definitions) of the following terms, to improve clarity, style and format or explain new product categories: "adhesive," "adhesive primer," "aerospace vehicle or component," "as applied," "as supplied," "cyanoacrylate adhesive," "exempt compound or exempt solvent," "sealant" and "solvent."

This proposed rulemaking adds definitions in § 121.1 for the following terms to explain new product categories: "ABS welding adhesive or acrylonitrile-butadiene-styrene welding adhesive," "aerosol adhesive," "architectural sealant or primer," "automotive glass adhesive primer,"

“CPVC plastic or chlorinated polyvinyl chloride plastic,” “CPVC welding adhesive or chlorinated polyvinyl chloride welding adhesive,” “ceramic tile installation adhesive,” “cleanup solvent,” “computer diskette jacket manufacturing adhesive,” “contact bond adhesive,” “cove base,” “cove base installation adhesive,” “diluent,” “drywall installation,” “fiberglass,” “flexible vinyl,” “indoor floor covering installation adhesive,” “laminant,” “low-solids adhesive, sealant or primer,” “marine deck sealant or marine deck sealant primer,” “medical equipment manufacturing,” “metal to urethane/rubber molding or casting adhesive,” “multipurpose construction adhesive,” “nonmembrane roof installation/repair adhesive,” “outdoor floor covering installation adhesive,” “PVC plastic or polyvinyl chloride plastic,” “PVC welding adhesive or polyvinyl chloride welding adhesive,” “panel installation,” “perimeter bonded sheet flooring installation,” “plastic cement welding adhesive,” “plastic cement welding adhesive primer,” “plastic foam,” “plasticizer,” “plastics,” “porous material,” “propellant,” “reactive diluent,” “roadway sealant,” “rubber,” “SCAQMD-South Coast Air Quality Management District,” “sealant primer,” “sheet rubber installation,” “single-ply roof membrane,” “single-ply roof membrane adhesive primer,” “single-ply roof membrane installation and repair adhesive,” “single-ply roof membrane sealant,” “structural glazing adhesive,” “subfloor installation,” “surface preparation solvent,” “thin metal laminating adhesive,” “tire repair,” “tire tread adhesive,” “traffic marking tape,” “traffic marking tape adhesive primer,” “undersea-based weapons systems components” and “waterproof resorcinol glue.”

The proposed definition of the term “single-ply roof membrane” specifies that it is a prefabricated single sheet of rubber, normally ethylene propylene diene terpolymer, that is field-applied to a building roof using one layer of membrane material. The Board seeks comment on whether the definition of this term should be expanded to include other types of single-ply roof membrane, including thermosets and thermoplastics, rather than those only made of rubber.

Proposed § 129.77(a) establishes that this section applies to the owner or operator of a facility that uses or applies, on or after April 15, 2010, an adhesive, sealant, adhesive primer or sealant primer subject to the emissions standards in Table V (relating to VOC content limits for adhesives, sealants, adhesive primers and sealant primers, as applied) of § 129.77; an adhesive or sealant product applied to the listed substrate subject to the emission standards in Table VI (relating to VOC content limits for adhesive or sealant products applied to particular substrates, as applied) of § 129.77; or a surface preparation solvent or cleanup solvent.

Proposed § 129.77(b) establishes that, on or after April 15, 2010, an owner or operator of a facility may not use or apply an adhesive, sealant, adhesive primer or sealant primer that exceeds the applicable VOC content limit in Table V or VI, except as provided elsewhere in § 129.77.

Proposed § 129.77(c) establishes that, on or after April 15, 2010, an owner or operator of a facility may not use or apply a surface preparation or cleanup solvent that exceeds the applicable VOC content limit or composite vapor pressure requirements of this section, except as provided elsewhere in this section.

Proposed § 129.77(d) specifies that the VOC content limits in Table VI apply if the adhesive or sealant does not have a VOC content limit in Table V. This subsection also specifies that if an adhesive is used to bond dissimi-

lar substrates together, the applicable substrate category with the highest VOC content is the limit for this use.

Proposed § 129.77(e) specifies requirements for an owner or operator using a surface preparation solvent or cleanup solvent.

Proposed § 129.77(f) specifies the requirements for removal of an adhesive, sealant, adhesive primer or sealant primer from the parts of spray application equipment.

Proposed § 129.77(g) addresses the requirements for an owner or operator using an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent subject to the emission standard requirements of this section that wants to use add-on air pollution control equipment to comply.

Proposed § 129.77(h) establishes that a person using an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent subject to this section shall store or dispose of all absorbent materials, including cloth or paper, which are moistened with products subject to this section in nonabsorbent containers that are kept closed except when placing materials in or removing materials from the container.

Proposed § 129.77(i) establishes that a person may not solicit, require the use of or specify the application of a product subject to this section if the use or application would result in a violation of this section.

Proposed § 129.77(j) specifies that a person who applies or solicits the application of a product subject to this section may not add solvent to the adhesive, sealant, adhesive primer or sealant primer in an amount in excess of the manufacturer’s recommendation for application, if this additional solvent causes the product to exceed the applicable VOC content limit listed in Table V or VI, unless the emissions are controlled through the use of add-on air pollution control equipment as specified in subsection (g).

Proposed § 129.77(k) provides for certain exemptions, including exemptions for products being tested or evaluated in a research and development, quality assurance or analytical laboratory, if records are maintained as required in subsections (q) and (r); products that are subject to certain other Department regulations; adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and less exempt compounds, as applied; cyanoacrylate adhesives; adhesives, sealants, adhesive primers or sealant primers that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less, or a net weight of one pound or less, except plastic cement welding adhesives and contact adhesives; and contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of 1 gallon or less.

Proposed § 129.77(l) provides exemptions for the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation solvents and cleanup solvents in certain operations, including tire repair operations, if the label of the tire repair adhesive states, “For tire repair only;” the assembly, repair and manufacture of aerospace components or undersea-based weapon systems; the manufacture of medical equipment; and certain plaque laminating operations.

Proposed § 129.77(m) provides a schedule and a phase-in period for the use of compliant single-ply roof membrane installation or repair adhesive, single-ply roof

membrane sealant and single-ply roof membrane adhesive primer to address rubber roofing adhesive curing issues during the colder months of the year. The phase-in strategy is proposed to provide time for product research and development, and for the training of roofing contractors in the effective application of new formulations for use in cold temperatures. According to the Ethylene Propylene Diene Membrane (EPDM) Roofing Association (ERA), compliance with the OTC 2006 Model Rule VOC content limit of 250 grams per liter for single-ply roof membrane installation or repair bonding adhesive is not currently possible in the colder months, as roofing adhesives meeting this limit do not properly cure at temperatures below 40° F. A phase-in strategy has been adopted in Connecticut and is also being considered by New Jersey, New York and Rhode Island and the District of Columbia.

Proposed § 129.77(n) provides an exemption from the requirements of § 129.77 if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the facility are less than 200 pounds or an equivalent volume, per calendar year. An owner or operator claiming exemption under this subsection shall record and maintain operational records sufficient to demonstrate compliance with this exemption.

Proposed § 129.77(o) provides an exemption for the use of a noncomplying adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent if the total volume of noncomplying products applied facility-wide does not exceed 55 gallons per calendar year. An owner or operator claiming exemption under this subsection shall record and maintain operational records sufficient to demonstrate compliance with this exemption.

Proposed § 129.77(p) specifies that each owner or operator subject to this section shall maintain records demonstrating compliance with this section, including specific information. Several members of AQTAC questioned the necessity of paragraph (6), which requires that the owner or operator maintain records of the volume used of each of the regulated products. These members suggested that keeping records of small quantities of miscellaneous product use and keeping records of materials used as opposed to materials purchased would be unnecessary and burdensome. These members questioned who should keep records for materials used by outside contractors (for example, roofers and piping contractors). They suggested either revising paragraph (6) to require records of volume of product "purchased" instead of volume of product "used," or deleting paragraph (6). They suggested that a certification that compliant products were used would suffice. Other members of AQTAC thought paragraph (6) should remain intact because of the information it would provide about actual emissions. The Board seeks comment on the alternative approaches suggested by members of AQTAC.

Proposed § 129.77(q) provides recordkeeping requirements for the person conducting testing on products that are subject to the laboratory testing exemption.

Proposed § 129.77(r) specifies that all records made to determine compliance with this section shall be maintained onsite for at least 5 years from the date the record is created and made available to the Department upon request.

Proposed § 129.77(s) specifies, with certain exceptions, that the VOC and solids content of all nonaerosol adhesives, sealants, adhesive primers, sealant primers, surface

preparation solvents and cleanup solvents shall be determined using either EPA Reference Method 24 or SCAQMD Method 304, including updates and revisions.

Proposed § 129.77(t) specifies that the identity and concentration of exempt organic compounds shall be determined using either ASTM D4457 or SCAQMD Method 303, including updates and revisions.

Proposed § 129.77(u) specifies that the VOC content of a plastic cement welding adhesive or primer shall be determined using SCAQMD Method 316A, including updates and revisions.

Proposed § 129.77(v) specifies that to determine if a diluent is a reactive diluent, the percentage of the reactive organic compound that becomes an integral part of the finished material shall be determined using SCAQMD Method 316A, including updates and revisions.

Proposed § 129.77(w) specifies the procedure for determining the composite vapor pressure of organic compounds in cleaning materials.

Proposed § 129.77(x) specifies that the vapor pressure of each component in the cleaning material subject to the requirement of § 129.77(w) may be determined from either ASTM 2879 or one or more of the listed references, including updates and revisions.

Proposed § 129.77(y) specifies that if air pollution control equipment is used to meet the requirements of this section, the owner or operator shall determine the capture efficiency and the control efficiency using certain procedures.

Proposed § 129.77(z) specifies that the active and passive solvent losses from spray gun cleaning systems shall be determined using the SCAQMD method, *General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems*, including updates and revisions.

Proposed § 129.77(aa) specifies the method for calculating the VOC content of adhesive, sealant, adhesive primer or sealant primer products that do not contain reactive diluents.

Proposed § 129.77(bb) specifies the method for calculating the VOC content for adhesive, sealant, adhesive primer or sealant primer products that contain reactive diluents.

Proposed § 129.77(cc) specifies the method for calculating the VOC content for low-solids adhesive, sealant, adhesive primer or sealant primer products.

Proposed § 129.77(dd) specifies the method for calculating percent VOC by weight.

Proposed § 129.77(ee) specifies how to convert from units of grams per liter to units of pounds per gallon.

Proposed § 129.77, Table V lists the VOC content limits for the regulated adhesives, sealants, adhesive primers and sealant primers, as applied.

Proposed § 129.77, Table VI lists the VOC content limits for adhesive or sealant products applied to particular substrates, as applied.

Proposed § 130.701 (relating to applicability) of Chapter 130, Subchapter D, establishes that, except as provided in § 130.703 (relating to exemptions and exceptions), this new subchapter applies to a person who, on or after April 15, 2010, sells, supplies, offers for sale, manufactures for sale, or uses or applies for compensation, in this Commonwealth, an adhesive, sealant, adhesive primer or sealant primer subject to this subchapter.

Proposed § 130.702(a) (relating to emission standards) establishes that on and after April 15, 2010, except as provided in § 130.703 (relating to exemptions and exceptions), a person may not sell, supply, offer for sale or manufacture for sale for use in this Commonwealth an adhesive, sealant, adhesive primer or sealant primer manufactured on or after April 15, 2010, which contains VOCs in excess of the applicable VOC content limits specified in Table I (relating to VOC content limits for adhesives, sealants, adhesive primers and sealant primers, as applied) of § 130.702.

Proposed § 130.702(a) also establishes that on and after April 15, 2010, except as provided in § 130.703, a person may not sell, supply, offer for sale or manufacture for sale for use in this Commonwealth an adhesive or sealant product manufactured on or after April 15, 2010, applied to particular substrates, which contains VOCs in excess of the applicable VOC content limits in Table II (relating to VOC content limits for adhesive or sealant products applied to particular substrates, as applied) of § 130.702.

Proposed § 130.702(b) establishes that on and after April 15, 2010, except as provided in § 130.703, a person may not use or apply for compensation within this Commonwealth an adhesive, sealant, adhesive primer or sealant primer which contains VOCs in excess of the applicable VOC content limits specified in Table I or an adhesive or sealant product applied to particular substrates manufactured on or after April 15, 2010, which contains VOCs in excess of the applicable VOC content limits in Table II.

Proposed § 130.702(c) describes how the VOC content limits in Table II will apply.

Proposed § 130.702(d) establishes additional requirements for persons using a surface preparation solvent or cleanup solvent.

Proposed § 130.702(e) establishes the methods that must be followed for removing adhesive, sealant, adhesive primer or sealant primer from the parts of spray application equipment.

Proposed § 130.702(f) establishes that a person using a product subject to this subchapter shall store or dispose of all absorbent materials, including cloth or paper, which are moistened with adhesives, sealants, primers or solvents subject to this subchapter in nonabsorbent containers that are kept closed except when placing materials in or removing materials from the container.

Proposed § 130.702(g) establishes that a person may not solicit, require the use of or specify the application of a product subject to this subchapter if the use or application would result in a violation of this subchapter.

Proposed § 130.702(h) specifies that a person who applies or solicits the application of an adhesive, sealant, adhesive primer or sealant primer subject to this subchapter may not add solvent to the adhesive, sealant, adhesive primer or sealant primer in an amount in excess of the manufacturer's recommendation for application, if this additional solvent causes the product to exceed the applicable VOC content limit listed in Table I or II.

Proposed § 130.702, Table I lists the VOC content limits for the regulated adhesives, sealants, adhesive primers and sealant primers, as applied.

Proposed § 130.702, Table II lists the VOC content limits for the regulated adhesive or sealant products applied to particular substrates, as applied.

Proposed § 130.703 provides certain exemptions from the requirements of proposed Subchapter D. Proposed subsection (a) provides exemptions for products being tested or evaluated in a research and development, quality assurance or analytical laboratory, if records are maintained as required in § 130.704 (relating to recordkeeping requirements); products that are subject to certain other Department regulations; adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and less exempt compounds, as applied; cyanoacrylate adhesives; adhesives, sealants, adhesive primers or sealant primers that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less, or a net weight of 1 pound or less, except plastic cement welding adhesives and contact adhesives; and contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of 1 gallon or less.

Proposed § 130.703(b) provides exemptions from the requirements of proposed Subchapter D for the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation solvents and cleanup solvents in certain operations, including tire repair operations, if the label of the tire repair adhesive states, "For tire repair only"; the assembly, repair and manufacture of aerospace components or undersea-based weapon systems; the manufacture of medical equipment; and certain plaque laminating operations.

Proposed § 130.703(c) provides a schedule and a phase-in period for the use and application of compliant single-ply roof membrane installation or repair adhesive, single-ply roof membrane sealant and single-ply roof membrane adhesive primer to address rubber roofing adhesive curing issues during the colder months of the year. This phase-in strategy is provided for the same reasons as those described proposed § 129.77(m).

Proposed § 130.703(d) provides an exemption for the sale, supply, offer for sale and manufacture of single-ply roof membrane adhesives, sealants and primers prior to January 1, 2012. This proposed exemption is premised upon adoption of the phase-in strategy in proposed subsection (c).

