

# PROPOSED RULEMAKING

## DEPARTMENT OF TRANSPORTATION

[ 67 PA. CODE CH. 105 ]

### Mechanical, Electrical and Electronic Speed-Timing Devices

The Department of Transportation (Department), under the authority in 75 Pa.C.S. §§ 3368 and 6103 (relating to speed timing devices; and promulgation of rules and regulations by department), proposes to amend Chapter 105, Subchapter C (relating to speedometers) to read as set forth in Annex A. The statutory provisions direct the Department to promulgate standards for speed-timing devices and testing and authorize the Department to promulgate regulations to implement 75 Pa.C.S. (relating to Vehicle Code).

#### *Purpose of Regulations*

The purpose of Chapter 105, Subchapter C is to govern the calibrating and testing of mechanical, electrical and electronic speed-timing devices by stations appointed by the Department.

#### *Purpose of the Proposed Rulemaking*

The purpose of this proposed rulemaking is to delete outdated speed-timing testing devices and procedures, modernize the language and add provisions permitting the use of new technologies approved by the Department.

#### *Summary of Significant Amendments*

Section 105.31 (relating to appointment of speedometer testing station) is proposed to be amended to require speedometer testing stations to prominently display a valid Certificate of Appointment provided by the Department. An identical requirement is proposed to be deleted from § 105.34 (relating to manner of testing speedometers).

Section 105.32 (relating to operation of speedometer testing station) is proposed to be amended to require that a separate application be filed for each mobile testing unit that a station intends to operate.

Section 105.32 is proposed to be amended to remove a testing station's ability to delegate speedometer testing to another testing station. This proposed amendment is based upon recommendations from industry stakeholders.

Section 105.33 (relating to required equipment) is proposed to be amended to allow for the use of new devices and technologies in speedometer testing and calibration that have been approved by the Department and are necessitated by advances in technology. The current language does not allow for the introduction and approval of new devices and technologies. Additional proposed amendments delete outdated testing devices and procedures.

Section 105.34 is proposed to be amended to: permit the reproduction of Certificates of Accuracy; require testing devices in accordance with the testing equipment manufacturer's specifications, if the manufacturer specifies a testing schedule; require a station to document the testing and calibration of its testing equipment; and require that this documentation is made available at the request of the Department.

Section 105.34 is proposed to be amended to provide greater detail regarding the standard for accuracy and specifications for testing accuracy.

#### *Persons and Entities Affected*

This proposed rulemaking will affect speedometer testing station owners and personnel, as well as future applicants who intend to have their stations appointed by the Department as a speedometer testing stations.

#### *Fiscal Impact*

Implementation of these proposed amendments will not require the expenditure of additional funds by the Commonwealth or local municipalities. Speedometer testing stations may incur additional short-term compliance costs in the application process and implementation of mobile testing units. However, any short-term costs will be outweighed by more opportunities to calibrate a broader range of vehicles.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 8, 2014, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. 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 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 Department, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *Sunset Provisions*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* following appropriate evaluation of comments, suggestions or objections received during the public comment period. The Department is not establishing a sunset date for these regulations, as these regulations are needed to administer provisions required under 75 Pa.C.S. The Department, however, will continue to closely monitor these regulations for their effectiveness.

#### *Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Anita M. Wasko, Director, Bureau of Motor Vehicles, 1101 South Front Street, 4th Floor, Harrisburg, PA 17104 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

#### *Contact Person*

The contact person for technical questions about this proposed rulemaking is Kay Kishbaugh, Manager, Vehicle Inspection Division, 1101 South Front Street, 4th Floor, Harrisburg, PA 17104, (717) 783-4597.

BARRY J. SCHOCH, PE,  
*Secretary*

**Fiscal Note:** 18-460. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VI. OPERATION OF VEHICLES

CHAPTER 105. MECHANICAL, ELECTRICAL AND ELECTRONIC SPEED-TIMING DEVICES

Subchapter C. SPEEDOMETERS

§ 105.31. Appointment of speedometer testing station.

(a) *Application.* Application for appointment as a speedometer testing station or mobile testing unit to be operated by a speedometer testing station shall be made on a form provided by the Department and submitted for each speedometer testing station and each mobile testing unit to be operated by a speedometer testing station.

(b) *Applicant.* [ Every applicant ] Each applicant intending to be appointed as a speedometer testing station that is not a business entity, including a sole proprietor or partner in a general or limited partnership, shall be at least 18 years of age.

(c) *Place of business.* [ Every ] An applicant shall have an established place of business properly equipped to conduct speedometer tests and repairs or to operate an approved mobile testing unit.

(d) *Certificate of appointment.* A speedometer testing station and each mobile testing unit operated by a speedometer testing station shall prominently display a valid Certificate of Appointment provided by the Department.

§ 105.32. Operation of speedometer testing station.

\* \* \* \* \*

(b) *Hours.* Speedometer testing stations shall be [ operated during a regular work week ] open for business, at a minimum, Monday through Friday during the hours of 8 a.m. to 5 p.m., except for holidays or alternative business hours approved in writing by the Department.

(c) *Personnel.* A speedometer testing station shall employ at least one [ speedometer inspection mechanic ] technician certified as follows:

(1) [ Application ] An application of a technician for certification shall be made on a form provided by the Department.

\* \* \* \* \*

(d) *Location.* Speedometer testing and repair shall take place at an approved speedometer testing station, except that [ : ], upon application to and approval by the Department, a speedometer testing station may operate one or more mobile testing units of a type approved by the Department.

[ (1) When absolutely necessary, it is permissible to delegate the functions to another approved speedometer testing station. The delegation, including the name and address of the other station, shall be kept on file for 1 year.

(2) Upon approval of the Department, a speedometer testing station may operate one or more mobile test units of a type approved by the Department. ]

§ 105.33. Required equipment.

(a) *Items.* [ The following items of equipment are required for the operation of a speedometer testing station ] A speedometer testing station or mobile testing unit shall have sufficient tools to make repairs or adjustments and one or more of the following required equipment:

[ (1) Sufficient hand tools to make needed repairs or adjustments.

(2) ] (1) A dynamometer of a type approved by the Department.

[ (3) ] (2) A Speed-Master Quartz Speedometer Tester.

[ (4) ] (3) A 650-H-1 Stewart-Warner Speedometer Calibrator with adaptive equipment needed to operate this device or any device.

[ (i) One flexible shaft 108 inches in length to reach from the calibrator to the vehicle transmission or speedometer head.

(ii) Two 12-inch flexible shafts to fit Chrysler speedometer.

(iii) One 12-inch flexible shaft to fit Ford speedometer.

(iv) One 12-inch flexible shaft to fit older speedometers with 5/8-18 male thread.

(v) One 757-AD Stewart-Warner strobetachometer, to be used with a fluorescent light using 60 cycle alternating current voltage.

(vi) One 312-12175y S. S. White-Mile-O-Meter revolution counter. ]

(4) Any equipment or alternative technique approved by the Department and published in the *Pennsylvania Bulletin*.

(b) *Periodic testing of speedometer testing equipment.* [ Periodic testing of equipment shall be conducted as follows:

(1) *Interval.* ] Speedometer testing equipment shall be repaired, tested and adjusted for accuracy in accordance with the testing equipment manufacturer's specifications. If the testing equipment manufacturer does not specify a testing schedule, the speedometer testing equipment shall be tested and adjusted for accuracy at least once every 60 days.

[ (2) *Forms.* A form provided by the Department shall be completed by a certified speedometer inspection mechanic after each periodic test. The form shall be released to the State Police Inspection Station Supervisor or Department representatives, if verification of the test is necessary. A duplicate copy, executed and signed in the same manner as the original, has the same force and effect as the original. ]

§ 105.34. Manner of testing speedometers.

(a) *Accuracy.* A [ test ] speedometer shall be tested for accuracy and, if necessary, repaired and adjusted to obtain the greatest possible degree of accuracy, plus or minus 2 miles per hour (mph) up to 100 mph. Testing shall [ include one of ] be conducted in accordance with the following:

[ (1) A dynamometer test.

(2) A Speed-Master Quartz Speedometer Tester.

(3) A Stewart-Warner Speedometer Calibrator and required components.

(i) It will be necessary to have a measured or surveyed mile laid out and properly marked. If less than a mile, use Table 1:

Table 1

1 mile or 5,280 feet = 1000 cable revolutions

1/2 mile or 2,640 feet = 500 cable revolutions

1/10 mile or 528 feet = 100 cable revolutions

(ii) Check the tires on the test vehicle for proper inflation.

(iii) Disconnect the speedometer cable from the back of the speedometer in the vehicle.

(A) Connect the speedometer cable to the counter. (S. S. White Mile-O-Meter).

(B) Place the vehicle rear wheel centered on line at the beginning of the measured course.

(C) Set the counter of the Mile-O-Meter to zero.

(D) Drive the vehicle over the measured course.

(E) Read the counter and compare it with Table 1.

(F) Establish degree or percent of error. In a given measured mile, there should be 1000 cable revolutions. The input speed is slow if less than 1,000. The input speed is fast if more than 1,000.

(iv) Disconnect the counter from the speedometer cable on the vehicle.

(A) Use the long flexible shaft from the calibrator with the proper 12-inch shaft that permits adopting to fit speedometer head in the vehicle.

(B) Proceed to check the speedometer in the vehicle against the master head on the calibrator at 10 mph increments, beginning at 10 to 100 mph, and record the proper information.

(v) Disconnect the calibrator flexible shaft from the rear of the speed head in the vehicle and connect the shaft in the vehicle to the speedometer head in same. The speedometer head in the vehicle being tested can also be tested by disconnecting the flexible shaft at the transmission and connecting it to the long flexible shaft from the calibrator. Then proceed as in subparagraph (iv)(B).

(vi) Information indicated above is based on United States standard of 1,000 cable revolutions per minute = 60 mph or 96 kilometers per hour.

(4) An examination of the speedometer cables to insure that they work freely and without defect or restriction. ]

(1) Testing equipment and alternative techniques set forth in or approved in accordance with § 105.33 (relating to required equipment) shall be used.

(2) Testing shall occur using manufacturer's specifications and procedures.

(3) It is necessary to have a measured or surveyed calibration course laid out and properly marked when using a technique that requires a calibration course for testing.

