PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 129]

Control of Volatile Organic Compound Emissions from Automobile and Light-Duty Truck Assembly Coating Operations and Heavier Vehicle Coating Operations

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 § 129.52e (relating to control of VOC emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations) to adopt reasonably available control technology (RACT) requirements and RACT emission limitations for stationary sources of volatile organic compound (VOC) emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations including primer, primer-surfacer, topcoat and final repair coating materials, as well as additional coatings applied during the vehicle assembly process and related cleaning activities. The proposed rulemaking would also add terms and definitions to § 129.52e to support the interpretation of the proposed measures and amend § 129.51 (relating to general) to support the addition of § 129.52e.

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 rulemaking.

This proposed rulemaking is given under Board order at its meeting of April 21, 2015.

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 (select "Public Participation Center," then "Environmental Quality Board").

C. *Statutory Authority*

The proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (act) (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 act 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 automobile and light-duty truck assembly coating operations and, when elected, certain other vehicle-related surface coating operations. These processes include the application of an automobile assembly coating or a light-duty truck assembly coating, or both, to a new automobile body or a new light-duty truck body, to a body part for a new automobile or for a new light-duty truck, or to another part that is coated along with the new automobile body or body part or new light-duty truck body or body part, as well as the application of coatings to a body or body part for a new heavier vehicle. A heavier vehicle is a self-propelled vehicle designed for transporting persons or property on a street or highway that has a gross vehicle weight rating over 8,500 pounds.

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 automobile and light-duty truck assembly coating operations, but is formed by a photochemical reaction between VOCs and nitrogen oxides (NOx) 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 VOC emission limitations and other requirements consistent with the recommendations of the EPA 2008 Automobile and Light-Duty Truck Assembly Coatings Control Techniques Guidelines (CTG) for these sources in this Commonwealth. See 73 FR 58481, 58483 (October 7, 2008); and *Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings*, EPA 453/R-08-006, Office of Air Quality Planning and Standards, EPA, September 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, nitrogen dioxide, carbon monoxide, sulfur dioxide and lead. Section 109 of the CAA (42 U.S.C.A. § 7409) 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 ground-level 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 capac-

ity. 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 2014 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 primary and secondary ozone 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 July 20, 2015, and that they continue to maintain the standard thereafter. The United States Court of Appeals for the District of Columbia Circuit ruled in December 2014, that the EPA could not extend the attainment date for "marginal" nonattainment areas, for the 2008 ozone NAAQS, to December 2015. See *NRDC v. EPA*, 2014 U.S. App. LEXIS 24253 (D.C. Cir. Dec. 23, 2014).

On November 25, 2014, the EPA proposed a revised ozone NAAQS ranging from 65 to 70 ppb. The EPA is also seeking comment on a 60 ppb ozone standard and retention of the 2008 75 ppb standard. See 79 FR 75234 (December 17, 2014). Evaluation of Department air monitoring system 2012-2014 ozone monitoring data indicates that, if the EPA adopts a 65 ppb ozone NAAQS, approximately 88% of the ozone samplers in this Commonwealth would violate the revised standard; an estimated 33% of the samplers would be in violation of a 70 ppb ozone standard. If the EPA lowers the 2015 ozone NAAQS to 60 ppb, all monitors in this Commonwealth, except a single monitor in southeastern Pennsylvania, would be in violation of the standard. The EPA has been ordered by the Court to finalize the new standard by October 1, 2015.

With regard to the 2008 ozone standard of 75 ppb, the Department's analysis of preliminary 2014 ambient air ozone concentrations shows that all ozone samplers in this Commonwealth except the Harrison sampler in Allegheny County, are monitoring attainment. The Department will develop Redesignation Requests and Maintenance Plans for submission to the EPA seeking redesignation of the nonattainment areas to attainment of the 2008 ozone standard; maintenance plans have already been submitted to the EPA and approved for the 1997 ozone standard. The CAA prescribes that the Maintenance Plans, including control measures, must provide for the maintenance of the ozone NAAQS for at least 10 years following the EPA's redesignation of the areas to attainment. Eight years after the EPA redesignates an area to attainment, an additional Maintenance Plan approved by the EPA must also provide for the maintenance of the ozone standard for another 10 years following the expiration of the initial 10-year period.