Proposed § 130.703(e) provides an exemption from many of the requirements of proposed § 130.702 if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the facility are less than 200 pounds or an equivalent volume, per calendar year. An owner or operator claiming exemption under this subsection shall record and maintain operational records sufficient to demonstrate compliance with this exemption. An identical exemption is established in § 129.77(n) of this proposed rulemaking. The Board seeks comment on the suitability of including this exemption in Subchapter D, which applies to persons who sell, supply, offer for sale or manufacture for sale, and persons who use or apply for compensation, the regulated products.

Proposed § 130.703(f) provides an exemption for the use of a noncomplying adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent if the total volume of noncomplying products applied facility-wide does not exceed 55 gallons per calendar year. An owner or operator claiming exemption under this subsection shall record and maintain operational records sufficient to demonstrate compliance with this exemption. An identical exemption is established in § 129.77(o) of this proposed rulemaking. The Board seeks

comment on the suitability of including this exemption in Subchapter D, which applies to persons who sell, supply, offer for sale or manufacture for sale, and persons who use or apply for compensation, the regulated products.

Proposed § 130.703(g) provides an exemption for an adhesive, sealant, adhesive primer or sealant primer product if the manufacturer or distributor keeps records demonstrating that the 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 product is not distributed to or within this Commonwealth.

Proposed § 130.703(h) precludes the exercise of the exemption provided in subsection (g) for an adhesive, sealant, adhesive primer or sealant primer product sold, supplied or offered for sale by a person to a retail outlet in this Commonwealth.

Proposed § 130.703(i) specifies that the requirements of Subchapter D does not apply to an adhesive, sealant, adhesive primer or sealant primer product that is sold or supplied for use or application at a facility subject to the requirements of § 129.77.

Proposed § 130.703(j) specifies that §§ 130.704 and 130.705 (relating to compliance procedures and test methods) do not apply to the use of an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent at a private residence for a noncommercial purpose.

Proposed § 130.704 specifies that on and after April 15, 2010, a person who sells, supplies, offers for sale, manufactures for sale, uses or applies in this Commonwealth an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent product subject to this subchapter shall maintain records demonstrating compliance with this subchapter, including certain information. This section also specifies that all records made to determine compliance with this section shall be maintained onsite for at least 5 years from the date the record is created and made available to the Department upon request.

Several members of AQTAC questioned the necessity of § 130.704(b)(6), which requires that the owner or operator maintain records of the volume used of each of the regulated products. These members suggested that keeping records of small quantities of miscellaneous product use and keeping records of materials used as opposed to materials purchased would be unnecessary and burdensome. These members questioned who should keep records for materials used by outside contractors (for example, roofers and piping contractors). They suggested either revising paragraph (6) to require records of volume of product "purchased" instead of volume of product "used", or deleting paragraph (6). They suggested that a certification that compliant products were used would suffice. Other members of AQTAC thought paragraph (6) should remain intact because of the information it would provide about actual emissions. The Board seeks comment on the alternative approaches suggested by members of AQTAC.

Proposed § 130.705 specifies the compliance procedures, test methods and calculations that shall be used to determine the VOC, solids content and exempt organic compound content of adhesives, sealants, adhesive primers, sealant primers, surface preparation solvents and cleanup solvents subject to this subchapter.

Proposed § 130.706 (relating to container labeling) specifies that on and after April 15, 2010, each manufact-

urer of an adhesive, sealant, adhesive primer or sealant primer product subject to this subchapter shall display certain information on the product container or label.

Consistent with the OTC 2006 Model Rule, the proposed rulemaking does not include a date-coding requirement. This presents problems for tracking the sale and use of product manufactured before the proposed regulatory compliance date of April 15, 2010. The Board seeks comment on whether the final-form regulations should include a date-coding requirement to facilitate enforcement of the regulations and the sale and use of product manufactured before the proposed compliance date of April 15, 2010 (sell-through and use-through). The Department will also consult with other OTR states on this issue.

#### F. *Benefits, Costs and Compliance*

##### *Benefits*

The citizens of this Commonwealth will be the major benefactors from this proposed rulemaking through reduced exposure to a variety of solvents, including hazardous air pollutants (HAPs), that are used in a variety of adhesive, sealant, adhesive primer and sealant primer products. These proposed amendments will result in improved air quality by reducing VOC ozone precursor emissions from the industrial and commercial use and application of the regulated adhesive, sealant and primer products. Benefits will also occur from reduced VOC content in surface preparation solvent and cleanup solvent products. The proposed amendments will encourage the implementation of new technologies and practices, which will reduce emissions of VOCs and HAPs throughout this Commonwealth.

##### *Compliance Costs*

The cost of complying with the new requirements includes the cost of using or developing alternative product formulations, including product formulations for low-VOC or water-based adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent and cleanup solvent products. Based on information provided by the Ventura County Air Pollution Control District (VCAPCD), the CARB determined that the cost-effectiveness of the VCAPCD adhesives rule, which formed the basis of the CARB 1998 RACT/BARCT Determination upon which the OTC 2006 Model Rule is based, ranges from a savings of \$1,060 per ton to a cost of \$2,320 per ton of VOC reduced. Any costs are likely to be less in the OTR, because some of the research and reformulation costs incurred for products sold in California will not have to be incurred again for products sold in the OTR. The CARB also reports a cost-effectiveness of \$9,000 to \$110,000 per ton of VOC reduced should the use of add-on control equipment to comply with the requirements be necessary.

The Department anticipates similar costs in this Commonwealth. MACTEC Federal Programs, a consultant to the OTC, indicated in its report, "Identification and Evaluation of Candidate Control Measures, Final Technical Support Document," that the requirements of the OTC Adhesives, Sealants and Primers Model Rule would reduce emissions of VOC by approximately 21.8 tons per summer day (tpsd) in this Commonwealth. Ozone monitoring season (April 1 through October 31) VOC emission reductions from this rulemaking would be approximately 4,665.2 tons (21.8 tpsd × 214 ozone monitoring season days). Assuming that there are approximately 12 million people living in this Commonwealth, the average ozone

season VOC emissions reduction is calculated to be 0.78 pound of VOC emissions reduced per resident of this Commonwealth.

The total ozone monitoring season costs are calculated by multiplying the maximum estimated cost of \$2,320 per ton of VOC emissions reduced times 4,665.2 tons per ozone monitoring season, which equals approximately \$10,823,264 per ozone monitoring season. The maximum ozone monitoring season cost per resident of this Commonwealth would be approximately \$0.90.

Annual VOC emission reductions from this rulemaking would be approximately 7,957 tons (21.8 tpsd  $\times$  365 days per year) or 1.3 pounds of VOC emissions reduced per resident of this Commonwealth per year. Annual costs would be \$2,320 per ton of VOC emissions reduced times 7,957 tons per year or \$18,460,000. The maximum annual cost per resident of this Commonwealth would be approximately \$1.55.

Cost savings could be incurred if reformulated products are less expensive, with the possibility that residents of this Commonwealth could realize savings of \$0.41 per ozone season per resident (\$1,060  $\times$  4,665.2 tons divided by 12,000,000 residents) or \$0.70 annually per resident (\$1,060  $\times$  7,957 tons divided by 12,000,000 residents).

Owners or operators of facilities or stationary sources using regulated adhesive, sealer, primer and solvent products could incur costs of \$9,000 to \$110,000 per ton of VOC emissions reduced, should the use of add-on control equipment be necessary to comply with the requirements of this rulemaking, based on CARB estimates. However, fewer than 40 facilities in this Commonwealth are expected to be required to comply with this rulemaking. Most of the affected facilities already have permits that establish requirements for the use of the adhesive, sealant, primer and solvent products proposed for regulation in this rulemaking.

#### *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 Regional compliance assistance program.

#### *Paperwork Requirements*

The proposed rulemaking includes recordkeeping and reporting requirements in § 129.77 for affected owners and operators of facilities that use or apply the regulated adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent and cleanup solvent products. These recordkeeping requirements include keeping lists of each regulated product in use or in storage; a data sheet or material list for each product that provides the name of the product, manufacturer's identification, and use for the product; the VOC content for the product as supplied; the catalysts, reducers or other components used and the mix ratio; the VOC content or vapor pressure of each product as applied, if solvent or other VOC is added to the product before application; and the volume used of each product.

For an adhesive, sealant, adhesive primer and sealant primer product subject to the laboratory testing exemption, the person conducting the testing shall make and maintain records of all products used, including the following information: the product name; the product category of the material or type of application; and the VOC content of the material.

Records made to determine compliance with § 129.77 shall be maintained onsite for at least 5 years from the date the record is created and made available to the Department upon request.

The proposed rulemaking includes recordkeeping and reporting requirements in Chapter 130, Subchapter D for a person who sells, supplies, offers for sale or manufactures for sale for use in this Commonwealth an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent product subject to this subchapter. The person shall maintain records demonstrating compliance with this subchapter, including the following information: a data sheet or material list which provides the material name, manufacturer identification and material application for each product; the VOC content of each product, as supplied; and the number of gallons of product sold in this Commonwealth.

A person who uses or applies an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent product subject to Subchapter D shall maintain records demonstrating compliance with this subchapter, including the following information: a list of each adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent and cleanup solvent product in use and in storage; a data sheet or material list which provides the product name, manufacturer identification and use or material application for each product included on the list; the VOC content of each product on the list, as supplied; catalysts, reducers or other components used and the mix ratio; the VOC content or vapor pressure of each product on the list, as applied, if solvent or other VOC is added to the product before application; and the volume used of each product on the list.

For an adhesive, sealant, adhesive primer and sealant primer product subject to the laboratory testing exemption of § 130.703(a)(1), the person conducting the testing shall make and maintain records of all materials used, including the following information: the product name; the product category of the material or type of application; and the VOC content of the material.

Records made to determine compliance with Chapter 130, Subchapter D shall be maintained for at least 5 years from the date the record is created and made available to the Department upon request.

#### *G. Pollution Prevention*

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

The proposed amendments will assure that the citizens and the environment of this Commonwealth experience the benefits of reduced emissions of VOCs and HAPs from the industrial and commercial use or application of low-VOC adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent and cleanup solvent products. Although the proposed requirements are to

address ground-level 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 proposed amendments will result in improved indoor and outdoor air quality for all citizens of this Commonwealth by reducing VOC 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.

H. *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.

I. *Regulatory Review*

In accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 20, 2009, the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days after the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. *Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 8, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by June 8, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 8, 2009. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

K. *Public Hearings*

The Board will hold three public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held as follows:

- May 4, 2009 1 p.m. Department of Environmental Protection  
Southwest Regional Office  
Waterfront A Conference Room  
400 Waterfront Drive  
Pittsburgh, PA 15222
- May 7, 2009 1 p.m. Department of Environmental Protection  
Southeast Regional Office  
Delaware River Conference Room  
2 East Main Street  
Norristown, PA 19401
- May 8, 2009 1 p.m. Department of Environmental Protection  
Rachel Carson State Office Building  
Room 105  
400 Market Street  
Harrisburg, PA 17105

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

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,  
*Acting Chairperson*

**Fiscal Note:** 7-428. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Subpart C. PROTECTION OF NATURAL RESOURCES**  
**ARTICLE III. AIR RESOURCES**  
**CHAPTER 121. GENERAL PROVISIONS**

**§ 121.1. Definitions.**

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

***ABS welding adhesive or acrylonitrile-butadiene-styrene welding adhesive***—An adhesive intended by the manufacturer to weld acrylonitrile-butadiene-styrene (ABS) pipe, which is made by reacting monomers of acrylonitrile, butadiene and styrene.

\* \* \* \* \*

*Adhesive*—

(i) A chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

(ii) The term does not include coatings or finishing materials.



\* \* \* \* \*

*Adhesive primer*—[ A ]

(i) A product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

(ii) For purposes of § 129.73 (relating to aerospace manufacturing and rework), a coating applied to an aerospace vehicle or component that does one of the following:

[ (i) ] (A) Inhibits corrosion and serves as a primer when applied to bare metal or other surfaces prior to adhesive application.

[ (ii) ] (B) Is applied to surfaces that can be expected to contain fuel, with the exception of fuel tanks.

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

\* \* \* \* \*

*Aerospace vehicle or component*—

[ A ] (i) For purposes of § 129.73, a fabricated part, processed part, assembly of parts or completed unit, with the exception of electronic components, of [ any ] an aircraft including[, but not limited to,] airplanes, helicopters, missiles, rockets and space vehicles.

(ii) For purposes of § 129.77 (relating to control of emissions from the use or application of adhesives, sealants, and primers and solvents) and Chapter 130, Subchapter D (relating to adhesives, sealants and primers and solvents), the fabricated part, assembly of parts or completed unit of an aircraft, helicopter, missile or space vehicle, including passenger safety equipment.

\* \* \* \* \*

*Architectural sealant or primer*—

(i) A sealant or sealant primer intended by the manufacturer to be applied to stationary architectural structures, including mobile homes, and their appurtenances.

(ii) Appurtenances to a stationary architectural structure include hand railings, cabinets, bathroom and kitchen fixtures, fences, rain gutters and downspouts, and windows.

*As applied*—

(i) The VOC and solids content of a coating, adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent that is actually used to coat the substrate.

(ii) The term includes the contribution of materials used for in-house dilution of the coating.

*As supplied*—The VOC and solids content of a coating, adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent as sold and delivered to the end user.

\* \* \* \* \*

*Automotive glass adhesive primer*—An adhesive primer labeled by the manufacturer to be applied to automotive glass prior to installation of the glass

using an adhesive or sealant. This primer improves the adhesion to pinch weld and blocks ultraviolet light.

\* \* \* \* \*

*CPVC plastic or chlorinated polyvinyl chloride plastic*—A polymer of the vinyl chloride monomer that contains 67% chlorine and is normally identified with a CPVC marking.

*CPVC welding adhesive or chlorinated polyvinyl chloride welding adhesive*—An adhesive labeled for welding of chlorinated polyvinyl chloride plastic.

\* \* \* \* \*

*Ceramic tile installation adhesive*—An adhesive intended by the manufacturer for use in the installation of ceramic tiles.

\* \* \* \* \*

*Cleanup solvent*—A VOC-containing material used for either of the following:

(i) To remove a loosely held, uncured (that is, not dry to the touch) adhesive or sealant from a substrate.

(ii) To clean equipment used in applying a material.

\* \* \* \* \*

*Computer diskette jacket manufacturing adhesive*—An adhesive intended by the manufacturer to glue the fold-over flaps to the body of a vinyl computer diskette jacket.

\* \* \* \* \*

*Contact bond adhesive*—

(i) An adhesive that meets all of the following:

(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.

\* \* \* \* \*

*Cove base*—A flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

*Cove base installation adhesive*—An adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

\* \* \* \* \*

*Cyanoacrylate adhesive*—

(i) For purposes of § 129.77 and Chapter 130, Subchapter D, an adhesive with a cyanoacrylate content of at least 95% by weight.

(ii) A fast-setting, single component adhesive that cures at room temperature.

(iii) The term is also known as “super glue.”

\* \* \* \* \*

*Diluent*—A diluting agent added to decrease the viscosity of a material.

\* \* \* \* \*

*Drywall installation*—The installation of gypsum drywall to studs or solid surfaces using an adhesive formulated for that purpose.