(b) *Forms.* [ The following forms are required: ] A Certificate of Accuracy, on a form provided by the Department, shall be completed after a speedometer test or repair and signed by the certified technician that performed the speedometer test. A copy of the certificate shall be kept on file at the speedometer testing station for at least 3 years, and be made available to the State Police Inspection Station Supervisor or Department representatives as necessary. Certificates of Accuracy may be reproduced and a duplicate copy, executed and signed in the same manner as the original, has the same force and effect as the original.

[ (1) A speedometer testing station shall permanently display a valid Certificate of Appointment, provided by the Department.

(2) A Certificate of Speedometer Accuracy, a form provided by the Department, shall be completed after a speedometer test or repair and signed by the Department speedometer inspection mechanic. A copy of the certificate shall be kept on file at the speedometer testing station for at least 2 years. A duplicate copy, executed and signed in the same manner as the original, has the same force and effect as the original. ]

[Pa.B. Doc. No. 14-1493. Filed for public inspection July 18, 2014, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA CODE CH. 129 ]

### Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing Materials

The Environmental Quality Board (Board) proposes to amend Chapter 129 (relating to standards for sources) to read as set forth in Annex A. The proposed rulemaking would add § 129.74 (relating to control of VOC emissions from fiberglass boat manufacturing materials) to adopt reasonably available control technology (RACT) requirements and RACT emission limitations for stationary sources of volatile organic compound (VOC) emissions from fiberglass boat manufacturing materials including open molding resins, gel coats and cleaning materials. The proposed rulemaking would also add terms and definitions to § 129.74 to support the interpretation of the proposed measures.

This proposed rulemaking will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to the Commonwealth's State Implementation Plan (SIP) following promulgation of the final-form regulation.

This proposed rulemaking is given under Board order at its meeting of May 21, 2014.

#### A. *Effective Date*

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

#### B. *Contact Persons*

For further information, contact Kirit Dalal, Chief, Division of Air Resource Management, Bureau of Air

Quality, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3436; or Kristen Furlan, Assistant Director, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.state.pa.us](http://www.dep.state.pa.us) (select "Public Participation Center," then select "Environmental Quality Board").

### C. Statutory Authority

The 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. Section 5(a)(8) of the APCA also grants the Board the authority to adopt rules and regulations designed to implement the provisions of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7671q).

### D. Background and Purpose

The purpose of this proposed rulemaking is to implement control measures to reduce VOC emissions from fiberglass boat manufacturing materials including open molding resin, gel coat and cleaning materials. VOCs are precursors for ground-level ozone formation. Ground-level ozone, a public health and welfare hazard, is not emitted directly to the atmosphere by fiberglass boat manufacturing materials including open molding resin, gel coat and cleaning materials, but is formed by a photochemical reaction between VOCs and nitrogen oxides (NO<sub>x</sub>) in the presence of sunlight. In accordance with sections 172(c)(1), 182(b)(2)(A) and 184(b)(1)(B) of the CAA (42 U.S.C.A. §§ 7502(c)(1), 7511a(b)(2)(A) and 7511c(b)(1)(B)), the proposed rulemaking establishes the VOC emission limitations and other requirements of the EPA 2008 Fiberglass Boat Manufacturing Materials Control Techniques Guidelines (CTG) for these sources in this Commonwealth. See Consumer and Commercial Products, Group IV: Control Techniques Guidelines in Lieu of Regulations for Miscellaneous Metal Products Coatings, Plastic Parts Coatings, Auto and Light-Duty Truck Assembly Coatings, Fiberglass Boat Manufacturing Materials, and Miscellaneous Industrial Adhesives, 73 FR 58481, 58483 (October 7, 2008).

The EPA is responsible for establishing National Ambient Air Quality Standards (NAAQS) for six criteria pollutants considered harmful to public health and the environment: ground-level ozone; particulate matter; NO<sub>x</sub>; carbon monoxide; sulfur dioxide; and lead. The CAA established two types of NAAQS: primary standards, which are limits set to protect public health; and secondary standards, which are limits set to protect public welfare and the environment, including protection against visibility impairment and from damage to animals, crops, vegetation and buildings. The EPA established primary and secondary ground-level ozone NAAQS to protect public health and welfare.

Ground-level ozone is a highly reactive gas, which at sufficiently high concentrations can produce a wide variety of harmful effects. At elevated concentrations, ground-level ozone can adversely affect human health, animal health, vegetation, materials, economic values, and personal comfort and well-being. It can cause damage to

important food crops, forests, livestock and wildlife. Repeated exposure to ozone pollution may cause a variety of adverse health effects for both healthy people and those with existing conditions, including difficulty in breathing, chest pains, coughing, nausea, throat irritation and congestion. It can worsen bronchitis, heart disease, emphysema and asthma, and reduce lung capacity. Asthma is a significant and growing threat to children and adults. High levels of ground-level ozone affect animals in ways similar to humans. 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 July 1997, the EPA promulgated primary and secondary ozone standards at a level of 0.08 part per million (ppm) averaged over 8 hours. See 62 FR 38856 (July 18, 1997). In 2004, the EPA designated 37 counties in this Commonwealth as 8-hour ozone nonattainment areas for the 1997 8-hour ozone NAAQS. Based on the ambient air monitoring data for the 2013 ozone season, all monitored areas of this Commonwealth are attaining the 1997 8-hour ozone NAAQS. The Department must ensure that the 1997 ozone standard is attained and maintained by implementing permanent and enforceable control measures to ensure violations of the standard do not occur for the next decade.

In March 2008, the EPA lowered the standard to 0.075 ppm averaged over 8 hours to provide even greater protection for children, other at-risk populations and the environment against the array of ozone-induced adverse health and welfare effects. See 73 FR 16436 (March 27, 2008). In April 2012, the EPA designated five areas in this Commonwealth as nonattainment for the 2008 ozone NAAQS. See 77 FR 30088, 30143 (May 21, 2012). These areas include all or a portion of Allegheny, Armstrong, Berks, Beaver, Bucks, Butler, Carbon, Chester, Delaware, Fayette, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, Washington and Westmoreland Counties. The Commonwealth must ensure that these areas attain the 2008 ozone standard by 2015 and that they continue to maintain the standard thereafter.

There are not Federal statutory or regulatory RACT limits for VOC emissions from fiberglass boat manufacturing materials. In 2001, however, the EPA promulgated 40 CFR Part 63, Subpart VVVV (relating to National emission standards for hazardous air pollutants for boat manufacturing) (2001 NESHAP). The 2001 NESHAP established organic hazardous air pollutant (HAP) emissions limits based on low-HAP resins and gel coats and low-emitting resin application technology. Many HAPs are VOCs, but not all VOCs are HAPs. The 2001 NESHAP data, however, indicate that styrene and methyl methacrylate, which are both organic HAP and VOC, account for nearly all the VOC emissions, as well as HAP emissions, from fiberglass boat manufacturing facilities. Therefore, total HAP and VOC emissions from fiberglass boat manufacturing facilities are nearly equal.

When developing the VOC emission reduction RACT measures included in its Fiberglass Boat Manufacturing Materials CTG, the EPA took into account the HAP emission reduction measures of the 2001 NESHAP for the boat manufacturing industry. The requirements of the 2001 NESHAP apply to "major sources" of HAP from boat manufacturing operations. For the purpose of regulating HAPs, a "major source" is considered to be a stationary

source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any single listed HAP or 25 tpy or more of any combination of HAPs. See section 112(a)(1) of the CAA (42 U.S.C.A. § 7412(a)(1)). See 66 FR 44218, 44219 (August 22, 2001).

State regulations to control VOC emissions from fiberglass boat manufacturing materials are required under Federal law and will be reviewed and approved by the EPA if the provisions meet the RACT requirements of the CAA and its implementing regulations. See 73 FR 58481, 58483. The EPA defines RACT as “the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.” See State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas—Supplement (on Control Techniques Guidelines), 44 FR 53761 (September 17, 1979).

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include “reasonably available control measures,” including RACT, for sources of emissions. Section 182(b)(2) of the CAA provides that for moderate ozone nonattainment areas, states must revise their SIPs to include RACT for sources of VOC emissions covered by a CTG document issued by the EPA prior to the area’s date of attainment. More importantly, section 184(b)(1)(B) of the CAA requires that states in the Ozone Transport Region (OTR), including the Commonwealth, submit an SIP revision requiring implementation of RACT for all sources of VOC emissions in the state covered by a specific CTG.

Section 183(e) of the CAA (42 U.S.C.A. § 7511b(e)) directs the EPA to list for regulation those categories of products that account for at least 80% of the VOC emissions from consumer and commercial products in ozone nonattainment areas. Section 183(e)(3)(C) of the CAA further provides that the EPA may issue a CTG document in place of a National regulation for a product category when the EPA determines that the CTG will be “substantially as effective as regulations” in reducing emissions of VOC in ozone nonattainment areas. In 1995, the EPA listed fiberglass boat manufacturing on its section 183(e) list and, in 2008, the EPA issued a CTG for this product category. See 60 FR 15264, 15267 (March 23, 1995) and 73 FR 58481. See Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials, EPA 453/R-08-004, Office of Air Quality Planning and Standards, EPA, September 2008. The Fiberglass Boat Manufacturing Materials CTG is available on the EPA web site at [www.epa.gov/airquality/ozonepollution/SIPToolkit/ctgs.html](http://www.epa.gov/airquality/ozonepollution/SIPToolkit/ctgs.html).

In the 2008 notice of final determination and availability of final CTGs, the EPA determined that the recommendations of the Fiberglass Boat Manufacturing Materials CTG would be substantially as effective as National regulations in reducing VOC emissions from the fiberglass boat manufacturing materials product category in ozone nonattainment areas. See 73 FR 58481. The CTG provides states with the EPA’s recommendation of what constitutes RACT for the covered category. States can use the Federal recommendations provided in the CTG to inform their own determination as to what constitutes RACT for VOC emissions from the covered category. State air pollution control agencies may implement other technically-sound approaches that are consistent with the CAA requirements and the EPA’s implementing regulations or guidelines.

The Department reviewed the recommendations included in the 2008 Fiberglass Boat Manufacturing Materials CTG for their applicability to the ground-level ozone reduction measures necessary for this Commonwealth. The Bureau of Air Quality determined that the measures provided in the Fiberglass Boat Manufacturing Materials CTG are appropriate to be implemented in this Commonwealth as RACT for this category.