Reductions in VOC emissions that are achieved following the adoption and implementation of VOC RACT emission control measures for source categories covered by CTGs, including automobile and light-duty truck assembly coating operations and heavier vehicle coating operations, will allow the Commonwealth to make substantial progress in achieving and maintaining the 1997 and 2008 8-hour ozone NAAQS; these reductions will also be necessary for the attainment and maintenance of the new ozone NAAQS that the Department anticipates will be promulgated by the EPA in October 2015.

There are Federal regulatory limits for VOC emissions from automobile and light-duty truck assembly coatings for several of the coating categories. In 1977, the EPA issued a CTG document entitled *Control of Volatile Organic Emissions from Existing Stationary Sources Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks* (EPA-450/2-77-008) (1977 CTG). The 1977 CTG provided RACT recommendations for controlling VOC emissions from automobile and light-duty truck assembly surface coating operations. The recommendations were for VOC emission limits calculated on a daily basis for each electrodeposition primer operation, primer-surfacer operation, topcoat operation and final repair operation. The limits of § 129.52 (relating to surface coating processes), Table I, category 6, regarding automobile and light duty truck coating subcategories of prime coat, top coat and repair, were promulgated at 9 Pa.B. 1447 (April 28, 1979) to implement RACT measures consistent with the recommendations in the 1977 CTG for the automobile and light duty truck coating categories.

The EPA promulgated New Source Performance Standards (NSPS) in 1980 (1980 NSPS) for surface coating of automobile and light-duty trucks in 40 CFR Part 60, Subpart MM (relating to standards of performance for automobile and light duty truck surface coating operations). The 1980 NSPS established VOC emission limits calculated on a monthly basis for each electrodeposition primecoat operation, guidecoat (primer-surfacer) operation, and topcoat operation located in an automobile or light-duty truck assembly plant constructed, reconstructed or modified after October 5, 1979. See 45 FR 85415 (December 24, 1980) and 59 FR 51383 (October 11, 1994). The NSPS limits and the 1977 CTG recommendations for primer-surfacer and topcoat cannot be directly compared because of differences in the compliance period (monthly for the NSPS limits and daily for the 1977 CTG recommendations) and how transfer efficiency is considered (table values for the NSPS limits and actual transfer efficiency testing for the 1977 CTG recommendations).

In addition to establishing the 1980 NSPS VOC content limits, in 2004 the EPA promulgated 40 CFR Part 63, Subpart IIII (relating to National emission standards for hazardous air pollutants: surface coating of automobiles and light-duty trucks) (2004 NESHAP). See 69 FR 22602, 22623 (April 26, 2004). The 2004 NESHAP established

organic hazardous air pollutant (HAP) emissions limitations calculated on a monthly basis for existing sources. More stringent limits apply to new sources that began construction after December 24, 2002. The 2004 NESHAP also specified work practices to minimize organic HAP emissions from the storage, mixing and conveying of coatings, thinners and cleaning materials, and from handling waste materials generated by the coating operation. Many HAPs are VOCs, but not all VOCs are HAPs. The requirements of the 2004 NESHAP apply to "major sources" of HAP from surface coatings applied to bodies or body parts for new automobiles or new light-duty trucks. For the purpose of regulating HAP emissions, 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)) and 69 FR 22602, 22603.

When developing the VOC emission reduction RACT measures included in its 2008 Automobile and Light-Duty Truck Assembly Coatings CTG, the EPA took into account the VOC emission limitations of the 1980 NSPS as well as the VOC control recommendations of the 1977 CTG and the HAP emission reduction measures in the 2004 NESHAP for the automobile and light-duty truck assembly coating industries. Additionally, in 2008, the Alliance of Automobile Manufacturers, an industry trade association representing the majority of these facilities, provided the EPA with information from its member companies. Nonmember companies also submitted information to the EPA. The EPA reviewed and evaluated this information in conjunction with developing the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG. The information included VOC emission rates for electrodeposition primer operations, primer-surfacer operations and topcoat operations on a daily and monthly average for calendar years 2006 and 2007. The VOC emission limits recommended in the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG are based on 2006 and 2007 data from then-operating automobile and light-duty truck assembly coating operations. The resulting recommended VOC emission limits in the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG for electrodeposition primer operations, primer-surfacer operations and topcoat operations are more stringent than the 1977 CTG and the 1980 NSPS limits. The recommended VOC emission limit for final repair operation in the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG is the same as the 1977 CTG recommended limit for this category. The work practices recommendations in the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG mirror those in the 2004 NESHAP.