\* \* \* \* \*

*Exempt compound or exempt solvent*—Specified organic compounds that have been designated by the Administrator of the EPA as having negligible photochemical reactivity and are listed in 40 CFR 51.100 (relating to requirements for preparation, adoption and submittal of implementation plans).

\* \* \* \* \*

*Fiberglass*—For purposes of §§ 129.77 and 130.702 (relating to emission standards), a material consisting of extremely fine glass fibers. (Editor’s Note: A definition of this term was published for comment in the Pennsylvania Bulletin on April 19, 2008, in a proposed amendment to Chapter 129 (relating to standards for sources) concerning glass melting furnaces. The later of these two rulemakings to be published as a final rulemaking will include both definitions).

\* \* \* \* \*

*Flexible vinyl*—Nonrigid polyvinyl chloride plastic with at least 5% by weight plasticizer content.

\* \* \* \* \*

*Indoor floor covering installation adhesive*—

(i) An adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl backed carpet, resilient sheet and roll or artificial grass.

(ii) The term does not include adhesives used to install ceramic tile or perimeter bonded sheet flooring with vinyl backing onto a nonporous substrate like flexible vinyl.

\* \* \* \* \*

*Laminate*—A product made by bonding together two or more layers of material.

\* \* \* \* \*

*Low-solids adhesive, sealant or primer*—An adhesive, sealant, adhesive primer or sealant primer product that contains 120 grams or less of solids per liter of material.

\* \* \* \* \*

*Marine deck sealant or marine deck sealant primer*—A sealant or sealant primer labeled for application to wooden marine decks.

\* \* \* \* \*

*Medical equipment manufacturing*—The manufacture of medical devices including catheters, heart valves, blood cardioplegia machines, tracheostomy tubes, blood oxygenators and cardiatory reservoirs.

\* \* \* \* \*

*Metal to urethane/rubber molding or casting adhesive*—An adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products like rollers for computer printers or other paper handling equipment.

\* \* \* \* \*

*Multipurpose construction adhesive*—An adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile and acoustical tile.

\* \* \* \* \*

*Nonmembrane roof installation/repair adhesive*—

(i) An adhesive intended by the manufacturer for use in the installation or repair of nonmembrane roofs and that is not intended for the installation of prefabricated single-ply flexible roofing membrane.

(ii) The term includes:

- (A) Plastic or asphalt roof cement.
- (B) Asphalt roof coating.
- (C) Cold application cement.

\* \* \* \* \*

*Outdoor floor covering installation adhesive*—An adhesive intended by the manufacturer for use in the installation of floor covering that is both of the following:

- (i) Not in an enclosure.
- (ii) Exposed to ambient weather conditions during normal use.

\* \* \* \* \*

*PVC plastic or polyvinyl chloride plastic*—A polymer of the chlorinated vinyl monomer that contains 57% chlorine.

*PVC welding adhesive or polyvinyl chloride welding adhesive*—An adhesive intended by the manufacturer for use in the welding of polyvinyl chloride (PVC) plastic pipe.

\* \* \* \* \*

*Panel installation*—The installation of plywood, predecorated hardboard or tileboard, fiberglass reinforced plastic and similar predecorated or nondecorated panels to studs or solid surfaces using an adhesive formulated for that purpose.

\* \* \* \* \*

*Perimeter bonded sheet flooring installation*—The installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to 4 inches wide around the perimeter of the sheet flooring.

\* \* \* \* \*

**Plastic cement welding adhesive—**

(i) An adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

(ii) The term does not include the following welding adhesives:

- (A) ABS.
- (B) CPVC.
- (C) PVC.

**Plastic cement welding adhesive primer—**A primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

**Plastic foam—**Foam constructed of plastics.

**Plasticizer—**A material, like a high boiling point organic solvent, that is incorporated into a vinyl to increase its flexibility, workability or distensibility, as determined by ASTM Method E-260, including updates and revisions.

**Plastics—**Synthetic materials chemically formed by the polymerization of organic (carbon-based) substances. Plastics are usually compounded with modifiers, extenders or reinforcers and are capable of being molded, extruded, cast into various shapes and films or drawn into filaments.

\* \* \* \* \*

**Porous material—**A substance that has tiny openings, often microscopic, into or from which fluids may be absorbed or discharged, including wood, paper and corrugated paperboard.

\* \* \* \* \*

**Propellant—**A fluid under pressure that expels the contents of a container when a valve is opened.

\* \* \* \* \*

**Reactive diluent—**A liquid reactive organic compound in an uncured adhesive, sealant or primer that reacts chemically or physically during the curing process to become an integral part of a finished material.

\* \* \* \* \*

**Roadway sealant—**A sealant intended by the manufacturer for application to public streets, highways and other surfaces, including curbs, berms, driveways and parking lots.

\* \* \* \* \*

**Rubber—**A natural or manmade rubber substrate, including styrene-butadiene rubber, polychloroprene (neoprene) rubber, butyl rubber, nitrile rubber, chlorosulfonated polyethylene rubber and ethylene propylene diene terpolymer rubber.

\* \* \* \* \*

**SCAQMD—South Coast Air Quality Management District—**The California regional government agency responsible for air pollution control in Los Angeles and Orange counties and parts of Riverside and San Bernardino counties.

\* \* \* \* \*

**Sealant—**

(i) For purposes of § 129.73:

(A) A material used to prevent the intrusion of water, fuel, air or other liquids or solids from certain areas of aerospace vehicles or components.

[ (ii) ] (B) There are two categories of sealants:

[ (A) ] (I) Extrudable/rollable/brushable sealants.

[ (B) ] (II) Sprayable sealants.

(ii) For purposes of § 129.77 and Chapter 130, Subchapter D:

(A) A material with adhesive properties that is formulated primarily to fill, seal, waterproof or weatherproof gaps or joints between two surfaces.

(B) The term includes caulks.

**Sealant primer—**A product intended by the manufacturer for application to a substrate, prior to the application of a sealant, to enhance the bonding surface.

\* \* \* \* \*

**Sheet rubber installation—**

(i) The process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion.

(ii) The term includes laminating sheet rubber to fabric by hand.

\* \* \* \* \*

**Single-ply roof membrane—**A prefabricated single sheet of rubber, normally ethylene propylene diene terpolymer, that is field applied to a building roof using one layer of membrane material.

**Single-ply roof membrane adhesive primer—**A primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

**Single-ply roof membrane installation and repair adhesive—**An adhesive labeled for use in the installation or repair of single-ply roof membrane. For purposes of this definition:

(i) Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes and ducts that protrude through the membrane.

(ii) Repair includes gluing the edges of torn membrane together, attaching a patch over a hole and reapplying flashings to vents, pipes or ducts installed through the membrane.

**Single-ply roof membrane sealant—**A sealant labeled for application to single-ply roof membrane.

\* \* \* \* \*

**Solvent—**Organic compounds which are liquid at standard conditions and which are used as diluents, thinners, dissolvers, viscosity reducers [ or ], cleaning agents or other related uses.

\* \* \* \* \*

**Structural glazing adhesive—**An adhesive intended by the manufacturer to apply glass, ceramic, metal, stone or composite panels to exterior building frames.

\* \* \* \* \*

**Subfloor installation—**The installation of subflooring material over floor joists, including the

**construction of load bearing joists. Subflooring material is covered by a finish surface material.**

\* \* \* \* \*

**Surface preparation solvent—A solvent used to remove dirt, oil and other contaminants from a substrate prior to the application of an adhesive, sealant, adhesive primer or sealant primer.**

\* \* \* \* \*

**Thin metal laminating adhesive—An adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line is less than 0.25 mils.**

\* \* \* \* \*

**Tire repair—A process that includes both of the following steps:**

(i) Expanding a hole, tear, fissure or blemish in a tire casing by grinding or gouging.

(ii) Applying adhesive and filling the expanded hole, tear, fissure or blemish with rubber.

**Tire tread adhesive—An adhesive intended by the manufacturer for one or more of the following applications:**

(i) To the back of precure tread rubber and to the casing and cushion rubber.

(ii) To seal buffed tire casings to prevent oxidation while the tire is being prepared for a new tread.

\* \* \* \* \*

**Traffic marking tape—Preformed reflective film intended by the manufacturer for application to public streets, highways and other surfaces, including curbs, berms, driveways and parking lots.**

**Traffic marking tape adhesive primer—A primer intended by the manufacturer for application to surfaces prior to installation of traffic marking tape.**

\* \* \* \* \*

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

\* \* \* \* \*

**Waterproof resorcinol glue—A two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.**

\* \* \* \* \*

**CHAPTER 129. STANDARDS FOR SOURCES**

**SOURCES OF VOCs**

(Editor's Note: Section 129.77 is new and printed in regular type to enhance readability.)

**§ 129.77. Control of emissions from the use or application of adhesives, sealants, primers and solvents.**

(a) This section applies to the owner or operator of a facility that uses or applies one or more of the following on or after April 15, 2010:

(1) An adhesive, sealant, adhesive primer or sealant primer subject to the emission standards in Table V.

(2) An adhesive or sealant product applied to the listed substrate subject to the emission standards in Table VI.

(3) A surface preparation solvent or cleanup solvent.

(b) On or after April 15, 2010, an owner or operator of a facility may not use or apply at the facility an adhesive, sealant, adhesive primer or sealant primer that exceeds the applicable VOC content limit in Table V or VI, except as provided elsewhere in this section.

(c) On or after April 15, 2010, an owner or operator of a facility may not use or apply at the facility a surface preparation or cleanup solvent that exceeds the applicable VOC content limit or composite vapor pressure requirements of this section, except as provided elsewhere in this section.

(d) The VOC content limits in Table VI for adhesives or sealants applied to particular substrates apply as follows:

(1) If an owner or operator uses an adhesive or sealant subject to a specific VOC content limit in Table V, the specific limit is applicable rather than the adhesive-to-substrate limit in Table VI.

(2) If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content is the limit for this use.

(e) An owner or operator subject to this section using a surface preparation solvent or cleanup solvent may not:

(1) Except as provided in paragraph (2) for single-ply roof membrane, use materials containing VOCs for surface preparation, unless the VOC content of the surface preparation solvent is less than 70 grams per liter of material or 0.6 pound of VOC per gallon of material.

(2) Use materials containing VOCs for surface preparation or cleanup when applying single-ply roof membrane, unless the composite vapor pressure, excluding water and exempt compounds, of the surface preparation solvent or cleanup solvent is less than or equal to 45 mm mercury at 20° C.

(3) Except as provided in subsection (f), use cleanup solvent materials containing VOCs for the removal of adhesives, sealants, adhesive primers or sealant primers from surfaces, other than from the parts of spray application equipment, unless the composite vapor pressure of the solvent is less than or equal to 45 mm mercury at 20° C.

(f) Removal of an adhesive, sealant, adhesive primer or sealant primer from the parts of spray application equipment shall be performed by one or more of the following methods:

(1) Using an enclosed cleaning system, or an equivalent cleaning system as determined by the test method identified in subsection (z).

(2) Using a solvent with a VOC content less than or equal to 70 grams of VOC per liter of material or 0.6 pound of VOC per gallon of material.

(3) Soaking parts containing dried adhesive in a solvent if the composite vapor pressure of the solvent, excluding water and exempt compounds, is less than or equal to 9.5 mm mercury at 20° C and the parts and solvent are in a closed container that remains closed except when adding parts to or removing parts from the container.

(g) An owner or operator using an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent subject to the emission standard requirements of this section through the use of add-on air pollution control equipment if the following requirements are met:

(1) The VOC emissions from the use of all noncomplying as applied adhesives, sealants, adhesive primers, sealant primers, surface preparation solvents and cleanup solvents subject to the emission standard requirements of this section are reduced by an overall efficiency of at least 85%, by weight.

(i) The capture efficiency of the system must be determined in accordance with subsection (y)(1).

(ii) The control efficiency of the system must be determined in accordance with subsection (y)(2).

(2) The combustion temperature is continuously monitored and recorded if a thermal incinerator is operated.

(3) Inlet and exhaust gas temperatures are continuously monitored and recorded if a catalytic incinerator is operated.

(4) Control device efficiency is monitored continuously if a carbon absorber or control device other than a thermal or catalytic incinerator is operated.

(5) Operation records sufficient to demonstrate compliance with the requirements of this section are maintained in accordance with subsections (p), (q) and (r).

(6) The control equipment is approved, in writing, by the Department in an operating permit.

(h) A person using an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent subject to this section shall store or dispose of all absorbent materials, including cloth or paper, which are moistened with adhesives, sealants, primers, surface preparation solvents or cleanup solvents subject to this section, in nonabsorbent containers that are kept closed except when placing materials in or removing materials from the container.

(i) A person may not solicit, require the use of or specify the application of an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent if the use or application would result in a violation of this section. The prohibition of this subsection applies to all written or oral contracts under which an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent subject to this section is to be used at a location in this Commonwealth.

(j) A person who applies or solicits the application of an adhesive, sealant, adhesive primer or sealant primer subject to this section may not add solvent to the adhesive, sealant, adhesive primer or sealant primer in an amount in excess of the manufacturer's recommendation for application, if this addition causes the adhesive, sealant, adhesive primer or sealant primer to exceed the applicable VOC content limit listed in Table V or VI, unless the emissions are controlled through the use of add-on air pollution control equipment as specified in subsection (g).

(k) This section does not apply to the use or application of the following compounds or products:

(1) Adhesives, sealants, adhesive primers or sealant primers being tested or evaluated in a research and

development, quality assurance or analytical laboratory, if records are maintained as required in subsections (q) and (r).

(2) Adhesives, sealants, adhesive primers or sealant primers that are subject to §§ 129.51, 129.52, 129.67, 129.73, 129.75, 129.101—129.107 or Chapter 130, Subchapter B or C (relating to consumer products; and architectural and industrial maintenance coatings).

(3) Adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and less exempt compounds, as applied.

(4) Cyanoacrylate adhesives.

(5) Adhesives, sealants, adhesive primers or sealant primers that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less, or a net weight of 1 pound or less, except plastic cement welding adhesives and contact adhesives.

(6) Contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of 1 gallon or less.

(l) This section does not apply to the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation solvents or cleanup solvents in the following operations:

(1) Tire repair operations, if the label of the adhesive states, "For tire repair only."

(2) The assembly, repair and manufacture of aerospace components or undersea-based weapons systems.

(3) The manufacture of medical equipment.

(4) Plaque laminating operations in which adhesives are used to bond clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992. An owner or operator claiming an exemption under this paragraph shall record and maintain operational records sufficient to demonstrate compliance with this exemption, in accordance with subsections (p)—(r).

(m) This section applies to the use or application of single-ply roof membrane installation or repair adhesive, single-ply roof membrane sealant and single-ply roof membrane adhesive primer on the following schedule:

(1) For the years 2010 and 2011, from April 15 through October 15.

(2) On and after January 1, 2012.

(n) This section does not apply if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the facility are less than 200 pounds or an equivalent volume, per calendar year. An owner or operator claiming exemption under this subsection shall record and maintain operational records sufficient to demonstrate compliance with this exemption, in accordance with subsections (p)—(r).

(o) This section does not apply to the use of a noncomplying adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent if the total volume of noncomplying adhesives, sealants, primers, surface preparation and cleanup solvents applied facility-wide does not exceed 55 gallons per calendar year. An owner or operator claiming exemption under this subsection shall record and maintain operational records sufficient to demonstrate compliance with this exemption, in accordance with subsections (p)—(r).