This proposed rulemaking would affect the owner and operator of one known Title V major facility in this Commonwealth. The Board anticipates that the affected owner of the facility would demonstrate compliance with the proposed measures to reduce VOC emissions because this facility is already subject to the 2001 NESHAP HAP emission control requirements. These NESHAP provisions are applicable requirements in the Federally-enforceable Title V permit issued by the Department to the owner and operator on January 23, 2008. It is possible that the proposed rulemaking would also affect owners and operators of other fiberglass boat manufacturing facilities that have not yet been identified, because the 2001 NESHAP does not apply to area sources (that is, sources that emit less than 10 tpy of any single listed HAP or less than 25 tpy of any combination of HAPs). Owners and operators of area source fiberglass boat manufacturing facilities are, therefore, not currently required to implement the HAP-reduction measures provided in the 2001 NESHAP, which are also included in the 2008 Fiberglass Boat Manufacturing Materials CTG as measures for reducing emissions of VOCs from sources that meet the applicability threshold recommended by the EPA in the CTG.

The ground-level ozone reduction measures included in this proposed rulemaking would achieve VOC emission reductions locally and would also reduce the transport of VOC emissions and ground-level ozone to downwind states, if implemented for potentially unidentified existing sources of VOC emissions from fiberglass boat manufacturing operations including open molding resin and gel coat materials that are not currently controlled in this Commonwealth. Adoption of VOC emission requirements for fiberglass boat manufacturing materials is part of the Commonwealth’s strategy, in concert with other OTR jurisdictions, to further reduce transport of VOC ozone precursors and ground-level ozone throughout the OTR to attain and maintain the 8-hour ozone NAAQS.

The proposed rulemaking is required under the CAA and is reasonably necessary to attain and maintain the health-based and welfare-based 8-hour ozone NAAQS and to satisfy related CAA requirements in this Commonwealth. If published as a final-form regulation in the *Pennsylvania Bulletin*, this proposed rulemaking will be submitted to the EPA as a revision to the Commonwealth’s SIP.

The proposed rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC) on December 12, 2013. The AQTAC voted unanimously to concur with the Department’s recommendation to forward the proposed rulemaking to the Board for consideration. The proposed rulemaking was discussed with the Small Business Compliance Advisory Committee (SBCAC) on April 23, 2014. The SBCAC also voted unanimously to forward the proposed rulemaking to the Board for consideration. The proposed rulemaking was discussed with the Citizens Advisory Council (CAC) Policy and Regulatory Oversight (PRO) Committee on March 12, 2014. On the recommendation of the PRO Committee, on March 18, 2014, the CAC concurred with the Department’s recommendation to forward the proposed rulemaking to the Board.

*E. Summary of Regulatory Requirements**§ 129.74. Control of VOC emissions from fiberglass boat manufacturing materials*

Under proposed subsection (a), the proposed rulemaking would apply Statewide to the owner and operator of a facility that manufactures a hull or a deck of a boat or a related part from fiberglass, builds a mold or plug to make a fiberglass boat hull or deck or related part, or makes polyester resin putties for assembling fiberglass boat parts when the total actual VOC emissions from fiberglass boat manufacturing operations identified in Table I are equal to or greater than 15 pounds (6.8 kilograms) per day or 2.7 tons per 12-month rolling period, before consideration of controls. The total actual VOC emissions include the actual VOC emissions from the manufacture of hulls or decks from fiberglass, fiberglass boat parts (including small parts such as hatches, seats and lockers), molds or plugs for fiberglass hulls, decks or boat parts, resin and gel coat mixing operations, resin and gel coat application equipment and related cleaning activities at the facility. As with all RACT regulations, an owner or operator remains subject to the regulation even if the throughput or VOC emissions fall below the applicability threshold.

Proposed subsection (a) also specifies that the proposed rulemaking would not apply to the owner and operator of a facility that manufactures boat trailers or parts of boats, such as hatches, seats and lockers, but does not manufacture hulls or decks of boats from fiberglass or build molds to make fiberglass boat hulls or decks. Further, proposed subsection (a) establishes monomer VOC content limits for open molding resin and gel coat materials.

Under proposed subsection (b), the proposed rulemaking establishes 39 definitions to support the proposed rulemaking.

Under proposed subsection (c), exceptions are established for certain operating circumstances.

Under proposed subsection (d), the requirements of this proposed rulemaking supersede the requirements of a RACT permit issued to an owner and operator of a source subject to this section, except to the extent the RACT permit contains more stringent requirements.

Under proposed subsection (e), the owner and operator of a facility subject to this section shall comply with the applicable requirements on the effective date of adoption of this proposed rulemaking.

Under proposed subsection (f), the owner and operator of a facility subject to this section may not cause or permit the emission into the outdoor atmosphere of monomer VOCs from an open molding resin or gel coat fiberglass boat manufacturing operation, a resin or gel coat mixing operation, or a resin or gel coat application equipment cleaning operation unless one or more of the specified limitations is met. Three options for meeting the emission limits are proposed: use of compliant materials as listed in Table I; monomer VOC emissions averaging; or installation of a VOC emissions capture system and add-on air pollution control device.

Under proposed subsection (g), the owner and operator of a facility subject to this section opting to install a VOC emissions capture system and add-on air pollution control device must obtain a plan approval prior to installation and operation of the VOC emissions capture system and add-on air pollution control device.

Under proposed subsection (h), the owner and operator of a facility subject to this section may use an adjusted

monomer VOC emission rate for filled production resins and filled tooling resins in each of the options specified in subsection (f).

Under proposed subsection (i), the monomer VOC content of an open molding resin, gel coat, filled production resin or filled tooling resin material not included in an emissions averaging option in subsection (f)(2) must meet the monomer VOC content requirements of subsection (f)(1) or the add-on air pollution control requirements of subsection (f)(3).

Under proposed subsection (j), alternative requirements for control of monomer VOC content for certain resin and gel coat materials are established.

Under proposed subsection (k), work practices for resin and gel coat materials are established.

Under proposed subsection (l), VOC content limits and work practices for cleaning materials are established.

Under proposed subsection (m), compliance and monitoring requirements are established.

Under proposed subsection (n), sampling and testing standards are established.

Under proposed subsection (o), recordkeeping requirements are established.

Under proposed subsection (p), reporting requirements are established.

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

Implementation of the VOC emission control measures in the proposed rulemaking would benefit the health and welfare of the approximately 12 million residents and the numerous animals, crops, vegetation and natural areas of this Commonwealth by reducing emissions of VOCs, which are precursors to the formation of ground-level ozone air pollution. Exposure to high concentrations of ground-level ozone is a serious human and animal health and welfare threat, causing respiratory illnesses and decreased lung function, agricultural crop loss, visible foliar injury to sensitive plant species, and damage to forests, ecosystems and infrastructure. Reduced ambient concentrations of ground-level ozone would reduce the incidences of hospital admissions for respiratory ailments including asthma and improve the quality of life for citizens overall. 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 ground-level ozone while engaged in activities that involve physical exertion.

This proposed rulemaking is designed to adopt the standards and recommendations in the EPA's 2008 Fiberglass Boat Manufacturing Materials CTG to meet the requirements of sections 172(c)(1), 182(b)(2) and 184(b)(1)(B) of the CAA. The proposed rulemaking would apply the standards and recommendations in the CTG across this Commonwealth, as required under section 184(b)(1)(B) of the CAA.

The Statewide implementation of the proposed rulemaking control measures would assist the Department in reducing VOC emissions from fiberglass boat manufacturing operations locally, and reducing the resultant local formation of ground-level ozone and transport of VOC emissions and ground-level ozone to downwind states. Statewide implementation would also facilitate implementation and enforcement of the proposed rulemaking in this Commonwealth. The measures in the proposed rulemaking are reasonably necessary to attain and maintain

the health-based and welfare-based 8-hour ozone NAAQS and to satisfy related CAA requirements in this Commonwealth.

The proposed rulemaking may create economic opportunities for VOC emission control technology innovators, manufacturers and distributors through an increased demand for new or improved equipment. In addition, the owners and operators of regulated facilities may be required to install and operate an emissions monitoring system or equipment necessary for an emissions monitoring method to comply with the proposed rulemaking, thereby creating an economic opportunity for the emissions monitoring industry.

#### *Compliance costs*

The Board does not anticipate additional costs from these proposed VOC emission reduction measures for the owner and operator of this Title V facility which is already subject to the EPA's 2001 NESHAP HAP emission control requirements. These applicable requirements are incorporated in the Federally-enforceable Title V permit issued by the Department to the owner and operator on January 23, 2008. Therefore, there would not be additional compliance costs to the owner and operator of this source from implementation of this proposed rulemaking. It is possible that the proposed rulemaking would also affect owners and operators of other fiberglass boat manufacturing facilities that have not yet been identified, because the HAP emission reduction measures of the 2001 NESHAP do not apply to the owners and operators of area sources (that is, sources that emit less than 10 tpy of any single listed HAP or less than 25 tpy of any combination of HAPs). Owners and operators of area source fiberglass boat manufacturing facilities are, therefore, not currently required to implement the HAP emission reduction measures provided in the 2001 NESHAP, which are also included in the 2008 Fiberglass Boat Manufacturing Materials CTG as measures for reducing emissions of VOCs from sources that meet the applicability threshold recommended by the EPA in the CTG.

The owner and operator of a facility that is not subject to the 2001 NESHAP that would be subject to the proposed rulemaking would be expected to incur little, if any, cost to implement the requirements of the proposed rulemaking. The proposed rulemaking provides as one compliance option the use of individually-compliant resin and gel coat materials in subsection (f)(1), and requires the use of compliant cleaning solvents in subsection (l). Open molding resin, gel coat and cleaning materials that are compliant with the HAP content limits in the 2001 NESHAP and with the proposed rulemaking VOC content limits in subsection (a) are readily available to all sizes of facilities. Further, the industry has experienced a shift to non-atomizing resin application methods that are required to comply with the HAP emission reduction requirements in the 2001 NESHAP and which are included in the proposed rulemaking. This shift has occurred at all sizes of facilities across the United States because of the productivity and economic benefits of using non-atomizing methods over conventional atomizing methods.

The proposed rulemaking would provide flexibility by allowing compliance through averaging the VOC emission rates of open molding resin and gel coat materials in subsection (f)(2) in addition to choice of application technology. A third compliance option, the use of a VOC emissions capture system and add-on air pollution control device, is provided in subsection (f)(3). However, because of the wide availability and lower cost (compared to

add-on controls) of compliant VOC content materials and alternative application methods, compliant materials and methods are generally used to reduce VOC emissions from fiberglass boat manufacturing facilities.

Emission limitations established by this proposed rulemaking would not require the submission of applications for amendments to existing operating permits. These requirements would be incorporated as applicable requirements at the time of permit renewal, if less than 3 years remain in the permit term.

New legal, accounting or consulting procedures would not be required.

#### *Compliance assistance plan*

The Department plans to educate and assist the public and regulated community in understanding the proposed requirements and how to comply with them. This would be accomplished through the Department's ongoing compliance assistance program. The Department would also work with the Small Business Assistance Program to aid the facilities less able to handle permitting matters with in-house staff.

#### *Paperwork requirements*

The owner and operator of an affected fiberglass boat manufacturing source would be required to keep records of information for open molding resin and gel coat materials and cleaning materials, as applicable, sufficient to demonstrate compliance with the requirements of this section. The proposed rulemaking would require monthly records of certain VOC content information or composite vapor pressure, as applicable. Records of calculations performed for each applicable requirement under subsections (f), (h) and (j) would be required, as well as records of the sampling and testing performed in accordance with subsection (n). The records required in the proposed rulemaking must be maintained for 2 years unless a longer period is specified by a plan approval or operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources) and submitted to the Department in an acceptable format upon receipt of a written request.

#### *G. Pollution Prevention*

The 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 proposed rulemaking would help ensure that the citizens and the environment of this Commonwealth experience the benefits of reduced emissions of VOCs and HAPs from fiberglass boat manufacturing open molding resin, gel coat and cleaning materials. Although the proposed rulemaking is designed primarily to address ozone air quality, the reformulation or substitution of low-VOC content open molding resin and gel coat materials, and low-VOC content or low vapor pressure cleaning materials, to meet the VOC content limits applicable to users may also result in reduction of HAP emissions, which are also a serious health threat. The reduced levels of high VOC-content and HAP-content solvents would

also benefit water quality through reduced loading on water treatment plants and in reduced quantities of high VOC-content and HAP-content solvents leaching into the ground.

The proposed rulemaking provides as one compliance option that open molding resin and gel coat materials used in fiberglass boat manufacturing processes in this Commonwealth would meet specified limits for VOC content, usually through substitution of low VOC-content solvents or water for the high VOC-content solvents, and that they be applied using specified application methods. Further, the proposed rulemaking would require the owner and operator of a source subject to this section to ensure that resin and gel coat containers with a capacity equal to or greater than 55 gallons (208 liters), including those used for onsite mixing of putties and polyputties, have a cover in place at all times with no visible gaps, except when materials are being manually added or removed from a container or when mixing equipment is being placed in or removed from a container.

The proposed rulemaking additionally requires the use of low-VOC content or low vapor pressure cleaning materials, and work practice standards for the storage and handling of cleaning materials. The proposed rulemaking would also require the owner and operator of a source subject to this section to ensure that the VOC content of cleaning materials used for routine application equipment cleaning is equal to or less than 5% by weight or has a composite vapor pressure equal to or less than 0.50 mmHg at 68°F and use only non-VOC-containing solvent to remove cured resin or gel coat residue from application equipment.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 8, 2014, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. 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 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 Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. *Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board. Comments, suggestions or objections must be received by the Board by September 22, 2014. In addition to the submission of comments, 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 the Board by September 22, 2014. The one-page summary will be distributed to the Board and

available publicly prior to the meeting when the final-form rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing the Board's online comment system at <http://www.ahs.dep.pa.gov/RegComments>. Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

Written comments should be mailed to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

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 at 1 p.m. on the following dates:

- August 19, 2014 Department of Environmental Protection  
Southwest Regional Office  
Island Conference Room  
400 Waterfront Drive  
Pittsburgh, PA 15222
- August 20, 2014 Department of Environmental Protection  
Southeast Regional Office  
Schuylkill Conference Room  
2 East Main Street  
Norristown, PA 19401
- August 21, 2014 Department of Environmental Protection  
Rachel Carson State Office Building  
Conference 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) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

E. CHRISTOPHER ABRUZZO,  
*Chairperson*

**Fiscal Note:** 7-487. 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 129. STANDARDS FOR SOURCES

## SOURCES OF VOCs

## § 129.74. Control of VOC emissions from fiberglass boat manufacturing materials.

(a) *Applicability.*

(1) This section applies to the owner and operator of a facility that manufactures a hull or a deck of a boat or a related part from fiberglass, builds a mold or plug to make a fiberglass boat hull or deck or related part, or makes polyester resin putties for assembling fiberglass boat parts, when the total actual VOC emissions from fiberglass boat manufacturing operations identified in Table I are equal to or greater than 15 pounds (6.8 kilograms) per day or 2.7 tons per 12-month rolling period, before consideration of controls. The total actual VOC emissions include the actual VOC emissions from the manufacture of hulls or decks from fiberglass, fiberglass boat parts (including small parts such as hatches, seats and lockers), molds or plugs for fiberglass hulls, decks or boat parts, resin and gel coat mixing operations, resin and gel coat application equipment and related cleaning activities at the facility.

(2) This section does not apply to the owner and operator of a facility that manufactures boat trailers or parts of boats, such as hatches, seats and lockers, but does not manufacture hulls or decks of boats from fiberglass or build molds to make fiberglass boat hulls or decks.

**Table I: Compliant Monomer VOC Content Limit for Open Molding Resin and Gel Coat Materials**

<i>Open Molding Resin or Gel Coat Material</i>	<i>Application Method</i>	<i>Individual Monomer VOC Content or Weighted Average Monomer VOC Content (weight percent)</i>
Production Resin	Atomized Spray	28
Production Resin	Non-atomized	35
Pigmented Gel Coat	Any Method	33
Clear Gel Coat	Any Method	48
Tooling Resin	Atomized Spray	30
Tooling Resin	Non-atomized	39
Tooling Gel Coat	Any Method	40

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Application equipment cleaning*—The process of flushing or removing resin or gel coat material, or both, from the interior or exterior of equipment that is used to apply resins or gel coats in the manufacture of fiberglass parts.

*Assembly adhesives*—A chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

*Atomized application method*—

(i) A resin application technology in which the resin leaves the application equipment and breaks into droplets or an aerosol as it travels from the application equipment to the surface of the part.

(ii) The term includes resin spray guns and resin chopper spray guns.

*Boat*—A vessel, other than a seaplane, that can be used for transportation on the water.

*Clear gel coat*—

(i) A polyester resin material that is clear or translucent so that underlying colors are visible. These materials are used to manufacture parts for sale.

(ii) The term does not include tooling gel coats used to build or repair molds.

*Closed molding*—

(i) A process in which pressure is used to distribute resin through the reinforcing fabric placed between two mold surfaces to either saturate the fabric or fill the mold cavity. The pressure may be clamping pressure, fluid pressure, atmospheric pressure or vacuum pressure used either alone or in combination. The mold surfaces may be rigid or flexible.

(ii) The term includes compression molding with sheet molding compound, infusion molding, resin injection molding, vacuum assisted resin transfer molding, resin transfer molding and vacuum assisted compression molding.

(iii) The term does not include:

(A) A process in which a closed mold is used only to compact saturated fabric or remove air or excess resin from the fabric, such as in vacuum bagging.

(B) Open molding steps, such as application of a gel coat or skin coat layer by conventional open molding.

*Cured resin*—A thermosetting plastic material containing styrene or methyl methacrylate or gel coat that has changed irreversibly from a liquid to a solid.

*Fiberglass*—A material consisting of glass fibers made in the form of cloth, mat or roving.

*Fiberglass boat*—A vessel in which either the hull or deck, or both, is built from a composite material consist-

ing of a thermosetting resin matrix reinforced with fibers of glass, carbon, aramid or other material.

*Filled resin*—A thermosetting plastic material to which an inert material has been added to change viscosity, density, shrinkage or other physical properties, particularly for building molds.

*Flowcoater*—A non-atomizing application method of applying resins and gel coats to an open mold with a fluid nozzle in a fan pattern with no air supplied to the nozzle.

*Gel coat*—

(i) A clear or pigmented polyester resin material that does not contain reinforcing fibers and becomes the outer or inner surface of a finished boat product or mold.

(ii) The term includes a clear or pigmented polyester resin mixed with metal flakes.

*Glass cloth*—A fabric made of woven yarns of glass fibers.

*Glass mat*—A prepared material consisting of short glass fibers that are fixed to each other in a random pattern by a chemical binder or are mechanically stitched to a lightweight fabric.

*Glass roving*—A bundle of continuous glass fibers that is fed from a spool to a specialized gun that chops the bundle into short fibers, mixes the fibers with catalyzed resin and deposits the mixture on the mold surface in a random pattern.

*Mixing*—An operation in which resin or gel coat, including the mixing of putties or polyester resin putties, is combined with additives that include fillers, promoters or catalysts.

*Mold*—

(i) The cavity or surface into or on which gel coat, resin and fibers are placed and from which finished fiberglass parts take their form.

(ii) The term is also known as a tool.

*Monomer VOC*—A VOC that partially combines with itself or other similar compounds by a cross-linking reaction to become a part of the cured resin.

*Monomer VOC content*—The weight of the monomer divided by the weight of the polymer.

*Non-atomized application method*—

(i) A resin application technology in which the resin is not broken into droplets or into an aerosol as the resin travels from the application equipment to the surface of the part.

(ii) The term includes flowcoaters, chopper flowcoaters, pressure-fed resin rollers, resin impregnators and hand application (for example, paint brush or paint roller).

*Open molding*—

(i) A process in which the reinforcing fibers and resin are placed in the mold and are open to the surrounding air while the reinforcing fibers are saturated with resin.

(ii) The term includes:

(A) An operation in which a vacuum bag or similar cover is used to compress an uncured laminate to remove air bubbles or excess resin or to achieve a bond between a core material and a laminate.

(B) Application of a gel coat or skin coat layer prior to a closed molding process.

(C) A process in which a closed mold is used only to compact saturated fabric or to remove air or excess resin from the fabric (such as in vacuum bagging).

*Pigmented gel coat*—

(i) An opaque polyester resin material used to manufacture parts for sale.