(p) Except as provided in subsection (q), each owner or operator subject to this section shall maintain records demonstrating compliance with this section, including the following information:

(1) A list of each adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent and cleanup solvent product in use and in storage.

(2) A data sheet or material list which provides the product name, manufacturer identification and use or material application for each product included on the list required under paragraph (1).

(3) The VOC content of each product on the list required under paragraph (1), as supplied.

(4) Catalysts, reducers or other components used and the mix ratio.

(5) The VOC content or vapor pressure of each product on the list required by paragraph (1), as applied, if solvent or other VOC is added to the product before application.

(6) The volume used of each product on the list required under paragraph (1).

(q) For an adhesive, sealant, adhesive primer and sealant primer product subject to the laboratory testing exemption of subsection (k)(1), the person conducting the testing shall make and maintain records of all products used, including the following information:

(1) The product name.

(2) The product category of the material or type of application.

(3) The VOC content of the material.

(r) Records made to determine compliance with this section shall be:

(1) Maintained onsite for at least 5 years from the date the record is created.

(2) Made available to the Department upon request.

(s) Except as provided in subsections (u)—(w), the VOC and solids content of all nonaerosol adhesives, sealants, adhesive primers, sealant primers, surface preparation solvents and cleanup solvents shall be determined using one of the following:

(1) EPA Reference Method 24, *Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings*, found at 40 CFR 60, Subpart D, Appendix A, including updates and revisions.

(2) SCAQMD Method 304, *Determination of Volatile Organic Compounds (VOC) in Various Materials*, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(t) The identity and concentration of exempt organic compounds shall be determined using one of the following:

(1) ASTM D4457, *Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph*, ASTM International, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959 USA including updates and revisions.

(2) SCAQMD Method 303, *Determination of Exempt Compounds*, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(u) The VOC content of a plastic cement welding adhesive or primer shall be determined using SCAQMD Method 316A, *Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings*, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(v) To determine if a diluent is a reactive diluent, the percentage of the reactive organic compound that becomes an integral part of the finished materials shall be determined using SCAQMD Method 316A, *Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings*, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(w) The composite vapor pressure of organic compounds in cleaning materials shall be determined by the following procedure:

(1) Quantifying the amount of each compound in the blend using gas chromatographic analysis, using the following methods:

(i) ASTM E260, *Standard Practice for Packed Column Gas Chromatography*, ASTM International, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959 USA, for organic content, including updates and revisions.

(ii) ASTM D3792, *Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph*, ASTM International, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959 USA, for water content, including updates and revisions.

(2) Calculating the composite vapor pressure using the following equation:

$$Pp_c = \frac{\sum_{i=1}^n (W_i) (VP_i)/Mw_i}{W_w/Mw_w + \sum_{i=1}^n W_e/Mw_e + \sum_{i=1}^n W_i/Mw_i}$$

Where:

$Pp_c$  = VOC composite partial pressure at 20° C, in mm mercury.

$W_i$  = Weight of the “i”th VOC compound, in grams, as determined by ASTM E260.

$W_w$  = Weight of water, in grams, as determined by ASTM D3792.

$W_e$  = Weight of the “i”th exempt compound, in grams, as determined by ASTM E260.

$Mw_i$  = Molecular weight of the “i”th VOC compound, in grams per g-mole, as given in chemical reference literature.

$Mw_w$  = Molecular weight of water, 18 grams per g-mole.

$Mw_e$  = Molecular weight of the “i”th exempt compound, in grams per g-mole, as given in chemical reference literature.

$VP_i$  = Vapor pressure of the “i”th VOC compound at 20° C, in mm mercury, as determined by subsection (x).

(x) The vapor pressure of each single component compound may be determined from one or more of the following:

(1) ASTM D2879, *Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isotenoscope*, ASTM International, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959 USA, including updates and revisions.

(2) The most recent edition of one or more of the following sources:

(i) *Vapour Pressures of Pure Substances*, Boublik, Elsevier Scientific Publishing Company, New York.

(ii) *Perry's Chemical Engineers' Handbook*, Green and Perry, McGraw-Hill Book Company.

(iii) *CRC Handbook of Chemistry and Physics*, CRC Press.

(iv) *Lange's Handbook of Chemistry*, McGraw-Hill Book Company.

(v) Additional sources approved by the SCAQMD or other California air districts.

(y) If air pollution control equipment is used to meet the requirements of this section, the owner or operator shall make both of the following determinations:

(1) The measurement of capture efficiency shall be conducted and reported in accordance with the EPA Technical Document "*Guidelines for Determining Capture Efficiency*," issued January 9, 1995.

(2) The control efficiency shall be determined in accordance with one of the following:

(i) EPA Reference Method 25, *Determination of Total Gaseous Nonmethane Organic Emissions as Carbon*, found at 40 CFR 60, Subpart D, Appendix A, including updates and revisions.

(ii) EPA Reference Method 25A, *Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer*, found at 40 CFR 60, Subpart D, Appendix A, including updates and revisions.

(iii) EPA Reference Method 25B, *Determination of Total Gaseous Organic Concentration Using a Nondispersive Infrared Analyzer*, found at 40 CFR 60, Subpart D, Appendix A, including updates and revisions.

(iv) CARB Method 100, *Procedures for Continuous Gaseous Emission Stack Sampling*, California Air Resources Board, 1001 "I" Street, Post Office Box 2815, Sacramento, CA 95812 USA, including updates and revisions.

(z) The active and passive solvent losses from the use of an enclosed spray gun cleaning system or equivalent cleaning system, as listed in subsection (f)(1), shall be determined using the SCAQMD method, *General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems*, dated October 3, 1989, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(1) The test solvent for this determination shall be a lacquer thinner with a minimum vapor pressure of 105 mm of mercury at 20° C.

(2) The minimum test temperature shall be 15° C.

(aa) For adhesive, sealant, adhesive primer or sealant primer products that do not contain reactive diluents, grams of VOC per liter of product thinned to the manufacturer's recommendation, less water and exempt compounds, shall be calculated according to the following equation:

Grams of VOC per liter of product, as applied =

$$\frac{Ws - Ww - We}{Vm - Vw - Ve}$$

Where:

$Ws$  = weight of volatile compounds, in grams.

$Ww$  = weight of water, in grams.

$We$  = weight of exempt compounds, in grams.

$Vm$  = volume of material, in liters.

$Vw$  = volume of water, in liters.

$Ve$  = volume of exempt compounds, in liters.

(bb) For adhesive, sealant, adhesive primer or sealant primer products that contain reactive diluents, the VOC content of the product is determined after curing. The grams of VOC per liter of product thinned to the manufacturer's recommendation, less water and exempt compounds, shall be calculated according to the following equation:

Grams of VOC per liter of product, as applied =

$$\frac{Wrs - Wrw - Wre}{Vrm - Vrw - Vre}$$

Where:

$Wrs$  = weight of volatile compounds not consumed during curing, in grams.

$Wrw$  = weight of water not consumed during curing, in grams.

$Wre$  = weight of exempt compounds not consumed during curing, in grams.

$Vrm$  = volume of material not consumed during curing, in liters.

$Vrw$  = volume of water not consumed during curing, in liters.

$Vre$  = volume of exempt compounds not consumed during curing, in liters.

(cc) For low-solids adhesive, sealant, adhesive primer or sealant primer products, grams of VOC per liter of product thinned to the manufacturer's recommendation, including the volume of water and exempt compounds, shall be calculated according to the following equation:

Grams of VOC per liter of product, as applied =

$$\frac{Ws - Ww - We}{Vm}$$

Where:

$Ws$  = weight of volatile compounds, in grams.

$Ww$  = weight of water, in grams.

$We$  = weight of exempt compounds, in grams.

$Vm$  = volume of material, in liters.

(dd) Percent VOC by weight shall be calculated according to the following equation:

$$\% \text{ VOC by weight} = [(Wv / W)] \times 100$$

Where:

$Wv$  = weight of VOCs in grams.

$W$  = weight of material in grams.

(ee) To convert from grams per liter (g/l) to pounds per gallon (lb/gal), multiply the result (VOC content) by  $8.345 \times 10^{-3}$  (lb/gal/g/l).

**Table V. VOC Content Limits for Adhesives, Sealants, Adhesive Primers and Sealant Primers, As Applied**

<i>Adhesive, sealant, adhesive primer or sealant primer category</i>	<i>VOC content limits (pounds VOC per gallon, less water and exempt compounds)*</i>	<i>VOC content limit (grams VOC per liter, less water and exempt compounds)*</i>
<b>Adhesives</b>		
ABS welding	3.3	400
Ceramic tile installation	1.1	130
Computer diskette jacket manufacturing	7.1	850
Contact bond	2.1	250
Cove base installation	1.3	150
CPVC welding	4.1	490
Indoor floor covering installation	1.3	150
Metal to urethane/rubber molding or casting	7.1	850
Multipurpose construction	1.7	200
Nonmembrane roof installation/repair	2.5	300
Outdoor floor covering installation	2.1	250
Perimeter bonded sheet vinyl flooring installation	5.5	660
Plastic cement welding, other than ABS, CPVC or PVC welding	4.3	510
PVC welding	4.3	510
Sheet rubber installation	7.1	850
Single-ply roof membrane installation/repair	2.1	250
Structural glazing	0.8	100
Thin metal laminating	6.5	780
Tire retread	0.8	100
Waterproof resorcinol glue	1.4	170
<b>Sealants</b>		
Architectural	2.1	250
Marine deck	6.3	760
Nonmembrane roof installation/repair	2.5	300
Roadway	2.1	250
Single-ply roof membrane	3.8	450
Other	3.5	420
<b>Adhesive Primers</b>		
Automobile glass	5.8	700
Plastic cement welding	5.4	650
Single-ply roof membrane	2.1	250
Traffic making tape	1.3	150
Other	2.1	250
<b>Sealant Primers</b>		
Marine deck	6.3	760
Nonporous architectural	6.5	775
Porous architectural	2.1	250
Other	6.3	750

\*The VOC content is determined as the weight of VOC per volume of product, less water and exempt compounds, as specified in subsections (aa) and (bb) or as the weight of VOC per volume of product, as specified in subsection (cc).



**Table VI. VOC Content Limits for Adhesive or Sealant Products Applied to Particular Substrates, As Applied**

<i>Adhesive or Sealant Products Applied to the Listed Substrate</i>	<i>VOC content limit (pounds VOC per gallon, less water and exempt compounds)*</i>	<i>VOC content limit (grams VOC per liter, less water and exempt compounds)*</i>
Fiberglass	1.7	200
Flexible vinyl	2.1	250
Metal	0.3	30
Porous material	1.0	120
Rubber	2.1	250
Other substrates	2.1	250

\*The VOC content is determined as the weight of VOC per volume of product, less water and exempt compounds, as specified in subsections (aa) and (bb) or as the weight of VOC per volume of product, as specified in subsection (cc).

## CHAPTER 130. STANDARDS FOR PRODUCTS

(Editor's Note: Subchapter D is new and printed in regular type to enhance readability.)

### Subchapter D. ADHESIVES, SEALANTS, PRIMERS AND SOLVENTS

#### GENERAL PROVISIONS

Sec.

- 130.701. Applicability.
- 130.702. Emission standards.
- 130.703. Exemptions and exceptions.
- 130.704. Recordkeeping requirements.
- 130.705. Compliance procedures and test methods.
- 130.706. Container labeling.

#### § 130.701. Applicability.

(a) Except as provided in § 130.703 (relating to exemptions and exceptions), this subchapter applies to a person who, on or after April 15, 2010, sells, supplies, offers for sale or manufactures for sale for use in this Commonwealth one or more of the following products subject to this subchapter:

- (1) An adhesive, sealant, adhesive primer or sealant primer product.
- (2) An adhesive or sealant product applied to particular substrates.
- (3) A surface preparation solvent or cleanup solvent product.

(b) Except as provided in § 130.703, this subchapter applies to a person who, on or after April 15, 2010, uses or applies for compensation within this Commonwealth one or more of the following products subject to this subchapter:

- (1) An adhesive, sealant, adhesive primer or sealant primer product.
- (2) An adhesive or sealant product applied to particular substrates.
- (3) A surface preparation solvent or cleanup solvent product.

#### § 130.702. Emission standards.

(a) Except as provided in § 130.703 (relating to exemptions and exceptions), on and after April 15, 2010, a person may not sell, supply, offer for sale or manufacture for sale for use in this Commonwealth one or more of the following products subject to this subchapter:

- (1) An adhesive, sealant, adhesive primer, or sealant primer product manufactured on or after April 15, 2010,

which contains VOCs in excess of the applicable VOC content limits specified in Table I.

(2) An adhesive or sealant product manufactured on or after April 15, 2010, applied to particular substrates, which contains VOCs in excess of the applicable VOC content limits specified in Table II.

(b) Except as provided in § 130.703, on and after April 15, 2010, a person may not use or apply for compensation within this Commonwealth one or more of the following products subject to this subchapter:

(1) An adhesive, sealant, adhesive primer or sealant primer product which contains VOCs in excess of the applicable VOC content limits specified in Table I.

(2) An adhesive or sealant product applied to particular substrates which contains VOCs in excess of the applicable VOC content limits specified in Table II.

(c) On and after April 15, 2010, the VOC content limits in Table II for adhesives or sealants applied to particular substrates apply as follows:

(1) If a person uses an adhesive or sealant subject to a specific VOC content limit in Table I, the specific limit is applicable rather than the adhesive-to-substrate limit in Table II.

(2) If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content is the limit for this use.

(d) On and after April 15, 2010, a person subject to this subchapter using a surface preparation solvent or cleanup solvent may not:

(1) Except as provided in paragraph (2) for single-ply roof membrane, use materials containing VOCs for surface preparation, unless the VOC content of the surface preparation solvent is less than 70 grams per liter of material or 0.6 pound of VOC per gallon of material.

(2) If a surface preparation solvent is used in applying single-ply roof membrane, use materials containing VOCs for surface preparation, unless the composite vapor pressure, excluding water and exempt compounds, of the surface preparation solvent is less than or equal to 45 mm mercury at 20° C.

(3) Except as provided in subsection (e), use materials containing VOCs for the removal of adhesives, sealants or adhesive or sealant primers from surfaces, other than from the parts of spray application equipment, unless the composite vapor pressure of the solvent used is less than or equal to 45 mm mercury at 20° C.

(e) On and after April 15, 2010, the removal of an adhesive, sealant, adhesive primer or sealant primer from the parts of spray application equipment shall be performed by one or more of the following methods:

(1) Using an enclosed cleaning system or equivalent cleaning system, as determined by the test method identified in § 130.705(g) (relating to compliance procedures and test methods).

(2) Using a solvent with a VOC content less than or equal to 70 grams of VOC per liter of material or 0.6 pound of VOC per gallon of material.

(3) Soaking parts containing dried adhesive in a solvent if the composite vapor pressure of the solvent, excluding water and exempt compounds, is less than or equal to 9.5 mm mercury at 20° C and the parts and solvent are in a closed container that remains closed except when adding parts to or removing parts from the container.

(f) On and after April 15, 2010, a person using adhesives, sealants, adhesive primers, sealant primers, surface preparation solvents or cleanup solvents subject to this subchapter shall store or dispose of all absorbent materials, including cloth or paper, which are moistened with

adhesives, sealants, primers or solvents subject to this subchapter, in nonabsorbent containers that are kept closed except when placing materials in or removing materials from the container.

(g) On and after April 15, 2010, a person may not solicit, require the use of or specify the application of an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent if the use or application would result in a violation of this subchapter. The prohibition of this subsection applies to all written or oral contracts under which an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent subject to this subchapter is to be used at a location in this Commonwealth.

(h) On and after April 15, 2010, a person who applies or solicits the application of an adhesive, sealant, adhesive primer or sealant primer subject to the requirements of this subsection may not add solvent to the adhesive, sealant, adhesive primer or sealant primer in an amount in excess of the manufacturer's recommendation for application, if this addition causes the adhesive, sealant, adhesive primer or sealant primer to exceed the applicable VOC content limit listed in Table I or II.

**Table I. VOC Content Limits for Adhesives, Sealants, Adhesive Primers and Sealant Primers, As Applied**

<i>Adhesive, sealant, adhesive primer or sealant primer category</i>	<i>VOC content limit (pounds VOC per gallon, less water and exempt compounds)*</i>	<i>VOC content limit (grams VOC per liter, less water and exempt compounds)*</i>
<b>Adhesives</b>		
ABS welding	3.3	400
Ceramic tile installation	1.1	850
Computer diskette jacket manufacturing	7.1	850
Contact bond	2.1	250
Cove base installation	1.3	150
CPVC welding	4.1	490
Indoor floor covering installation	1.3	150
Metal to urethane/rubber molding or casting	7.1	850
Multipurpose construction	1.7	200
Nonmembrane roof installation/repair	2.5	300
Outdoor floor covering installation	2.1	250
Perimeter bonded sheet vinyl flooring installation	5.5	660
Plastic cement welding, other than ABS, CPVC or PVC welding	4.3	510
PVC welding	4.3	510
Sheet rubber installation	7.1	850
Single-ply roof membrane installation/repair	2.1	250
Structural glazing	0.8	100
Thin metal laminating	6.5	780
Tire retread	0.8	100
Waterproof resorcinol glue	1.4	170
<b>Sealants</b>		
Architectural	2.1	250
Marine deck	6.3	760
Nonmembrane roof installation/repair	2.5	300
Roadway	2.1	250

<i>Adhesive, sealant, adhesive primer or sealant primer category</i>	<i>VOC content limits (pounds VOC per gallon, less water and exempt compounds)*</i>	<i>VOC content limit (grams VOC per liter, less water and exempt compounds)*</i>
Single-ply roof membrane	3.7	450
Other	3.5	420
<b>Adhesive Primers</b>		
Automotive glass	5.8	700
Plastic cement welding	5.4	650
Single-ply roof membrane	2.1	250
Traffic marking tape	1.3	150
Other	2.1	250
<b>Sealant Primers</b>		
Marine deck	6.3	760
Nonporous architectural	2.1	250
Porous architectural	6.5	775
Other	6.3	760

\*The VOC content is determined as the weight of VOC per volume of product, less water and exempt compounds, as specified in § 130.705(h) and (i) or as the weight of VOC per volume of product, as specified in § 130.705(j).

**Table II. VOC Content Limits for Adhesives or Sealant**

<i>Adhesive or Sealant Products Applied to the Listed Substrate</i>	<i>VOC content limit (pounds VOC per gallon, less water and exempt compounds)*</i>	<i>VOC content limit (grams VOC per liter, less water and exempt compounds)*</i>
Fiberglass	1.7	200
Flexible vinyl	2.1	250
Metal	0.3	30
Porous material	1.0	120
Rubber	2.1	250
Other substrates	2.1	250

\*The VOC content is determined as the weight of VOC per volume of product, less water and exempt compounds, as specified in § 130.705(h) and (i) or as the weight of VOC per volume of product, as specified in § 130.705(j).

**§ 130.703. Exemptions and exceptions.**

(a) This subchapter does not apply to the use or sale of the following compounds or products:

(1) Adhesives, sealants, adhesive primers or sealant primers being tested or evaluated in a research and development, quality assurance or analytical laboratory, if records are maintained as required under § 130.704 (relating to recordkeeping requirements).

(2) Adhesives, sealants, adhesive primers or sealant primers that are subject to §§ 129.51, 129.52, 129.67, 129.73, 129.75, 129.101—129.107 or Chapter 130, Subchapter B or C (relating to consumer products; and architectural and industrial maintenance coatings).

(3) Adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and less exempt compounds, as applied.

(4) Cyanoacrylate adhesives.

(5) Adhesives, sealants, adhesive primers or sealant primers that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less, or a net weight of 1 pound or less, except plastic cement welding adhesives and contact adhesives.

(6) Contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of 1 gallon or less.

(b) This subchapter does not apply to the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation solvents or cleanup solvents in the following operations:

(1) Tire repair operations, if the label of the adhesive states, "For tire repair only."

(2) The assembly, repair and manufacture of aerospace components or undersea-based weapons systems.

(3) The manufacture of medical equipment.

(4) Plaque laminating operations in which adhesives are used to bond clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992. A person claiming an exemption under this paragraph shall record and maintain operational records sufficient to demonstrate compliance with this exemption, in accordance with § 130.704.

(c) This subchapter does not apply to the use or application of single-ply roof membrane installation or repair adhesive, single-ply roof membrane sealant and single-ply roof membrane adhesive primer prior to April

15, 2010. This subchapter applies to the use and application of these products on the following schedule:

(1) For the years 2010 and 2011, from April 15 through October 15.

(2) On and after January 1, 2012.

(d) This subchapter does not apply to the sale, supply, offer for sale or manufacture for sale of a single-ply roof membrane installation or repair adhesive, single-ply roof membrane sealant or single-ply roof membrane adhesive primer prior to January 1, 2012.

(e) Section 130.702(a)—(e) (relating to emission standards) does not apply if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the facility are less than 200 pounds or an equivalent volume, per calendar year. A person claiming exemption under this paragraph shall record and maintain operational records sufficient to demonstrate compliance with this exemption, in accordance with § 130.704.

(f) Section 130.702(a)—(e) does not apply to the use of a noncomplying adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent if the total volume of noncomplying adhesives, sealants, primers, surface preparation solvents and cleanup solvents applied facility-wide does not exceed 55 gallons per calendar year. A person claiming exemption under this subsection shall record and maintain operational records sufficient to demonstrate compliance with this exemption, in accordance with § 130.704.

(g) This subchapter does not apply to an adhesive, sealant, adhesive primer or sealant primer product that does not comply with § 130.702 if the manufacturer or distributor of the noncomplying product makes and keeps records demonstrating both of the following:

(1) The noncomplying adhesive, sealant, adhesive primer or sealant primer product is intended for shipment and use outside of this Commonwealth.

(2) The manufacturer or distributor has taken reasonably prudent precautions to assure that the noncomplying adhesive, sealant, adhesive primer or sealant primer product is not distributed to or within this Commonwealth.

(h) The exemption in subsection (g) does not apply to an adhesive, sealant, adhesive primer or sealant primer product that is sold, supplied or offered for sale by a person to a retail outlet in this Commonwealth.

(i) This subchapter does not apply to an adhesive, sealant, adhesive primer or sealant primer product that is sold or supplied for use or application at a facility subject to the requirements of § 129.77 (relating to control of emissions from the use or application of adhesives, sealants and primers).

(j) Sections 130.704 and 130.705 (relating to compliance procedures and test methods) do not apply to the use of an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent at a private residence for a noncommercial purpose.

#### § 130.704. Recordkeeping requirements.

(a) On and after April 15, 2010, a person who sells, supplies, offers for sale or manufactures for sale for use in this Commonwealth an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent product subject to this subchapter shall maintain records demonstrating compliance with this subchapter, including the following information:

(1) A data sheet or material list which provides the material name, manufacturer identification and material application for each product.

(2) The VOC content of each product, as supplied.

(3) The number of gallons of product sold in this Commonwealth.

(b) On and after April 15, 2010, a person who uses or applies an adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent product subject to this subchapter shall maintain records demonstrating compliance with this subchapter, including the following information:

(1) A list of each adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent and cleanup solvent product in use and in storage.

(2) A data sheet or material list which provides the product name, manufacturer identification and use or material application for each product included on the list required under paragraph (1).

(3) The VOC content of each product on the list required under paragraph (1), as supplied.

(4) Catalysts, reducers or other components used and the mix ratio.

(5) The VOC content or vapor pressure of each product on the list required under paragraph (1), as applied, if solvent or other VOC is added to the product before application.

(6) The volume used of each product on the list required under paragraph (1).

(c) For an adhesive, sealant, adhesive primer and sealant primer product subject to the laboratory testing exemption of § 130.703(a)(1) (relating to exemptions and exceptions), on and after April 15, 2010, the person conducting the testing shall make and maintain records of all materials used, including the following information:

(1) The product name.

(2) The product category of the material or type of application.

(3) The VOC content of the material.

(d) Records made to determine compliance with this subchapter shall be:

(1) Maintained for at least 5 years from the date the record is created.

(2) Made available to the Department upon request.

#### § 130.705. Compliance procedures and test methods.

(a) Except as provided in subsections (c)—(e), the VOC and solids content of all nonaerosol adhesives, sealants, adhesive primers, sealant primers, surface preparation solvents and cleanup solvents shall be determined using one of the following:

(1) EPA Reference Method 24, *Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings*, found at 40 CFR 60, Subpart D, Appendix A, including updates and revisions.

(2) SCAQMD Method 304, *Determination of Volatile Organic Compounds (VOC) in Various Materials*, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(b) The identity and concentration of exempt organic compounds shall be determined using one of the following:

(1) ASTM D4457, *Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph*, ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959 USA, including updates and revisions.

(2) SCAQMD Method 303, *Determination of Exempt Compounds*, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(c) The VOC content of a plastic cement welding adhesive or primer shall be determined using SCAQMD Method 316A, *Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings*, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(d) To determine if a diluent is a reactive diluent, the percentage of the reactive organic compound that becomes an integral part of the finished materials shall be determined using SCAQMD Method 316A, *Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings*, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(e) The composite vapor pressure of organic compounds in cleaning materials shall be determined by the following procedure:

(1) Quantifying the amount of each compound in the blend using gas chromatographic analysis, using the following methods:

(i) ASTM E260, *Standard Practice for Packed Column Gas Chromatography*, ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959 USA, for organic content, including updates and revisions.

(ii) ASTM D3792, *Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph*, ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959 USA, for water content, including updates and revisions.

(2) Calculating the composite vapor pressure using the following equation:

$$Pp_c = \frac{\sum_{i=1}^n (W_i) (VP_i) / Mw_i}{W_w / Mw_w + \sum_{i=1}^n W_e / Mw_e + \sum_{i=1}^n W_i / Mw_i}$$

Where:

$Pp_c$  = VOC composite partial pressure at 20° C, in mm Hg.

$W_i$  = Weight of the "i"th VOC compound, in grams, as determined by ASTM E260.

$W_w$  = Weight of water, in grams as determined by ASTM D3792.

$W_e$  = Weight of the "i"th exempt compound, in grams, as determined by ASTM E260.

$Mw_i$  = Molecular weight of the "i"th VOC compound, in grams per g-mole, as given in chemical reference literature.

$Mw_w$  = Molecular weight of water, 18 grams per g-mole.

$Mw_e$  = Molecular weight of the "i"th exempt compound, in grams per g-mole, as given in chemical reference literature.

$VP_i$  = Vapor pressure of the "i"th VOC compound at 20° C, in mm mercury, as determined by subsection (f).

(f) The vapor pressure of each single component compound may be determined from one or more of the following:

(1) ASTM D2879, *Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope*, ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959 USA, including updates and revisions.

(2) The most recent edition of one or more of the following sources:

(i) *Vapour Pressures of Pure Substances*, Boublik, Elsevier Scientific Publishing Company, New York.

(ii) *Perry's Chemical Engineers' Handbook*, Green and Perry, McGraw-Hill Book Company.

(iii) *CRC Handbook of Chemistry and Physics*, CRC Press.

(iv) *Lange's Handbook of Chemistry*, McGraw-Hill Book Company.

(v) Additional sources approved by the SCAQMD or other California air districts.

(g) The active and passive solvent losses from the use of an enclosed spray gun cleaning system or equivalent cleaning system, as listed in § 130.702(e)(1) (relating to emission standards), shall be determined using the SCAQMD method, *General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems*, dated October 3, 1989, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765 USA, including updates and revisions.

(1) The test solvent for this determination shall be a lacquer thinner with a minimum vapor pressure of 105 mm of mercury at 20° C.

(2) The minimum test temperature shall be 15° C.

(h) For adhesive, sealant or primer products that do not contain reactive diluents, grams of VOC per liter of product thinned to the manufacturer's recommendation, less water and exempt compounds, shall be calculated according to the following equation:

Grams of VOC per liter of product, as applied =

$$\frac{Ws - Ww - We}{Vm - Vw - Ve}$$

Where:

$Ws$  = weight of volatile compounds, in grams.

$Ww$  = weight of water, in grams.

$We$  = weight of exempt compounds, in grams.

$Vm$  = volume of material, in liters.

$Vw$  = volume of water, in liters.

$Ve$  = volume of exempt compounds, in liters.

(i) For adhesive, sealant or primer products that contain reactive diluents, the VOC content of the product is

determined after curing. The grams of VOC per liter of product thinned to the manufacturer's recommendation, less water and exempt compounds, shall be calculated according to the following equation:

$$\text{Grams of VOC per liter of product, as applied} = \frac{Wrs - Wrw - Wre}{Vrm - Vrw - Vre}$$

Where:

*Wrs* = weight of volatile compounds not consumed during curing, in grams.

*Wrw* = weight of water not consumed during curing, in grams.

*Wre* = weight of exempt compounds not consumed during curing, in grams.

*Vrm* = volume of material not consumed during curing, in liters.

*Vrw* = volume of water not consumed during curing, in liters.

*Vre* = volume of exempt compounds not consumed during curing, in liters.

(j) For low-solids adhesive, sealant or primer products, grams of VOC per liter of product thinned to the manufacturer's recommendation, including water and exempt compounds, shall be calculated according to the following equation:

$$\text{Grams of VOC per liter of product, as applied} = \frac{Ws - Ww - We}{Vm}$$

Where:

*Ws* = weight of volatile compounds, in grams.

*Ww* = weight of water, in grams.

*We* = weight of exempt compounds, in grams.

*Vm* = volume of material, in liters.

(k) Percent VOC by weight shall be calculated according to the following equation:

$$\% \text{ VOC by weight} = [(Wv / W)] \times 100$$

Where:

*Wv* = weight of VOCs in grams.

*W* = weight of material in grams.

(l) To convert from grams per liter (g/l) to pounds per gallon (lb/gal), multiply the result (VOC content) by 8.345 x 10<sup>-3</sup> (lb/gal/g/l).

**§ 130.706. Container labeling.**

On and after April 15, 2010, each manufacturer of an adhesive, sealant, adhesive primer or sealant primer product subject to this subchapter shall display the following information on the product container or label:

(1) A statement of the manufacturer's recommendation regarding thinning, reducing or mixing of the product, except that:

(i) This requirement does not apply to the thinning of a product with water.