(ii) The term does not include tooling gel coats used to build or repair molds.

*Plug*—

(i) A full-size model of the part to be manufactured. The mold is built over the finished model.

(ii) The term is also known as a prototype.

*Polyester resin material*—An unsaturated thermosetting plastic material, such as an isophthalic, orthophthalic, halogenated, bisphenol A, vinylester or furan resin, a cross-linking agent, a catalyst, a gel coat, an inhibitor, an accelerator, a promoter or other material containing VOC used in polyester resin operations.

*Polyester resin operation*—A process in which an unsaturated polyester resin material is used to fabricate, rework, repair or touch-up a product for commercial, military or industrial use by mixing, pouring, hand laying-up, impregnating, injecting, forming, winding, spraying or curing.

*Polypatty or putty*—A polyester or vinylester resin mixed with inert fillers or fibers. The mixture is used to assemble fiberglass parts and to fill gaps between parts. The applied material becomes part of the composite structure. These materials are not considered industrial adhesives.

*Production resin*—

(i) A thermosetting plastic material used to manufacture parts for sale.

(ii) The term does not include tooling resins used to build or repair molds and assembly adhesives.

*Repair*—The addition of polyester resin material to a portion of a previously fabricated product to mend damage.

*Resin*—A thermosetting plastic material containing styrene or methyl methacrylate, with or without pigment, used to encapsulate and bind together reinforcement fibers in the construction of fiberglass parts.

*Resin impregnator*—A mechanical non-atomizing composite material application method in which fiber reinforcement is saturated with one or more resins in a controlled ratio for each specific composite product.

*Roll-out*—The process of using rollers, squeegees or similar tools to compact reinforcing materials saturated with resin to remove trapped air or excess resin.

*Skin coat*—A layer of resin and fibers applied over the gel coat to protect the gel coat from being deformed by the next laminate layer.

*Tooling gel coat*—A polyester resin material containing styrene or methyl methacrylate, or both, that becomes the interior surface of a mold, supported by resin and fiberglass, or the exterior surface of a plug used to create a mold or is used to repair a mold.

*Tooling resin*—A thermosetting plastic material, hardened by a catalyst, used to construct or repair a mold or a plug for a mold for the manufacture of a fiberglass boat hull, deck or other part.

*Touch-up*—The application of material to cover minor imperfections.

*Vacuum bagging*—

(i) A molding technique in which the reinforcing fabric is saturated with resin, covered with a flexible sheet that is sealed to the edge of the mold and a vacuum is applied under the sheet to compress the laminate, remove excess resin or remove trapped air from the laminate during curing.

(ii) The term does not include a process that meets the definition of “closed molding.”

*Vacuum bagging with roll-out*—A partially closed molding technology that rolls the resin and fabric before the application of vacuum bagging materials.

*Vacuum bagging without roll-out*—A partially closed molding technology that applies vacuum bagging materials to the mold immediately after resin application without rolling the resin and fabric.

*Vinylester resin*—A thermosetting plastic material containing one or more esters of acrylic or methacrylic acids and having double-bond and ester linkage sites only at the ends of the resin molecules.

(c) *Exceptions.* The requirements of this section do not apply to the following circumstances:

(1) A resin application process in a closed molding operation as defined in subsection (b).

(2) A surface coating applied to a fiberglass boat.

(3) A surface coating for a fiberglass and metal recreational boat.

(4) An industrial adhesive used in the assembly of a fiberglass boat. Industrial adhesives used in fiberglass boat assembly are regulated under § 129.77 or Chapter 130, Subchapter D (relating to control of emissions from the use or application of adhesives, sealants, primers and solvents; and adhesives, sealants, primers and solvents).

(d) *Existing RACT permit.* The requirements of this section supersede the requirements of a RACT permit issued to the owner and operator of a source subject to subsection (a) prior to \_\_\_\_\_, (*Editor’s Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) under §§ 129.91—129.95 (relating to stationary sources of NO<sub>x</sub> and VOCs) to control, reduce or minimize VOCs from a fiberglass boat manufacturing process, except to the extent the RACT permit contains more stringent requirements.

(e) *Compliance deadline.* The owner and operator of a facility subject to this section shall comply with the applicable requirements beginning \_\_\_\_\_. (*Editor’s Note:* The blank refers to the effective date of adoption of this proposed rulemaking.)

(f) *Emission limits.* Except as specified in subsection (h) or (j), the owner and operator of a facility subject to this section may not cause or permit the emission into the outdoor atmosphere of monomer VOCs from an open molding resin or gel coat fiberglass boat manufacturing operation, a resin or gel coat mixing operation, or a resin

or gel coat application equipment cleaning operation unless one or more of the following limitations is met:

(1) *Compliant materials option.* The individual monomer VOC content limit is achieved through the use of low-monomer VOC content open molding resin and gel coat materials by one or more of the following methods:

(i) Using only low-monomer VOC content resin and gel coat materials within a covered operation listed in Table I.

(A) The monomer VOC content of each resin or gel coat material is equal to or less than the limit specified in Table I.

(B) The monomer VOC content of each resin or gel coat material includes the amount of non-monomer VOC content that exceeds 5% by weight of the resin or gel coat material.

(ii) Averaging the monomer VOC contents for the open molding resin and gel coat materials used within a covered operation listed in Table I on a weight-adjusted basis.

(A) The combined total monomer VOC content of resin or gel coat materials of a certain type must meet the applicable monomer VOC content limit for a specific application method on a 12-month rolling weighted-average basis, calculated using the equation in clause (C).

(B) The monomer VOC content of each resin or gel coat material included in the weighted average specified in clause (A) includes the amount of non-monomer VOC content that exceeds 5% by weight of the resin or gel coat material.

(C) The weighted-average monomer VOC content on a 12-month rolling-average basis shall be calculated as follows:

$$\text{Weighted Average Monomer VOC Content} = \frac{\sum_{i=1}^n (M_i \text{VOC}_i)}{\sum_{i=1}^n (M_i)}$$

Where:

$M_i$  = Mass of open molding resin or gel coat  $i$  used in the past 12 months in an operation, in megagrams.

$\text{VOC}_i$  = Monomer VOC content, by weight percent, of open molding resin or gel coat  $i$  used in the past 12 months in an operation.

$n$  = Number of different open molding resins or gel coats used in the past 12 months in an operation.

(2) *Emissions averaging option.* The numerical monomer VOC emission rate limit is achieved through averaging emissions among different open molding resin and gel coat operations. The equations in subparagraphs (iii)—(v) shall be used to estimate the monomer VOC emission rates from each operation included in the emissions averaging option based on the material and application method.

(i) The monomer VOC content of each open molding resin or gel coat material included in the emissions averaging option includes the amount of non-monomer VOC content that exceeds 5% by weight of the resin or gel coat material.

(ii) The 12-month rolling emissions average shall be determined at the end of each calendar month.

(iii) The facility-specific monomer VOC mass emission limit on a 12-month rolling-average basis shall be calculated as follows:

$$\text{Monomer VOC Limit} = 46(M_R) + 159(M_{PG}) + 291(M_{CG}) + 54(M_{TR}) + 214(M_{TG})$$

Where:

Monomer VOC Limit = Total allowable monomer VOC that can be emitted from the open molding operations included in the emissions averaging program, in kilograms per 12-month period.

$M_R$  = Mass of production resin used in the past 12 months, excluding exempt VOC materials, in megagrams.

$M_{PG}$  = Mass of pigmented gel coat used in the past 12 months, excluding exempt VOC materials, in megagrams.

$M_{CG}$  = Mass of clear gel coat used in the past 12 months, excluding exempt VOC materials, in megagrams.

$M_{TR}$  = Mass of tooling resin used in the past 12 months, excluding exempt VOC materials, in megagrams.

$M_{TG}$  = Mass of tooling gel coat used in the past 12 months, excluding exempt VOC materials, in megagrams.

Numerical coefficients = The allowable monomer VOC emission rate for that particular material, in units of kg/Mg of material used.

(iv) At the end of the first 12-month rolling-average emissions period and at the end of each subsequent calendar month, the owner or operator of the facility shall demonstrate that the monomer VOC emissions from the operations and materials included in the emissions averaging option do not exceed the emission limit calculated under subparagraph (iii) for the same 12-month period as follows:

$$\text{Monomer VOC emissions} = (PV_R)(M_R) + (PV_{PG})(M_{PG}) + (PV_{CG})(M_{CG}) + (PV_{TR})(M_{TR}) + (PV_{TG})(M_{TG})$$

Where:

Monomer VOC emissions = Monomer VOC emissions calculated using the monomer VOC mission equation for each operation included in the emissions averaging program, in kilograms.

$PV_R$  = Weighted-average monomer VOC emission rate for production resin used in the past 12 months, in kilograms per megagram.

$M_R$  = Mass of production resin used in the past 12 months, in megagrams.

$PV_{PG}$  = Weighted-average monomer VOC emission rate for pigmented gel coat used in the past 12 months, in kilograms per megagram.

$M_{PG}$  = Mass of pigmented gel coat used in the past 12 months, in megagrams.

$PV_{CG}$  = Weighted-average monomer VOC emission rate for clear gel coat used in the past 12 months, in kilograms per megagram.

$M_{CG}$  = Mass of clear gel coat used in the past 12 months, in megagrams.

$PV_{TR}$  = Weighted-average monomer VOC emission rate for tooling resin used in the past 12 months, in kilograms per megagram.

$M_{TR}$  = Mass of tooling resin used in the past 12 months, in megagrams.

$PV_{TG}$  = Weighted-average monomer VOC emission rate for tooling gel coat used in the past 12 months, in kilograms per megagram.

$M_{TG}$  = Mass of tooling gel coat used in the past 12 months, in megagrams.

(v) For purposes of subparagraph (iv), the owner or operator of the facility shall determine the weighted-average monomer VOC emission rate for the previous 12 months for each open molding resin and gel coat operation included in the emissions averaging option as follows:

$$PV_{OP} = \frac{\sum_{i=1}^n (M_i PV_i)}{\sum_{i=1}^n (M_i)}$$

Where:

$PV_{OP}$  = Weighted-average monomer VOC emission rate for each open molding operation ( $PV_R$ ,  $PV_{PG}$ ,  $PV_{CG}$ ,  $PV_{TR}$ ,  $PV_{TG}$ ) included in the emissions averaging program, in kilograms of monomer VOC per megagram of material applied.