(ii) If thinning of the product prior to use is not necessary, the recommendation must specify that the product is to be applied without thinning.

(2) The maximum or the actual VOC content of the product as supplied, displayed as one of the following:

(i) Weight of VOC per volume of product, less water and exempt compounds, calculated in accordance with § 130.705(h) and (i) (relating to compliance procedures and test methods).

(ii) Weight of VOC per volume of product, calculated in accordance with § 130.705(j).

(3) The maximum or the actual VOC content of the product as applied, which includes the manufacturer's maximum recommendation for thinning, displayed as one of the following:

(i) Weight of VOC per volume of product, less water and exempt compounds, calculated in accordance with § 130.705(h) and (i).

(ii) Weight of VOC per volume of product, calculated in accordance with § 130.705(j).

[Pa.B. Doc. No. 09-619. Filed for public inspection April 3, 2009, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 62 ]

[L-2008-2069115/57-266]

### Licensing Requirements for Natural Gas Suppliers

The Pennsylvania Public Utility Commission (Commission) on December 4, 2008, adopted a proposed rule-making order which revises the Commission's natural gas supplier licensing regulations regarding level of security needed and forms of security used to satisfy statutory security requirements for licensing.

#### Executive Summary

In its October 2005 Report to the General Assembly on its investigation into competition in Pennsylvania's retail natural gas market, the Commission found that there was not effective competition in the natural gas retail market based in part on the low number of natural gas suppliers (NGSs) participating in the market. Docket No. I-00040103. The amount of financial security that an NGS needed to provide for licensing was identified as a possible barrier to market entry and participation. See 66 Pa.C.S. § 2208(c)(1)(i).

Based on the Commission's finding, a collaborative of stakeholders (SEARCH) was convened to discuss ways to increase effective competition. The report on SEARCH suggested the use of reasonable criteria for adjusting the amount of security required for licensing and the use as security of NGS accounts receivable in Purchase of Receivables Programs (POR) as two ways to increase the number of suppliers participating in the retail market. The Commission adopted this suggestion in its Final Search Order and Action Plan, order entered September 11, 2008 at Docket No. I-00040103F0002 and directed that the Commission's regulation in 52 Pa. Code § 62.111 (relating bonds and other security) be revised accordingly.

This proposed rulemaking revises § 62.111 to include: (1) the use of NGS accounts receivables in a Commission approved POR program to satisfy part of, or the total security requirement; (2) the adoption of standard language for financial instruments used for security; and (3) the development of reasonable criteria for a natural gas distribution company (NGDC) to use in adjusting the

level of security that a NGS must provide to maintain its license. The proposed revisions will better balance the ability of a NGS to provide adequate security to maintain its license with a NGDC's actual risk of financial loss in the event of supplier default.

Public Meeting held  
December 4, 2008

*Commissioners Present:* James H. Cawley, Chairpersons; Tyrone J. Christy, Vice Chairperson, Concurring in result only; Robert F. Powelson; Kim Pizzingrilli, Statement attached; Wayne E. Gardner

*Licensing Requirements For Natural Gas Suppliers; SEARCH Final Order and Action Plan: Natural Gas Supplier Issues; Doc. No. L-2008-2069115; I-00040103F0002*

### Proposed Rulemaking Order

In its September 11, 2008 Final Order and Action Plan regarding the Commission's *Investigation into the Natural Gas Supply Market: Report on Stakeholder's Working Group*<sup>1</sup> (*SEARCH Order*), Docket No. I-00040103F0002 (*SEARCH Order*), the Commission determined that one way to increase effective competition in the retail natural gas market was to revise the natural gas supplier licensing regulations<sup>2</sup> in regard to the level of security needed and the forms of security that could be used to satisfy the statutory security requirement for licensing. Accordingly, this proposed rulemaking order sets forth revisions to the Commission's natural gas supplier licensing regulations on these matters.

### Discussion

Section 2208(c)(1)(i) of the Public Utility Code establishes the security requirements for the issuance and maintenance of a natural gas supplier (NGS) license. The section also authorizes the natural gas distribution company (NGDC) to determine the amount and form of the bond or other security that is required for a NGS license. The bonding amount must be based on criteria that were approved by the Commission in each natural gas distribution company's restructuring filing. This section reads as follows:

#### (c) Financial fitness.—

(1) In order to ensure the safety and reliability of the natural gas supply service in this Commonwealth, no natural gas supplier license shall be issued or remain in force unless the applicant or holder, as the case may be, complies with all of the following:

(i) *Furnishes a bond or other security in a form and amount to ensure the financial responsibility of the natural gas supplier. The criteria each natural gas distribution company shall use to determine the amount and form of such bond or other security shall be set forth in the natural gas distribution company's restructuring filing.* In approving the criteria, commission considerations shall include, but not be limited to, the financial impact on the natural gas distribution company or an alternative supplier of last resort of a default or subsequent bankruptcy of a natural gas supplier. The commission shall periodically review the criteria upon petition by any party. The amount and form of the bond or other security

<sup>1</sup> The Stakeholders had been convened based on the Commission finding that "effective competition" did not exist in the retail natural gas market in accordance with 66 Pa.C.S. § 2204(g) (relating to investigation and report to General Assembly). See *Investigation into the Natural Gas Supply Market: Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market*, Order entered at Docket No. I-00040103.

<sup>2</sup> Natural gas supplier licensing regulations may be found at 52 Pa. Code §§ 62.101—62.114.

may be mutually agreed to between the natural gas distribution company or the alternate supplier of last resort and the natural gas supplier or, failing that, shall be determined by criteria approved by the commission.

66 Pa.C.S. § 2208(c)(1)(i)(emphasis added).

The Commission's NGS licensing regulations became effective on publication in the *Pennsylvania Bulletin* on July 21, 2001. 31 Pa. B. 3943. *Licensing Requirements for Natural Gas Suppliers*, Order entered April 19, 2001 at Docket No. L-00000150. Section 62.111 addresses bonds and other security. 52 Pa. Code § 62.111. This section reads as follows:

#### § 62.111. Bonds or other security.

(a) A license will not be issued or remain in force until the licensee furnishes proof of a bond or other security. See section 2208(c)(1)(i) of the act (relating to requirements for natural gas suppliers).

(b) The purpose of the security requirement is to ensure the licensee's financial responsibility. See section 2208(c)(1)(i) of the act.

(c) The amount and the form of the security, if not mutually agreed upon by the NGDC and the licensee, shall be based on the criteria established in this section. The criteria shall be applied in a nondiscriminatory manner. The Commission will periodically review the established criteria upon petition by any party.

(1) The amount of the security should be reasonably related to the financial exposure imposed on the NGDC or supplier of last resort resulting from the default or bankruptcy of the licensee. At a minimum, the amount of security should materially reflect the difference between the cost of gas incurred and the supplier's charges, if any, incurred by the NGDC or supplier of last resort during one billing cycle.

(i) The amount of security established under this paragraph may be modified based on one or more of the following:

(A) The licensee's past operating history, including the length of time that the licensee operated on the NGDC's system, the number of customers served and past supply reliability problems.

(B) The licensee's credit reports.

(C) The number and class of customers being served.

(D) Information that materially affects a licensee's creditworthiness.

(E) The licensee's demonstrated capability to provide the volume of natural gas necessary for its customers' needs.

(ii) The amount of the security may be adjusted, but not more often than every 6 months. The adjustments shall be reasonable and based on one or more of the following criteria:

(A) Changes in a licensee's recent operating history on the NGDC's system.

(B) Changes in a licensee's credit reports.

(C) Changes in the number or class of customers being served by the licensee.

(D) Changes in circumstances that materially affect a licensee's creditworthiness.

(E) The licensee's demonstrated capability to provide the volume of natural gas necessary for its customers' needs.

(2) The following legal and financial instruments and property shall be acceptable as security:

(i) Bond.

(ii) Irrevocable letter of credit.

(iii) Corporate, parental or other third-party guaranty.

(3) In addition to the requirements in this section, small suppliers with annual operating revenues of less than \$1 million may utilize real or personal property with the following supporting documentation acceptable as security:

(i) A verified statement from the licensee that it has clear title to the property and that the property has not been pledged as collateral, or otherwise encumbered in regard to any other legal or financial transaction.

(ii) A current appraisal report of the market value of the property.

(d) The licensee shall submit to the Commission documentation demonstrating that it has complied with the bonding or security requirement. One copy of each bond, letter of credit, or other financial or legal instrument or document evidencing an agreement between the licensee and the NGDC shall be submitted to the Commission.

(e) Licensee liability for violations of 66 Pa.C.S. (relating to the Public Utility Code) and Commission orders and regulations is not limited by these security requirements.

In the *SEARCH Order*, the Commission identified NGDC security requirements as one barrier to supplier participation in the retail market<sup>3</sup>. Referencing the *SEARCH Report*, the *SEARCH Order* discussed the criteria used by the NGDC in establishing a security level and the extent of the Commission's authority under the law to modify security requirements:

The criteria that are to be used by the NGDC to set the amount and form of the security were established in each company's restructuring proceeding. The level of security is based on a formula that takes into account the NGDC's exposure to costs. For the retail supply market, this formula involves the peak day demand estimate for capacity, number of days' potential exposure in a billing cycle, and commodity estimates for quantity and cost. Offsets to the amount of security that a NGS must provide may include calls on capacity, receivable purchases or receivable pledges. NGDC costs related to supplier default as set forth in Section 2207(k) of the Public Utility Code may also be taken into account when establishing the amount of security required. 66 Pa.C.S. § 2207(k). *SEARCH Report*, pp. 18-19.

If a NGDC and NGS cannot come to a mutual agreement, the level or form of security is determined by criteria approved by the Commission. See 66 Pa.C.S. § 2208(c)(1). These criteria were established in the Commission's NGS licensing regulations and are to be used to determine security levels and acceptable forms for the security when voluntary agreement is not reached. See 52 Pa. Code § 62.111.

Section 62.111(c) permits the use of the irrevocable letters of credit, corporate parental or other third party guaranty, and real or personal property. Personal property would include the use of escrow account or the pledge or purchase of receivables. 52 Pa. Code § 62.111(c). *SEARCH Report*, pp. 18-19.

Also, an individual NGDC's security requirement, including the level of security, is subject to periodic review by the Commission. 66 Pa.C.S. § 2208(c). See also, *UGI Utilities, Inc.—Gas Division v. PA PUC*, 878 A. 2d 186 (Pa. Cmwlth. Ct. 2005) appeal den. 586 Pa. 732; 890 A.2d 1062 (2005) (the Commission has discretion to approve criteria to be used to determine the financial security necessary based upon financial impact on the NGDC by a default by a NGS). Thus, a supplier is not without a remedy to address unreasonable security requirements of a NGDC on a case-by-case basis.

*SEARCH Order*, pp. 23-24.

The *SEARCH Order* also discussed the suppliers' position that uniformity in the use of security instruments across NGDC service territories, and greater acceptance of other types of security by the NGDCs would decrease costs for suppliers and remove a barrier to supplier entry and participation.

However, the *SEARCH Report* states that suppliers observe that the use of security instruments is not uniform among the companies and contend that this variability is a barrier to market entry and multi-system participation. Suppliers also raised concerns about the escalating cost of security to match the growth of their sales, and opined that there should be a limitation on the frequency of review of required security levels, with specific triggers for that review, such as a percentage change in pool size. *SEARCH Report*, p. 19.

Suppliers also view the NGDC's acceptance of only certain financial instruments as a barrier to market entry. Suppliers prefer to use corporate guarantees as the predominant practice. Further, to ensure fairness and remove a possible barrier for market entry, suppliers believe that specific criteria for acceptable financial instruments should be established in a regulation or order rather than permitting companies to set those through tariffs. *SEARCH Report*, p. 19.

Establishing standard language for the form of the financial instrument used for security and reasonable criteria for the amount of security should assist NGSs in obtaining security in an acceptable form and amount, while aiding the NGDC in collecting a claim against the security in the event of supplier default. North American Energy Standards Board (NAESB) forms and business practices could be reviewed for appropriateness to develop uniform language to address this issue. *SEARCH Report*, p. 21. Also, the use of a POR program should be examined as a way to reduce the level of required security, to lessen the need for frequent credit reviews and to ameliorate adjustments in security level that might normally be triggered by changes in a company's creditworthiness rating, which can occur for reasons unrelated to its immediate business interaction and relationships. *SEARCH Report*, p. 21.

*SEARCH Order*, pp. 24-25.

After our review of the *SEARCH Report*, we determined that it is in the public interest to initiate a rulemaking to address security requirements related to NGS licensing.

<sup>3</sup> This subject is fully discussed in the *SEARCH Report* in Section I (Creditworthiness/Security) at pp. 18-21.



*SEARCH Order*, p. 25. The task involves the revision of the NGS licensing regulations at Section 62.111 (relating to bonds or other security), and other related regulations in regard to the required level of security and the acceptable forms of security permitted to satisfy the statutory security requirement for licensing at 66 Pa.C.S. § 2208(c)(i) (relating to requirements for natural gas suppliers; financial fitness). The goal is to update the Commission's existing regulations regarding security requirements to better balance the ability of NGS firms to provide adequate security with the NGDC's risk of a supplier default. Specific matters that were to be addressed included (1) the use of NGS accounts receivables in purchase of receivables programs as fulfillment of some part or all of security requirements; (2) the adoption of standard language for financial instruments used for security; and (3) the development of reasonable criteria for NGDCs to use to establish the amount of security necessary for licensing purposes.

With this order, we initiate this proposed rulemaking. The following revisions are proposed to be made to the NGS licensing regulations at Section 62.111 (relating to bonds or other security).

*Section 62.111(c)(1)(ii)*

This subsection states that the amount of the security may be adjusted, but not more often than every six months, and the adjustments must be reasonable. It then lists criteria upon which these adjustments must be based. In response to suppliers' complaints about the frequency of security level adjustments and the need for specific triggering events for creditworthiness reviews and security adjustments, we have revised the criteria to make them more stringent. This means that only significant changes in the NGS's operation that would materially affect the NGDC system operation or reliability or that would materially affect the NGS's creditworthiness can trigger a review and adjustment.

*Section 62.111(c)(2)*

This subsection lists the legal and financial instruments that shall be acceptable for security. We have revised the list to include escrow accounts, accounts pledged to the NGDC or sold by the supplier in a NGDC purchase of receivables program, and "calls on capacity" or other operational offsets that may be mutually agreeable to NGDC and NGS.

*Section 62.111(c)(4)*

This subsection is a new subsection and states that when practicable, the NGDC shall use applicable North American Energy Standards Board forms or language for financial and legal instruments.

*Section 62.111(c)(5)*

This subsection is a new subsection that imposes an annual reporting requirement on the NGDCs. The purpose of this reporting requirement is to gather information about the NGDC's application of established criteria to set and adjust levels of security for suppliers that operate on the NGDC's system. The report will be filed with the Commission's Secretary.

*Section 62.111(c)(6)*

Section 62.111(c)(6) is a new subsection that lists four Commission processes that a NGS may pursue if it is unable to reach an agreement with the NGDC on the form or amount of security to be provided: informal mediation; alternate dispute resolution with the OALJ; litigation of a formal complaint; and petition for Commis-

sion review of NGDC criteria for security levels. The first alternative presented, informal mediation, may be requested by filing a dispute with the Commission's Secretary. The Office of Competitive Market Oversight<sup>4</sup> will act as the mediator between the NGS and the NGDC.