$M_i$  = Mass of resin or gel coat used within an operation in the past 12 months, in megagrams.

$n$  = Number of different open molding resins and gel coats used within an operation within the past 12 months.

$PV_i$  = The monomer VOC emission rate for resin or gel coat used within an operation in the past 12 months, in kilograms of monomer VOC per megagram of material applied.  $PV_i$  shall be calculated using the applicable emission rate formula specified in Table II.

**Table II: Monomer VOC Emission Rate Formulas for Open Molding Resin and Gel Coat Materials**

<i>Open Molding Resin or Gel Coat Material</i>	<i>Application Method</i>	<i>Emission Rate Formula</i>
Production Resin, Tooling Resin	Atomized	0.014 x (Resin VOC%) <sup>2.425</sup>
Production Resin, Tooling Resin	Atomized, plus vacuum bagging with roll-out	0.01185 x (Resin VOC%) <sup>2.425</sup>
Production Resin, Tooling Resin	Atomized, plus vacuum bagging without roll-out	0.00945 x (Resin VOC%) <sup>2.425</sup>
Production Resin, Tooling Resin	Non-atomized	0.014 x (Resin VOC%) <sup>2.275</sup>
Production Resin, Tooling Resin	Non-atomized, plus vacuum bagging with roll-out	0.0110 x (Resin VOC%) <sup>2.275</sup>

<i>Open Molding Resin or Gel Coat Material</i>	<i>Application Method</i>	<i>Emission Rate Formula</i>
Production Resin, Tooling Resin	Non-atomized, plus vacuum bagging without roll-out	$0.0076 \times (\text{Resin VOC}\%)^{2.275}$
Pigmented Gel Coat	All methods	$0.445 \times (\text{Resin VOC}\%)^{1.675}$
Clear Gel Coat	All methods	$0.445 \times (\text{Resin VOC}\%)^{1.675}$
Tooling Gel Coat	All methods	$0.445 \times (\text{Resin VOC}\%)^{1.675}$

(3) *VOC emissions capture system and add-on air pollution control device option.* A numerical monomer VOC emission rate, determined for a facility based on the mix of application methods and materials used at the facility, is achieved through the use of a VOC emissions capture system and add-on air pollution control device.

(i) The equation in paragraph (2)(iii) must be used to determine the emission limit to be achieved by the add-on air pollution control device, but modified as specified in this subparagraph. The mass of each open molding monomer VOC-containing material used during the control device performance test must be used in the equation in paragraph (2)(iii), instead of the mass of each material used over the past 12 months, to determine the emission limit, in kilograms of monomer VOC, that is applicable during the control device test.

(ii) The measured emissions at the outlet of the control device, in kilograms of monomer VOC, must be less than the emission limit calculated as specified in subparagraph (i).

(iii) The relevant control device and emission capture system operating parameters must be monitored and recorded during the test.

(iv) The values of the parameters recorded in subparagraph (iii) must be used to establish the operating limits for those parameters.

(v) The operating parameters must be maintained within the established operating limits.

(g) *VOC emissions capture system and add-on air pollution control device requirements.* The owner or operator of a facility subject to this section may elect to comply with the applicable emission limitations of this section through the installation of a VOC emissions capture system and add-on air pollution control device in accordance with subsection (f)(3). The owner or operator shall submit a plan approval to the appropriate regional office. The plan approval must be approved, in writing, by the Department prior to installation and operation of the emissions capture system and add-on air pollution control device. The plan approval must include the following information:

(1) A description, including location, of each affected source or operation to be controlled with the emissions capture system and add-on air pollution control device.

(2) A description of the proposed emissions capture system and add-on air pollution control device to be installed.

(3) A description of the proposed compliance monitoring equipment to be installed.

(4) A description of the parameters to be monitored to demonstrate continuing compliance.

(5) A description of the records to be kept that will document the continuing compliance.

(6) A schedule containing proposed interim dates for completing each phase of the required work to install and test the emissions capture system and add-on air pollution control device described in paragraph (2) and the compliance monitoring equipment described in paragraph (3).

(7) A proposed interim emission limitation that will be imposed on the affected source or operation until compliance is achieved with the applicable emission limitation.

(8) A proposed final compliance date that is as soon as possible but not later than 1 year after the start of installation of the approved emissions capture system and add-on air pollution control device and the compliance monitoring equipment.

(h) *Emission limits for filled production resins and filled tooling resins.* The owner or operator may use an open molding filled production resin or filled tooling resin in each of the emission limit options specified in subsection (f).

(1) If fillers are added to the resin material, the adjusted monomer VOC emission rate of the filled material must be calculated on an as-applied basis as follows:

$$PV_F = PV_U \times \frac{(100 - \% \text{ Filler})}{100}$$

Where:

$PV_F$  = The as-applied monomer VOC emission rate for the filled production resin or tooling resin, in kilograms per megagram of filled material.

$PV_U$  = The monomer VOC emission rate for the neat (unfilled) resin, before filler is added, calculated using the applicable emission rate formula in Table II.

% Filler = The weight-percent of filler in the as-applied resin system.

(2) The value of  $PV_F$  of a compliant material used in subsection (f)(1), calculated as specified in paragraph (1), for a filled resin used as a:

(i) Production resin shall not exceed 46 kilograms of monomer VOC per megagram of filled resin applied.

(ii) Tooling resin shall not exceed 54 kilograms of monomer VOC per megagram of filled resin applied.

(3) The value of  $PV_F$ , calculated as specified in paragraph (1), must be used in place of the value of  $PV_i$  for a filled resin included in the emissions averaging option equation in subsection (f)(2)(v).

(4) The monomer VOC content of each as applied filled resin includes the amount of non-monomer VOC content that exceeds 5% by weight of the unfilled resin material.

(i) *Monomer VOC control requirement for an open molding resin, gel coat, filled production resin or filled tooling resin not included in an emissions averaging option.* The monomer VOC content of an open molding resin, gel coat, filled production resin or filled tooling resin material not included in an emissions averaging

option in subsection (f)(2) shall meet the monomer VOC content requirements of subsection (f)(1) or the add-on air pollution control requirements of subsection (f)(3).

(j) *Alternative requirements for control of monomer VOC content for certain resin and gel coat materials.* The monomer VOC content limits in Table I do not apply to a tooling or production material used for the following purposes:

(1) A production resin, including a skin coat resin, that must meet a specification for use in a military vessel or must be approved by the United States Coast Guard for use in the construction of a lifeboat, rescue boat or life-saving appliance approved under 46 CFR Chapter 1, Subchapter Q (relating to equipment, construction, and materials: specifications and approval) or the construction of a small passenger vessel regulated under 46 CFR Chapter 1, Subchapter T (relating to small passenger vessels (under 100 gross tons)). A production resin that meets one or more of these criteria shall be applied with non-atomizing resin application equipment.

(2) A production or tooling resin or a pigmented, clear or tooling gel coat used for repair and touch up of a part or a mold, if the weight used of resin and gel coat materials that meet one or more of these criteria does not exceed 1% by weight of the total resin and gel coat material used at a facility on a 12-month rolling-average basis.

(3) Pure 100% vinylester resin used for a skin coat, if the pure 100% vinylester resin used for the skin coat is applied with non-atomizing resin application equipment, and the weight used of resin materials meeting this criterion does not exceed 5% by weight of the total resin used at a facility on a 12-month rolling-average basis.

(k) *Work practices for resin and gel coat materials.* The owner or operator of a facility subject to this section shall ensure that resin and gel coat containers with a capacity equal to or greater than 55 gallons (208 liters), including those used for onsite mixing of putties and polyputties, have a cover in place at all times with no visible gaps, except when materials are being manually added or removed from a container or when mixing equipment is being placed in or removed from a container.

(l) *VOC content limits and work practices for cleaning materials.* The owner or operator of a facility subject to this section shall comply with the following VOC content limits and work practices for VOC-containing cleaning materials:

(1) Ensure that the VOC content of cleaning solvents used for routine application equipment cleaning is equal to or less than 5% by weight or has a composite vapor pressure equal to or less than 0.50 mmHg at 68°F.

(2) Use only non-VOC-containing solvent to remove cured resin or gel coat from application equipment.

(m) *Compliance and monitoring requirements.* The owner or operator of a facility subject to this section shall:

(1) Use the test methods and procedures in subsection (n) to determine the monomer VOC content of resin and gel coat material.

(2) Equip add-on air pollution control devices with the applicable monitoring equipment. The monitoring equipment shall be installed, calibrated, operated and maintained according to manufacturer's specifications at all times that the add-on air pollution control device is in use.

(n) *Sampling and testing.* The owner or operator of a facility subject to this section shall perform sampling and testing as follows:

(1) Use one or more of the following methods to determine the monomer VOC content of a resin or gel coat.

(i) SCAQMD Method 312-91, *Determination of Percent Monomer in Polyester Resins.*

(ii) Manufacturer's formulation data.

(iii) Other test methods or data demonstrated to provide results that are acceptable for purposes of determining compliance with this section if prior approval is obtained in writing from the Department and the United States Environmental Protection Agency.

(2) Use the test methods and procedures specified in Chapter 139 (relating to sampling and testing) for sampling and testing of add-on air pollution control devices.

(o) *Recordkeeping requirements.* The owner or operator of a facility subject to this section shall maintain monthly records sufficient to demonstrate compliance with this section. The records must include the following information:

(1) The name and identification number of each resin and gel coat.

(2) The total quantity of atomized molding production resin, non-atomized production resin, pigmented gel coat, clear gel coat, atomized tooling resin, non-atomized tooling resin and tooling gel coat used per month.

(3) The monomer VOC content for each resin and gel coat.

(4) The non-monomer VOC content for each resin and gel coat.

(5) The calculations performed for each applicable requirement under subsections (f), (h) and (j).

(6) The name and identification number only for each resin used in accordance with subsection (j)(1). The records specified in paragraphs (1)—(5) do not apply to resins used in accordance with subsection (j)(1).

(7) The name, identification number and VOC content or composite vapor pressure for each cleaning solvent used for routine application equipment cleaning.

(8) The information required by the plan approval issued under subsection (g), as applicable.

(9) The results of sampling and testing performed in accordance with subsection (n).

(p) *Reporting requirements.* The records shall be maintained for 2 years unless a longer period is required by an order issued by the Department or a plan approval or operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources). The records shall be submitted to the Department in an acceptable format upon receipt of a written request.

[Pa.B. Doc. No. 14-1494. Filed for public inspection July 18, 2014, 9:00 a.m.]

# STATE BOARD OF EDUCATION

[ 22 PA. CODE CH. 18 ]

## Financial Recovery

The State Board of Education (Board) proposed to add Chapter 18 (relating to financial recovery) to read as set forth in Annex A. The Board is acting under the authority of section 621-A(a)(2)(i) of the Public School Code of 1949 (School Code) (24 P. S. § 6-621-A(a)(2)(i)).

### *Purpose*

This proposed rulemaking establishes criteria the Secretary of Education (Secretary) may consider in determining whether to place a school district in financial recovery status and provides guidance to the Secretary in determining whether a district would be deemed in either moderate or severe recovery status.

### *Background*

The act of July 12, 2012 (P. L. 1142, No. 141) (Act 141) added section 621-A(a)(2)(i) of the School Code, which identifies 15 criteria the Secretary may consider in determining whether to issue a declaration that a school district is in financial recovery status. Section 621-A of the School Code also directs the Board to promulgate regulations that establish additional criteria the Secretary may consider in determining whether to issue a declaration of financial recovery status and whether a financial recovery school district should be deemed in either moderate or severe recovery status.

In promulgating the regulations mandated by Act 141, the Board was required under section 621-A(a)(2)(ii)(A) of the School Code to convene and consult with a Statewide Advisory Committee comprised of representatives of the Department of Education (Department), the Governor's Office of the Budget, and a superintendent, school board member and school business official representative of urban, rural and suburban school districts. The Advisory Committee convened four times throughout 2012 to develop a draft proposed regulation for the Board's consideration. Advisory Committee meetings were open to the public and public comment was invited at each convening.

From its first meeting on September 6, 2012, through the conclusion of its deliberations on December 6, 2012, the Advisory Committee worked in conjunction with the Board's Standing Committee on Financial Recovery. The full Board was kept abreast of the Advisory Committee's work through regular reports the chairperson made during the Board's bimonthly public meetings.

In the early stages of its deliberations, the Advisory Committee reviewed its statutory charge and received a presentation on Act 141 so that Advisory Committee members had a comprehensive understanding of how their work fit into the broader system of supports for struggling school districts established by the General Assembly. This included receiving a presentation on the new Early Warning System developed by the Department to identify districts that show indications of financial challenges and provide them with technical assistance early on in the hopes that their challenges may be addressed before a declaration of financial recovery status would become necessary.

In the next stage of its deliberations, the Advisory Committee reviewed approaches used by other states to identify school districts facing financial challenges and

discussed whether criteria used by those states were factors that should be included in the Board's regulations. In total, the Advisory Committee reviewed relevant policies in Michigan, California, Texas, Florida, Arizona and Illinois. The Advisory Committee also reviewed other Commonwealth laws concerning financially distressed entities to inform itself of the criteria used in other Commonwealth policies to classify distressed local governments.

Upon receiving the Advisory Committee's recommendation on Chapter 18, the Board's Standing Committee on Financial Recovery (Standing Committee) held a public meeting on January 9, 2013, and adopted amendments to further refine areas where the Standing Committee felt the Advisory Committee's recommendation needed greater clarity. Proposed Chapter 18, as approved by the Standing Committee, was then presented for additional comment to both the Board's Council of Basic Education (Council) at its public meeting on January 9, 2013, and the full Board at its public meeting on January 10, 2013. Both the Council and the Board provided an opportunity for public comment prior to approval of the proposed regulation.

Subsequently, the Board withdrew its proposed rulemaking to engage in continued discussion of the criteria identified for the Secretary's consideration. On November 14, 2013, the Board discussed and approved a revised rulemaking that removed criteria that were identified as being duplicative and, therefore, unnecessary. An additional opportunity for public comment was made available prior to the Board's consideration of the revised proposed rulemaking at its public meeting on November 14, 2013.

### *Provisions of the Proposed Rulemaking*

Proposed Chapter 18 addresses the requirements in section 621-A(a)(2)(i) of the School Code.

### *Issuance of declaration*

Sections 18.4 and 18.5 (relating to issuance of declaration under section 621-A(a)(1) of the School Code; and issuance of declaration under section 621-A(a)(2) of the School Code) address the issuance of a declaration of financial recovery status.

Section 18.4 reflects statutory criteria that require the Secretary to place a school district in financial recovery status and is included in the proposed regulations for completeness. The section also contains, again for completeness, statutory provisions that allow the Secretary to decline to issue a declaration of financial recovery status to districts that meet the criteria established in section 621-A(a)(1) of the School Code if the circumstances facing a district were caused by an emergency that occurred within the past 5 years and that prohibit a district from being placed under a declaration if its financial circumstances were caused by the failure of the Commonwealth to make timely payments of State or Federal funds due to the district.

Section 18.5 establishes criteria the Secretary may consider in determining whether to issue a declaration that a school district is in financial recovery status. Section 621-A(a)(2) of the School Code identifies 15 criteria that the Secretary may consider in deciding whether to issue a declaration. Those 15 statutory criteria are included for completeness and are reflected in § 18.5(a)(1)—(6), (9)—(16) and (18).

The Board is proposing three additional criteria for the Secretary's consideration in determining whether to issue a declaration of financial recovery status.

The Board is proposing to include the criteria in § 18.5(a)(7) and (8) because they are conceptually congru-

ent to the criteria identified in section 621-A(a)(2)(i)(F) of the School Code. This statutory criteria is reflected in § 18.5(a)(6). Section 18.5(a)(6) directs the Secretary to consider whether a district is subject to withholding of State appropriations because the district met statutory thresholds that allow for withholding due to missed bond payments. The Board is proposing that the Secretary take into consideration whether a district is subject to withholding of State appropriations because the district met other statutory thresholds that allow for withholding either due to missed payments to the State Public School Building Authority or missed SWAP payments.

The Board is proposing criterion in § 18.5(a)(17) as a means for the Secretary to assess districts facing a deficit situation by directing the Secretary to examine whether a district is experiencing a deficit of 3% or more for 3 consecutive years that results in an annual reduction of the district's unassigned fund balance. The Board recognizes that there are circumstances when deficit spending may be appropriate, including situations when a district is tapping its fund balance to meet pension obligations or to avoid increasing taxes. To address the use of fund balance in these circumstances, the Board focused the proposed criterion on comparing a district's deficit only to reductions in a district's unassigned fund balance, recognizing that these appropriate uses of fund balance should have a dedicated purpose and not fall into the category of unassigned expenditures. Further, the Board crafted the criterion to look only at deficits of 3% or more that continue for 3 consecutive years to avoid identifying districts that are experiencing short-term circumstances that result in a deficit situation. The proposed regulation also includes a safeguard for districts experiencing circumstances outside of their control from being identified for a declaration of recovery status by including a provision in § 18.5(c) that would allow the Secretary to decline to issue a declaration if a district's challenges were caused by an emergency. This provision could prevent identification of districts that may need to tap unassigned fund balance to address extenuating circumstances.

Section 621-A(b) of the School Code prohibits the Secretary from placing a school district in financial recovery status if the circumstances facing a district were caused by the failure of the Commonwealth to remit timely payments of State or Federal funds owed to the district. This statutory limitation is included in § 18.5(b) for completeness.

Section 621-A(a)(1)(ii)(B) of the School Code grants the Secretary the discretion to decline to issue a declaration of financial recovery status to districts subject to a designation by section 621-A(a)(1) of the School Code if the Secretary determines that the circumstances facing a district were caused by an emergency that occurred within the past 5 years. The Board is proposing to extend this provision to districts potentially subject to a declaration of financial recovery status under § 18.5(c) to grant the Secretary discretion to decline to issue a declaration of financial recovery status in all situations when the circumstances facing a district were caused by an emergency that occurred within the past 5 years.

The Board is proposing in § 18.5(d) to require the Secretary to identify which criteria were used as the basis for issuing a declaration of financial recovery status when making a declaration.

#### *Limitations*

Section 621-A(a)(1)(ii)(A) of the School Code limits the number of school districts that may be in either financial recovery status or receivership at any one time to nine.

This statutory limitation is included in § 18.6(a) (relating to limitation) for completeness.

The Board is of the opinion that declarations of financial recovery status should be based on the most current information available to the Secretary. To provide guidance to the Secretary in executing decisions based on the criteria proposed in § 18.5(a), the Board is proposing in § 18.6(b) that the Secretary not use information related to the criteria that is more than 5 years old. The Board is proposing a 5-year period based on section 621-A(a)(1) of the School Code, which allows the Secretary to consider a 5-year period in determining whether circumstances facing a district were caused by an emergency.

#### *Moderate and severe recovery status*

Section 18.7 (relating to moderate and severe recovery status) would provide guidance to the Secretary in determining whether a financial recovery school district will be deemed in either moderate recovery status or severe recovery status. The Board is proposing that the decisions be guided by whether a district is unable, or is reasonably unlikely to be able, to access enough revenue to complete the current school year or to fulfill the required amount of instruction to complete the forthcoming school year. The proposed regulations would guide the Secretary to issue a declaration of severe recovery status to districts that would not be able to access enough revenue to complete the required instruction.

#### *Appeal*

Section 621-A(c) of the School Code provides for declarations of financial recovery status to be subject to appeal under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and is included in § 18.8 (relating to appeal) for completeness.

#### *Affected Parties*

The proposed rulemaking would guide the decision making of the Secretary and affect work of the Department's staff.

#### *Cost and Paperwork Estimates*

The proposed rulemaking establishes responsibilities for the Secretary and staff of the Department to collect and analyze information, as well as to support certain legal procedures. State government incurred one-time costs of \$75,000 in Fiscal Year 2012-2013 to develop, populate and reconcile models to be used by the Department for information collected relevant to the Department's Early Warning System and criteria identified in the proposed rulemaking.

Beginning in the current fiscal year, the Department estimates it would incur an annual cost of \$549,080 to support staffing necessary to carry out the requirements of the proposed rulemaking. Specifically, the Department anticipates the following implementation costs: \$399,500 to annually support one to two full-time equivalent employees, plus outside counsel, to undertake legal procedures associated with opinions, declarations, appeals, petitions, contracts and challenges; \$72,500 to annually support one full-time equivalent staff to coordinate and consolidate information, communications and procurement; and \$77,080 to support staffing to conduct preliminary reviews, request and review information, produce summary reports and provide expert advice to the Department.