### Conclusion

The goal of this proposed rulemaking is to revise the security requirements for NGS licensing, lower barriers to market entry and to increase supplier participation. This is the first step of the *SEARCH Order's* Action Plan to increase effective competition in Pennsylvania's retail natural gas market.

The Commission seeks comments on the proposed revisions to our licensing regulation. Parties submitting comments are requested to provide supporting justification for requested revisions, and to propose regulatory language for incorporation into the final-form regulation.

Accordingly, under sections 501, 504 and 2203(12) and 2208 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 2203(12) and 2208; 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 promulgated thereunder in 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we are proposing to amend our regulation as set forth in Annex A, attached hereto;

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 19, 2009, Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees (Committees). In addition to submitting the proposed rulemaking, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the department, the General Assembly and the Governor of objections raised.

*Therefore,*

It Is Ordered That:

1. A rulemaking docket shall be opened to amend the regulation relating to bonds and other security in 52 Pa. Code § 62.111 as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comments to the Independent Regulatory Review Commission and the legislative standing committees.

<sup>4</sup> In the Action Plan, the Commission directed that an independent unit be created within the Commission to oversee the development and the functioning of the competitive retail natural gas market. *SEARCH Order*, pp. 8-10 and Ordering Paragraph 5. The unit is to be created by January 5, 2009. The working name for the unit, Office of Competitive Market Oversight, is subject to change.

4. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. An original and 15 copies of written comments referencing the docket number of the proposed regulation be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. To facilitate posting, all filed comments shall be forwarded by means of electronic mail to Patricia Krise Burket at pburket@state.ps.us, Annunciata Marino at annmarino@state.pa.us, and Cyndi Page at cypage@state.pa.us

6. A copy of this Order and Annex A shall be served on all jurisdictional natural gas distribution companies, all licensed natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate and all other parties that filed comments at the Docket number I-00040103.

7. That the contact persons for this proposed rule-making are Patricia Krise Burket, Law Bureau, (717) 787-3463 (legal) and Annunciata Marino, (717) 772-2151 (technical).

*By the Commission*

JAMES J. MCNULTY,  
*Secretary*

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE**

**Subchapter D. LICENSING REQUIREMENTS FOR NATURAL GAS SUPPLIERS**

**§ 62.111. Bonds or other security.**

\* \* \* \* \*

(c) The amount and the form of the security, if not mutually agreed upon by the NGDC and the licensee, shall be based on the criteria established in this section. The criteria shall be applied in a nondiscriminatory manner. The Commission will periodically review the established criteria upon petition by any party.

(1) The amount of the security should be reasonably related to the financial exposure imposed on the NGDC or supplier of last resort resulting from the default or bankruptcy of the licensee. At a minimum, the amount of security should materially reflect the difference between the cost of gas incurred and the supplier's charges, if any, incurred by the NGDC or supplier of last resort during one billing cycle.

\* \* \* \* \*

(ii) The amount of the security may be adjusted, but not more often than every 6 months. The adjustments [ shall ] must be reasonable and based on one or more of the following criteria:

(A) [ Change ] Significant changes in a licensee's recent operating history on the NGDC's system that have materially affected NGDC system operation or reliability.

(B) [ Changes ] A change in a licensee's credit reports that materially affects a licensee's creditworthiness.

(C) [ Changes ] A significant change in the number of customers or a change in the class of customers being served by the licensee. An increase of 25% in the number of customers would represent a significant change that would justify an NGDC directing that additional security be provided.

(D) [ Changes ] A change in circumstances that materially [ affect ] affects a licensee's creditworthiness.

(E) [ The ] A change in the licensee's demonstrated capability to provide the volume of natural gas necessary for its customers' needs that materially affects NGDC system operation or reliability.

(2) The following legal and financial instruments and property shall be acceptable as security:

\* \* \* \* \*

(iv) Escrow account.

(v) Accounts receivable pledged to the NGDC or sold by a supplier participating in a NGDC purchase of receivables program that is consistent with Commission orders, guidelines and regulations governing the programs.

(vi) Calls on capacity or other operational offsets as may be mutually agreed upon by the NGDC and the NGS.

\* \* \* \* \*

(4) When practicable, the NGDC shall use applicable North American Energy Standards Board forms or language for financial and legal instruments that are used as security.

(5) The NGDC shall file an annual report with the Secretary no later than April 30 of each year. The report must contain the following information for the prior calendar year:

(i) The criteria that is being used to establish the amount of security that a supplier must provide to be granted a license.

(ii) The criteria that is being used to determine the amount of security that a supplier must provide to maintain a license.

(iii) The criteria that is being used to determine that a change in the amount of security is needed for the supplier to maintain a license.

(iv) The number of times in the last quarter that the NGDC determined that a change in the level of security was needed for a supplier to maintain its license.

(v) The types of legal and financial instruments and property, real and personal, that the NGDC accepted as security for licensing purposes.

(6) When there is a dispute relating to the form or amount of security, the NGS may:

(i) Submit the dispute to the Secretary for assignment to the appropriate bureau for informal mediation and resolution.

(ii) File a formal complaint with the Commission and request alternative dispute resolution by the Office of Administrative Law Judge.

(iii) File a formal complaint with the Commission and proceed with the litigation of the complaint.

**(iv) File a petition with the Commission and request review of the criteria used by the NGDC.**

\* \* \* \* \*

[Pa.B. Doc. No. 09-620. Filed for public inspection April 3, 2009, 9:00 a.m.]

## PENNSYLVANIA GAMING CONTROL BOARD

[ 58 PA. CODE CHS. 439a, 461a, 463a, 465a AND  
499a ]

### Junkets; Slot Machines; and Practice and Procedures; Omnibus Amendments

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. §§ 1205, 1207 and 1322 (relating to license or permit application hearing process; public input hearings; regulatory authority of the Board; and slot machine accounting controls and audits), proposes to amend Chapters 439a, 461a, 463a, 465a and 499a to read as set forth in Annex A.

#### *Purpose of the Proposed Rulemaking*

The proposed rulemaking contains numerous editorial changes to improve the clarity of existing provisions; brings the Board's regulations in line with current practices; and eliminates or streamlines existing requirements and procedures to improve the effectiveness of the Board's regulatory programs.

#### *Explanation of Amendments to Chapters 439a, 461a, 463a, 465a and 499a*

Throughout this rulemaking the Board has replaced references to the "Office of Gaming Operations" with the new name, "Bureau of Gaming Operations." Additionally the Board has deleted the definition of "Slots Lab" and references to this term and to "Gaming Lab" and replace them with the "Bureau of Gaming Laboratory Operations" which is the name that is used for this Bureau in other chapters.

In § 461a.12 (relating to progressive slot machines), a new subsection (g) is being added to require that the Bureau of Gaming Laboratory Operations test and certify progressive slot machines prior to the progressive slot machines being made available to the public for play. This reflects the current practice of the Bureau of Gaming Laboratory Operations, but it will now be a regulatory requirement.

In § 463a.1(c) (relating to possession of slot machines generally), the Board has limited the requirement to file a petition requesting permission to possess slot machines to: educational institutions; unlicensed manufacturers, manufacturer designees or suppliers who want to exhibit or demonstrate slot machines; and the general category of "other persons." There is no need for the other entities listed in subsection (b) to file a petition because they are either licensed by the Board or are law enforcement agencies. The Board will be able to monitor slot machines in the possession of these entities through the periodic reports they are required to file. The Board also believes that requiring common carriers to file a petition is impracticable and unnecessary because of the short dura-

tion of the time common carriers will have the slot machines in their possession and because information related to all shipments is filed with the Board under § 463a.2 (relating to transportation of slot machines into, within and out of this Commonwealth).

In § 463a.7 (relating to off premise storage of slot machines), the Board is simplifying the process for reviewing requests from slot machine licensees to store slot machines off the premises of a licensed facility. These amendments replace the requirement that these requests be filed as a petition and approved by the Board with the requirement that these requests be filed as a written request with the Bureau of Gaming Operations which will be approved by the Board's Executive Director. This should reduce the amount of time required to process these requests.

In § 465a.9(c) (relating to surveillance system; surveillance department control; surveillance department restrictions), the Board is deleting the requirement that slot machine licensees have audio surveillance capability in the count room. Because of changes in count room equipment technology and the capabilities of the central control computer system to track gaming revenues, there is no need to have audio recordings of count room activities.

In subsections (c) and (e), "automated teller machines" (ATMs) have been added to the lists of items that require camera coverage and video recording. Slot machine licensees' surveillance systems already cover ATMs, but they were not previously included in the Board's regulations. Gaming conducted at slot machines has also been added to the list in subsection (e) for the same reason. Additionally in subsection (e), the reference to "satellite cage" has been moved from paragraph (2) which covers the main bank and vault to paragraph (1) which covers the cashier cage.

In § 465a.9(i), the Board is reducing the time period for retention of surveillance recordings from 30 days to 7 days for the main bank and vault, the drop, the count and gaming conducted at slot machines. Because of the internal control requirements associated with the activities that are conducted in these areas, if there are going to be any problems for which these recordings would be needed, they will occur within the 7-day time frame.

In § 465a.25 (relating to counting and recording of slot cash storage boxes), the Board is deleting the "at least 48 hours" from the advance notice requirement for changes to the time the slot cash storage boxes are to be counted. Because there is video surveillance during the count process and the continuing presence of the Board's casino compliance representatives at the licensed facilities, there is no need for two days advanced notice on changes to this schedule.

In § 465a.26 (relating to jackpot payouts), the requirement in subsection (b)(3) and (7)(viii)(A) that the witness of a jackpot between \$1,200 and \$9,999.99 be "a lead slot attendant or higher" has been replaced with "a security department member or a slot operations department member other than the preparer." This will make it easier for slot machine licensees to verify jackpots and allow more efficient use of personnel.

In § 499a.1 (relating to appearance in person), a new subsection (b) has been added that clarifies who may represent a party in nonadversarial proceedings before the Board. It is modeled on the provisions in 1 Pa. Code § 31.21 (relating to appearance in person) and will reduce the need for some parties to hire legal counsel to represent them.

*Affected Parties*

Slot machine licensees will benefit from the simplification of the process for reviewing requests for off premise storage of slot machines and for verifying jackpots, the elimination of the requirement for audio surveillance capability in the count room, the reduction in the time periods for retention of some video recordings and the elimination of minimum of 48 hours notice on changes to the count schedule. Slot machine licensees will also be required to have progressive slot machines certified by the Bureau of Gaming Laboratory Operations prior to their use by the gaming public. Licensed and governmental entities and common carriers will no longer have to file petitions to possess slot machines. Parties in some Board proceedings will not be required to be represented by legal counsel.

*Fiscal Impact*

*Commonwealth*

To the extent that this rulemaking simplifies some administrative processes, there may be some slight savings to the Board. The Department of Revenue and the State Police may also experience some small savings from no longer having to file a petition to possess slot machines.

*Political Subdivisions*

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

*Private Sector*

Slot machine licensees will experience some cost savings because of the revisions and elimination of unnecessary regulatory requirements. There should be little to no costs associated with the new requirement that progressive slot machines be certified prior to the use because this represents the current practice of the Bureau of Gaming Laboratory Operations.

*General Public*

This proposed rulemaking will have no fiscal impact on the general public.

*Paperwork Requirements*

This proposed rulemaking may reduce the paperwork associated with filing requests for off premise storage of slot machines. Licensed and governmental entities and common carriers will no longer have to file petitions to possess slot machines.

*Effective Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation No. 125-99.

*Contact Person*

The contact person for questions about this proposed 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 March 24, 2009, the Board submitted

a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request and is available on the Board's web site at [www.pgcb.state.pa.us](http://www.pgcb.state.pa.us).

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,  
*Chairperson*

**Fiscal Note:** 125-99. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION**

**CHAPTER 439a. JUNKET ENTERPRISES**

**§ 439a.7. Junket schedules.**

\* \* \* \* \*

(b) A junket schedule shall be filed with the Bureau **[of Corporate Compliance and Internal Controls] of Gaming Operations** by a slot machine licensee by the 15th day of the month preceding the month in which the junket is scheduled. If a junket is arranged after the 15th day of the month preceding the arrival of the junket, an amended junket schedule shall be filed with the Bureau **[of Corporate Compliance and Internal Controls] of Gaming Operations** by the slot machine licensee by the close of the next business day.

\* \* \* \* \*

**§ 439a.8. Junket arrival reports.**

\* \* \* \* \*

(b) Junket arrival reports must:

\* \* \* \* \*

(2) Include information required under § 439a.7 (relating to junket schedules) that has not been previously provided to the **[Office] Bureau** of Gaming Operations in a junket schedule pertaining to the particular junket, or an amendment thereto.

\* \* \* \* \*

**§ 439a.10. Monthly junket reports.**

(a) Each slot machine licensee shall, on or before the 15th day of the month, prepare and file with the **[Office] Bureau** of Gaming Operations a monthly junket report listing the name and registration number of each person who performed the services of a junket representative during the preceding month.

\* \* \* \* \*

§ 439a.11. Purchase of patron lists.

\* \* \* \* \*

(c) The report required by subsection (a) shall be filed with the [ Office ] Bureau of Gaming Operations, no later than 7 days after the receipt of the list by the purchaser.

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 461a. SLOT MACHINE TESTING AND CONTROL

§ 461a.1. Definitions.

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

\* \* \* \* \*

[ Slot Lab—The Bureau of Gaming Laboratory Operations of the Board. ]

\* \* \* \* \*

§ 461a.4. Submission for testing and approval.

\* \* \* \* \*

(g) When an applicant for, or holder of, a manufacturer license seeks Board approval of a slot machine prototype, associated equipment prototype, or any modification thereto, it shall submit to the [ Slot Lab ] Bureau of Gaming Laboratory Operations the following:

(1) A prototype of the equipment, device or software accompanied by a written request for testing and approval. The manufacturer shall transport the equipment, device or software at its own expense and deliver it to the [ offices of the Board's Slot Lab ] Bureau of Gaming Laboratory Operations in accordance with instructions provided.

\* \* \* \* \*

(5) Any hardware, software and other equipment, inclusive of technical support and maintenance applicable thereto, required by the [ Slot Lab ] Bureau of Gaming Laboratory Operations to conduct the testing and approval process contemplated by the act, this subpart and technical standards adopted by the Board and published in the Pennsylvania Bulletin and posted on the Board's [ website ] web site. The testing equipment and services required by this paragraph shall be provided at no cost to the Board.

\* \* \* \* \*

(8) In the case of a slot monitoring system, casino management system, player tracking system, wide area progressive system, gaming voucher system, external bonusing system, cashless funds transfer system, automated gaming voucher, coupon redemption or jackpot payout machine, coupon system or any other equipment or system required to be tested and approved under subsection (c):

\* \* \* \* \*

(xiv) Any specialized hardware, software or other equipment, inclusive of technical support and maintenance applicable thereto, required by the [ Slot Lab ] Bureau of Gaming Laboratory Operations to conduct the testing and approval process contemplated by the act, this subpart and technical standards adopted by the Board and published in the Pennsylvania Bulletin and

posted on the Board's [ website ] web site. The testing equipment and services required by this paragraph shall be provided at no cost to the Board.