#### *Effective Date*

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



*Sunset Date*

The Board will review the effectiveness of Chapter 18 every 4 years in accordance with the Board's policy and practice respecting its regulations. Therefore, a sunset date is not necessary.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 8, 2014, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. 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 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.

*Public Comments and Contact Person*

Interested persons and individuals affiliated with small businesses are invited to submit written comments, questions, suggestions, commendations, concerns or objections regarding this proposed rulemaking to Karen Molchanow, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126, ra-stateboardofed@pa.gov. Comments must be submitted to Board within 30 days of publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Karen Molchanow at (717) 787-3787 or TDD (717) 787-7367.

KAREN MOLCHANOW,  
*Executive Director*

**Fiscal Note:** 6-329. (1) General Fund; (2) Implementing Year 2012-13 is \$75,000; (3) 1st Succeeding Year 2013-14 is \$549,000; 2nd Succeeding Year 2014-15 is \$549,000; 3rd Succeeding Year 2015-16 is \$549,000; 4th Succeeding Year 2016-17 is \$549,000; 5th Succeeding Year 2017-18 is \$549,000; (4) 2012-13 Program—N/A; 2011-12 Program—N/A; 2010-11 Program—N/A; (7) Various; (8) recommends adoption. Funds have been included in the current and proposed budget to cover this increase.

**Annex A****TITLE 22. EDUCATION****PART I. STATE BOARD OF EDUCATION****Subpart A. MISCELLANEOUS PROVISIONS****CHAPTER 18. FINANCIAL RECOVERY**

Sec.	
18.1.	Statutory authority.
18.2.	Purpose.
18.3.	Definitions.
18.4.	Issuance of declaration under section 621-A(a)(1) of the School Code.
18.5.	Issuance of declaration under section 621-A(a)(2) of the School Code.
18.6.	Limitation.
18.7.	Moderate and severe recovery status.
18.8.	Appeal.

**§ 18.1. Statutory authority.**

The statutory authority for this chapter is section 621-A(a)(2) of the School Code (24 P. S. § 6-621-A(a)(2)).

**§ 18.2. Purpose.**

Consistent with section 621-A(a)(2) of the School Code (24 P. S. § 6-621-A(a)(2)), the purpose of this chapter is to establish criteria that the Secretary may consider in determining whether to issue a declaration that a school district is in financial recovery status, and whether a school district in financial recovery status is in moderate or severe recovery status.

**§ 18.3. Definitions.**

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

*Average daily membership*—The final average daily membership of a school district as most recently determined by the Department in accordance with procedures established by the Secretary under section 2501(3) of the School Code (24 P. S. § 25-2501(3)).

*Claim*—As defined by section 602-A of the School Code (24 P. S. § 6-602-A), a right to either of the following:

(i) Payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

(ii) An equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not the right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

*Deficit*—As defined by section 602-A of the School Code, the excess of expenditures over revenues, calculated as a percentage of revenue, during an accounting period, and which calculation includes all governmental fund types and all proprietary fund types, but excludes all fiduciary fund types of the school district.

*Expenditures*—

(i) As defined by section 602-A of the School Code, reductions in fund equity, including current operating expenses that require the use of fund equity, debt service and capital outlays.

(ii) The term does not include interfund transfers.

*Financial Recovery School District*—As defined by section 602-A of the School Code, a school district declared by the Secretary to be in financial recovery status under section 621-A of the School Code (24 P. S. § 6-621-A).

*Fixed costs*—Expenditures for utility services, insurance—general, communications, energy and debt service as defined in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*.

*Fund equity*—

(i) As defined by section 602-A of the School Code, excess of assets of a fund over its liabilities.

(ii) The term includes a fund balance.

*Revenues*—As defined by section 602-A of the School Code, additions to fund equity other than from interfund transfers, proceeds of debt and proceeds of disposition of general fixed assets.

*School Code*—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

*School district—*

(i) As defined by section 602-A of the School Code, a school district of the first class A, second class, third class and fourth class and a Financial Recovery School District.

(ii) The term does not include a school district of the first class.

*Total annual expenditures—*

(i) Reductions in fund equity (including current operating expenses that require the use of fund equity), debt service and capital outlays (including all governmental fund types and all proprietary fund types), excluding all fiduciary fund types of the school district.

(ii) The term does not include interfund transfers.

*Unassigned fund balance—*Amounts available for any purpose within the general fund only as defined in the Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems.

**§ 18.4. Issuance of declaration under section 621-A(a)(1) of the School Code.**

(a) As provided by section 621-A(a)(1) of the School Code (24 P. S. § 6-621-A(a)(1)), the Secretary shall issue a declaration that a school district is in financial recovery status when either of the following applies:

(1) The school district has an average daily membership over 7,500 and receives an advance of its basic education subsidy at any time.

(2) The school district receives an advance of its basic education subsidy at any time and either of the following applies:

(i) The school district is subject to a declaration of financial distress under section 691 of the School Code (24 P. S. § 6-691).

(ii) The school district is engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue in operation.

(b) As provided by section 621-A(a)(1)(ii)(B) of the School Code, the Secretary may decline to issue a declaration that a school district is in financial recovery status when the Secretary determines that the school district, within the previous 5 years, has faced an emergency that caused the occurrence of a circumstance in subsection (a).

(c) As provided by section 621-A(b) of the School Code, a school district will not be declared in financial recovery status if the circumstances in subsection (a) have been caused by the failure of the Commonwealth to make a payment of money due to the school district at the time the payment is due, including payment of Federal funding that is distributed through the Commonwealth.

**§ 18.5. Issuance of declaration under section 621-A(a)(2) of the School Code.**

(a) Consistent with section 621-A(a)(2)(i) of the School Code (24 P. S. § 6-621-A(a)(2)(i)), the Secretary may consider the following criteria when determining whether to issue a declaration that a school district is in financial recovery status:

(1) The school district receives at least 85% of its per pupil funding from the Commonwealth and collects less than 50% of local taxes levied to fund the school district.

(2) The school district's unreserved fund balance has declined for 3 consecutive years and is less than 5% of the school district's annual expenditures. As used in this

paragraph, a school district's unreserved fund balance means the school district's unassigned fund balance.

(3) The school district's fixed costs are at least 30% of the school district's total annual expenditures.

(4) The school district's total outstanding debt is greater than the school district's total annual expenditures.

(5) The salaries of teachers or other employees of the school district are unpaid at least 15 days after payment is due.

(6) The school district is subject to withholding of its State appropriation under section 633 of the School Code (24 P. S. § 6-633).

(7) The school district is subject to withholding of its State appropriation under section 785 of the School Code (24 P. S. § 7-785).

(8) The school district is subject to withholding of its State appropriation under 53 Pa.C.S. § 8283(c) (relating to remedies).

(9) The school district has defaulted on the payment of a debt due to a school district, intermediate unit or charter school that remains unpaid on or after January 1 of the year following the school year it was due and there is not a dispute regarding the validity or amount of the claim.

(10) The school district's assigned and unassigned total fund balance is less than zero in the school district's general fund.

(11) The school district's assigned and unassigned total fund balance in the school district's general fund as a percentage of total expenditures is less than 3%.

(12) The school district experiences a delinquent tax rate of more than 10%.

(13) The assessed valuation of taxable real estate in the school district, as certified by the State Tax Equalization Board, has not increased over the previous 5 years.

(14) An amount due a joint board of school directors under a joint board agreement remains unpaid beyond the due date specific in the joint board's articles of agreement.

(15) The school district has contracted a loan not authorized by law.

(16) The school district has accumulated and operated with a deficit equal to at least 2% of the assessed valuation of the taxable real estate within the school district for 2 successive school years.

(17) The school district experiences a deficit of 3% or more for 3 consecutive school years resulting in a reduction of unassigned fund balance each year.

(18) A new, merged or union school district has been formed and one or more of the former school districts which compose the merger or union school district was a distressed school district under section 691 of the School Code (24 P. S. § 6-691) or a financial recovery school district under Article VI-A of the School Code (24 P. S. §§ 6-601-A—6-693-A) at the time of the formation of the new, merged or union school district.

(b) As provided by section 621-A(b) of the School Code, a school district will not be declared in financial recovery status if the circumstances in subsection (a) have been caused by the failure of the Commonwealth to make a payment of money due to the school district at the time the payment is due, including payment of Federal funding that is distributed through the Commonwealth.

(c) The Secretary may decline to issue a declaration that a school district is in financial recovery status when the Secretary determines that the school district, within the previous 5 years, has faced an emergency that caused the occurrence of a circumstance in subsection (a).

(d) When the Secretary issues a declaration that a school district is in financial recovery status, the Secretary will specify the criteria in this section that placed the school district in financial recovery status.

**§ 18.6. Limitation.**

(a) As provided by section 621-A(a)(1)(ii)(A) of the School Code (24 P. S. § 6-621-A(a)(1)(ii)(A)), no more than nine school districts may be under a declaration of financial recovery status or in receivership at any one time.

(b) The Secretary may not use information that is more than 5 years old when considering criteria under § 18.5 (relating to issuance of declaration under section 621-A(a)(2) of the School Code).

**§ 18.7. Moderate and severe recovery status.**

(a) *Moderate recovery status.* The Secretary shall issue a declaration that a Financial Recovery School District is

in moderate recovery status if the Financial Recovery School District is not declared by the Secretary in severe recovery status.

(b) *Severe recovery status.* The Secretary shall issue a declaration that a Financial Recovery School District is in severe recovery status if the financial conditions of the school district indicate that the school district is unable, or is reasonably unlikely to be able, to fulfill the 180 days of instruction for pupils requirement provided by section 1501 of the School Code (24 P. S. § 15-1501) for the present school year or for the following school year due to the lack of existing revenue sources and additional revenue sources as are provided by and allowed under law, including the Taxpayer Relief Act (53 P. S. §§ 6926.101—6926.5006).

**§ 18.8. Appeal.**

As provided by section 621-A(c) of the School Code (24 P. S. § 6-621-A(c)), a school district may appeal the Secretary's declaration of financial recovery status under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

[Pa.B. Doc. No. 14-1495. Filed for public inspection July 18, 2014, 9:00 a.m.]