\* \* \* \* \*

(h) At the conclusion of testing of a prototype or modification by the [ Slot Lab ] Bureau of Gaming Laboratory Operations, but prior to a decision to approve a prototype or modification, the Board may require a trial period of scope and duration as it deems appropriate to assess the operation of the prototype or modification in a live gaming environment. The conduct of the trial period shall be subject to compliance by the licensed manufacturer, licensed manufacturer designee, applicable licensed suppliers, and the slot machine licensee with specific terms and conditions as may be required by the Board, which may include development and implementation of product specific accounting and internal controls, periodic data reporting to the Board and compliance with technical standards on trial periods or the prototype or modification adopted by the Board and published in the Pennsylvania Bulletin and posted on the Board's [ website ] web site. The Board may authorize the receipt of compensation by a licensed manufacturer, licensed manufacturer designee or licensed supplier during the trial period. The Board may order termination of the trial period if it determines that the licensed manufacturer, licensed manufacturer designee, applicable licensed suppliers or the slot machine licensee conducting the trial period has not complied with the terms and conditions required by the Board or that the product is not performing as expected.

(i) At the conclusion of testing of a prototype or modification, the [ Slot Lab ] Bureau of Gaming Laboratory Operations will report to the Board the results of its testing. Upon receipt of the [ Slot Lab's ] Bureau of Gaming Laboratory Operations' report, the Board will:

\* \* \* \* \*

§ 461a.5. Slot machine conversions.

A slot machine licensee shall:

\* \* \* \* \*

(2) Give prior notice of a slot machine conversion to the [ Slot Lab ] Bureau of Gaming Laboratory Operations in writing.

\* \* \* \* \*

§ 461a.7. Slot machine minimum design standards.

\* \* \* \* \*

(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 ] Bureau 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.8. Gaming vouchers.

\* \* \* \* \*

(m) A slot machine licensee shall provide written notice to the [Slot Lab] Bureau of Gaming Laboratory Operations of any adjustment to the value of any gaming voucher. The notice shall be made prior to, or concurrent with, the adjustment.

\* \* \* \* \*

§ 461a.10. Automated gaming voucher and coupon redemption machines.

\* \* \* \* \*

(b) Automated gaming voucher and coupon redemption machines may be located on or proximate to the gaming floor of a licensed facility and must be subject to surveillance coverage under § 465a.9 (relating to surveillance system; surveillance department control; surveillance department restrictions). Each automated gaming voucher and coupon redemption machine must have a label on the top of the automated gaming voucher and coupon redemption machine and on the front of the automated gaming voucher and coupon redemption that displays the asset number of the automated gaming voucher and coupon redemption machine. The labels must have white lettering on a black background or other color combination approved by the [Office] Bureau of Gaming Operations and may not be easily removed. The label on the top of the automated gaming voucher and redemption machine must be at least 1.5 inches by 5.5 inches and the label on the front of the automated gaming voucher and coupon redemption machine must be at least 1 inch by 2.5 inches.

\* \* \* \* \*

§ 461a.12. Progressive slot machines.

\* \* \* \* \*

(g) A slot machine that offers either a new progressive jackpot or a modification of an existing progressive jackpot may not be made available for play by the public until the slot machine has been tested and certified by the Bureau of Gaming Laboratory Operations.

(h) Progressive meters may not be turned back to a lesser amount unless one of the following occurs:

\* \* \* \* \*

[ (h) ] (i) \* \* \*

[ (i) ] (j) \* \* \*

[ (j) ] (k) \* \* \*

\* \* \* \* \*

[ (k) ] (l) \* \* \*

\* \* \* \* \*

[ (l) ] (m) \* \* \*

[ (m) ] (n) \* \* \*

§ 461a.18. Cashless funds transfer systems.

\* \* \* \* \*

(g) A slot machine licensee shall notice the [Slot Lab] Bureau of Gaming Laboratory Operations in writing of any adjustment to the amount of a credit transferred to a slot machine by means of a cashless funds transfer system. The notice shall be made on or before the date of adjustment.

§ 461a.22. Automated jackpot payout machines.

\* \* \* \* \*

(b) An automated jackpot payout machine must have a label on the top of the automated jackpot payout machine and on the front of the automated jackpot payout machine that displays the asset number of the automated jackpot payout machine. The labels must have white lettering on a black background or other color combination approved by the [Office] Bureau of Gaming Operations, may not be easily removed and must be easily visible to the surveillance department. The label on the top of the automated jackpot payout machine must be at least 1.5 inches by 5.5 inches and the label on the front of the automated jackpot payout machine must be at least 1 inch by 2.5 inches.

\* \* \* \* \*

§ 461a.26. Testing and software installation on the live gaming floor.

(a) Prior to the testing of slot machines, associated equipment and displays on a live gaming floor during a slot machine licensee's normal hours of operation, the slot machine licensee shall notify the [Board's Gaming Lab] Bureau of Gaming Laboratory Operations in writing at least 72 hours prior to the test date. The notification must include the following:

\* \* \* \* \*

(b) A slot machine licensee shall notify the [Board's Gaming Lab] Bureau of Gaming Laboratory Operations at least 72 hours prior to the installation of any new software or the installation of any change in previously approved software for:

\* \* \* \* \*

CHAPTER 463a. POSSESSION OF SLOT MACHINES

§ 463a.1. Possession of slot machines generally.

\* \* \* \* \*

(c) Persons seeking to possess slot machines under [subsection (b)] subsection (b)(4), (5) and (8) shall submit a petition to the Board as required under § 493a.4 (relating to petitions generally). The petition to the Board must contain:

\* \* \* \* \*

§ 463a.2. Transportation of slot machines into, within and out of this Commonwealth.

In furtherance of section 1511 of the act (relating to the declaration of exemption from Federal laws prohibiting slot machines), prior to the transport or movement of a slot machine into this Commonwealth, from one person authorized to possess slot machines under § 463a.1 (relating to possession of slot machines generally) to another person authorized within this Commonwealth or transport or movement out of this Commonwealth, the persons causing the slot machine to be transported or moved shall notify the Bureau of Gaming Laboratory Operations, BIE and the [Office] Bureau of Gaming Operations in writing or in an electronic format approved by the Board. The notice shall be submitted no later than the day the slot machine is transported and include the following information:

\* \* \* \* \*

§ 463a.7. Off premises storage of slot machines.

(a) A slot machine licensee may not store slot machines off the premises of a licensed facility without prior approval from the [ Board ] Board's Executive Director.

(b) A slot machine licensee seeking to store slot machines off the premises of a licensed facility shall [ file ] submit a [ petition to the Board ] written request to the Bureau of Gaming Operations for off premise storage [ as required under § 493a.4 (relating to petitions generally) ]. The [ petition ] request must include:

\* \* \* \* \*

(2) A description of the type of surveillance system that has been or will be installed at the proposed storage facility.

(3) The plan to provide 24 hour, 7 day a week security at the proposed storage facility.

(4) The number and manufacturer of the slot machines that will be stored at the proposed storage facility.

(5) The date that the slot machines are expected to arrive at the proposed storage facility.

\* \* \* \* \*

(c) Before [ acting ] the Board's Executive Director will act on a request for off premise storage of slot machines, the Board will inspect the proposed storage facility.

(d) The [ Board ] Board's Executive Director will approve or disapprove requests within 60 days. Requests approved by the [ Board ] Board's Executive Director may be subject to specific terms and conditions imposed by the [ Board ] Board's Executive Director.

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 ] Bureau 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 ] subsection (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 ] Bureau 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 ] Bureau 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 ] Bureau 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.

\* \* \* \* \*

§ 465a.4. Standard financial and statistical reports.

(a) Within 30 days of the close of each calendar quarter, slot machine licensees shall file a report which includes a detailed reconciliation of the amount invoiced by the Department to the tax accrual determined by the slot machine licensee's revenue/income audit process. The reconciliation shall be determined by the slot machine licensee on at least a weekly basis and the report must provide the date and the amount of any differences found during the reconciliation process. The report shall be filed electronically with the [ Board's Office ] Bureau of Gaming Operations and the Department's Bureau of Fiscal Management.

\* \* \* \* \*

§ 465a.5. Annual audit; other reports; suspicious activity and currency transaction reporting.

\* \* \* \* \*

(n) Prior to commencing gaming operations, a slot machine licensee shall file with the [ Office ] Bureau of Gaming Operations, in a manner to be prescribed by the [ Office ] Bureau 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 ] Bureau of Gaming Operations any amendment or supplement to its compliance program on or before the effective date of the amendment or supplement.

§ 465a.8. Licensed facility.

\* \* \* \* \*

(d) Slot machine licensees shall, in accordance with section 1207(13) of the act (relating to regulatory authority of board), provide for and maintain onsite facilities for use by the Board, the Department and the Pennsylvania State Police for the purpose of carrying out their respective responsibilities (collectively referred to as the "onsite facilities"). The onsite facilities must be located in the same building as the gaming floor, in locations approved by the [ Office ] Bureau of Gaming Operations and include suitable office space, equipment, partitions and supplies to meet the continuing needs of the Board, the Department and the Pennsylvania State Police at the facility including the following:

\* \* \* \* \*

(8) Signs indicating the location of the Board's office. The size, location and design of the signs must be approved by the [ Office ] Bureau of Gaming Operations.

\* \* \* \* \*

§ 465a.9. Surveillance system; surveillance department control; surveillance department restrictions.

\* \* \* \* \*

(c) The surveillance system required in this section must include the following:

(1) Light sensitive cameras with lenses of sufficient magnification to allow the operator to read information on a slot machine reel strip and credit meter and equipped with 360° pan, tilt and zoom capabilities, without camera stops, to clandestinely monitor in detail and from various vantage points, including the following:

\* \* \* \* \*

(iii) The operations conducted at automated bill breaker **machines, automated** gaming voucher [ **redemption, ]** and coupon redemption [ **and ]** **machines, automated** jackpot payout machines and **automated teller machines.**

\* \* \* \* \*

(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:

\* \* \* \* \*

[ (6) ] (5) \* \* \*

[ (7) ] (6) \* \* \*

\* \* \* \* \*

(e) A slot machine licensee's surveillance system must continuously record, during the times and in the manner indicated in this subsection, transmissions from cameras used to observe the following locations, persons, activities or transactions:

(1) Each transaction conducted on the gaming floor or at a cashiers' cage **or satellite cage.** Coverage of the transaction must include, but not be limited to, recording transmissions from cameras used to observe the face of each patron transacting business at a cashiers' cage **or satellite cage** from the direction of the cashier.

(2) The main bank, vault [ **, satellite cages ]** and other areas specified in writing by the Board.

\* \* \* \* \*

(6) [ **Automated ]** The operations conducted at **automated** bill breaker **machines, automated** gaming voucher [ **redemption, ]** and coupon redemption [ **and ]** **machines, automated** jackpot payout machines [ **whenever the machines are opened for replenishment or other servicing ]** and **automated teller machines.**

\* \* \* \* \*

(8) **The gaming conducted at slot machines.**

\* \* \* \* \*

(j) [ **Except for subsection (e)(3), the ]** The surveillance recordings required under [ **subsection (e) ]** **subsection (e)(1), (5), (6) and (7)** shall be retained for a minimum of 30 days. [ **Other ]** All other surveillance recordings shall be retained for a **minimum of 7 days.** Surveillance recordings shall be made available for review upon request by the Board or the Pennsylvania State Police.

\* \* \* \* \*

§ 465a.18. **Transportation of slot cash storage boxes to and from bill validators; storage.**

(a) Slot machine licensees shall file with the [ **Office ]** **Bureau** 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 ]** **Bureau** 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 ]** **Bureau** of Gaming Operations in advance.

\* \* \* \* \*

§ 465a.25. **Counting and recording of slot cash storage boxes.**

(a) A slot machine licensee shall file with the [ **Office ]** **Bureau** 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 ]** **Bureau** of Gaming Operations and the casino compliance supervisor at the licensed facility [ **at least 48 hours ]** in advance.

\* \* \* \* \*

§ 465a.26. **Jackpot payouts.**

\* \* \* \* \*

(b) The internal control procedures developed and implemented by the slot machine licensee under subsection (a) must, at a minimum, include:

\* \* \* \* \*

(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 ]** **security department member or a slot operations department member other than the preparer.**

\* \* \* \* \*

(7) A requirement that the following information be on the two-part manual jackpot payout receipt:

\* \* \* \* \*

(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 ] \$10,000.

(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) ] (C) 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.

\* \* \* \* \*

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 499a. REPRESENTATION BEFORE THE BOARD

§ 499a.1. Appearance in person.

\* \* \* \* \*

(b) In nonadversarial proceedings:

(1) A member of a partnership may represent the partnership.

(2) A bona fide officer of a corporation, trust or association may represent the corporation, trust or association.

(3) An officer or employee of another agency or of a political subdivision may represent the agency or political subdivision in presenting any submittal to the Board.

(c) A party, other than an individual appearing on his own behalf, in an adversary proceeding before the Board shall be represented by an attorney authorized to appear before the Board in accordance with § 499a.2 (relating to appearance by attorney).

[ (c) ] (d) This section supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

[Pa.B. Doc. No. 09-621. Filed for public inspection April 3, 2009, 9:00 a.m.]

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GAME COMMISSION

[ 58 PA. CODE CH. 141 ]

Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) by notational vote completed on March 4, 2009, proposed the following rulemaking:

Amend §§ 141.43 and 141.44 (relating to deer; and bear) to remove the prohibition on the use of magnifying telescopic sights on bows and crossbows during deer and bear archery seasons.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public by Commission news release on March 5, 2009. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 17, 2009.

1. Purpose and Authority

On January 27, 2009, the Commission adopted regulatory amendments that, in relevant part, authorized the use of the crossbow during deer and bear archery seasons. This authorization was qualified by language prohibiting the use of magnifying telescopic sights on bows and crossbows. In light of extensive public comment received by the Commission concerning the prohibition on the use of magnifying telescopic sights on crossbows during the respective archery seasons, the Commission is prepared to revisit and promote further discussion on the issue. To this end, the Commission is proposing to amend §§ 141.43 and 141.44 to remove the prohibition on the use of magnifying telescopic sights on crossbows.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 141.43 and 141.44 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend §§ 141.43 and 141.44 to remove the prohibition on the use of magnifying telescopic sights on bows and crossbows during deer and bear archery seasons.

3. Persons Affected

Persons wishing to hunt white-tailed deer or black bear during their respective archery seasons within this Commonwealth may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

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

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717)783-6526.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-284. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 141. HUNTING AND TRAPPING**

**Subchapter C. BIG GAME**

**§ 141.43. Deer.**

(a) *Archery deer season.*

\* \* \* \* \*

(2) *Prohibitions.* While hunting deer during the archery deer season, it is unlawful to:

\* \* \* \* \*

**[ (iii) Use magnifying telescopic sights. ]**

\* \* \* \* \*

**§ 141.44. Bear.**

(a) *Archery bear season.*

\* \* \* \* \*

(2) *Prohibitions.* While hunting bear during the archery bear season, it is unlawful to:

\* \* \* \* \*

**[ (v) Use magnifying telescopic sights. ]**

\* \* \* \* \*

[Pa.B. Doc. No. 09-622. Filed for public inspection April 3, 2009, 9:00 a.m.]

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