This proposed rulemaking is designed to adopt VOC emission limitations and requirements consistent with the standards and recommendations in the 2008 Automobile and Light-Duty Truck Assembly Coatings 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 these VOC emission limitations and requirements across this Commonwealth as required under section 184(b)(1)(B) of the CAA. The ground-level ozone air pollution reduction measures in this proposed rulemaking are reasonably necessary to attain and maintain the health-based and welfare-based ozone NAAQS in this Commonwealth and to satisfy related CAA requirements.

State regulations to control VOC emissions from automobile and light-duty truck assembly coating operations, as well as the related cleaning activities, are required under Federal law. The Commonwealth regulations will be approved by the EPA as a revision to the Commonwealth's SIP 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 44 FR 53761 (September 17, 1979).

Section 110(a) of the CAA (42 U.S.C.A. § 7410(a)) provides that each state shall adopt and submit to the EPA a plan to implement measures (a SIP) to enforce the NAAQS or revision to the NAAQS promulgated under section 109(b) of the CAA. 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 of VOC and NOx. 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 a SIP revision requiring implementation of RACT for all sources of VOC emissions in the state covered by a specific CTG and not just for those sources that are located in designated nonattainment areas of the state. 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. Adoption of VOC emission requirements for these sources is part of the Commonwealth's strategy, in concert with other OTR jurisdictions, to further reduce the transport of VOC ozone precursors and ground-level ozone throughout the OTR to attain and maintain the 8-hour ozone NAAQS.

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 automobile and light-duty truck assembly coatings on its section 183(e) list and, in 2008, issued a CTG for this product category. See 60 FR 15264, 15267 (March 23, 1995); 73 FR 58481; and *Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings*, EPA 453/R-08-006, Office of Air Quality Planning and Standards, EPA, September 2008. The 2008 Automobile and Light-Duty Truck Assembly Coatings CTG is available on the EPA web site at 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 2008 Automobile and Light-Duty Truck Assembly Coatings CTG would be substantially as effective as National regulations in reducing VOC emissions from the automobile and light-duty truck assembly coatings 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 Automobile and Light-Duty Truck Assembly Coatings CTG for their applicability to the ground-level ozone reduction measures necessary for this Commonwealth. The Bureau of Air Quality determined that VOC emission reduction measures consistent with the recommendations provided in the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG are appropriate to be implemented in this Commonwealth as RACT for this category.

This proposed rulemaking would apply to the owner and operator of an automobile and light-duty truck assembly coating operation that applies an automobile assembly coating or a light-duty truck assembly coating, or both, to a new automobile body or a new light-duty truck body, to a body part for a new automobile or for a new light-duty truck, or to another part that is coated along with the new automobile body or body part or new light-duty truck body or body part. The owner or operator of a separate coating line at an automobile and light-duty truck assembly coating facility, and the owner or operator of a facility that coats a body or body part for a new heavier vehicle, would have the option to elect to be regulated under this proposed rulemaking instead of proposed § 129.52d (relating to control of VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings). This option is provided to allow these owners and operators flexibility in complying with their permit conditions and to optimize their operations. Proposed § 129.52d would be adopted as a final-form rulemaking concurrently with adoption of this proposed rulemaking as a final-form rulemaking. See 45 Pa.B. 4366 (August 8, 2015) for proposed § 129.52d.

This proposed rulemaking would also apply to the owner and operator of a facility that performs a coating operation subject to this proposed rulemaking on a contractual basis.

This proposed rulemaking would not apply to the use or application of an automobile and light-duty truck assembly coating by an owner or operator at a plastic or composites molding facility. The VOC content limits in the proposed rulemaking would not apply to an assembly coating supplied in a container with a net volume of 16 ounces or less or a net weight of 1 pound or less.

The Board anticipates that not more than 61 businesses, all of which would likely be small businesses, would be affected by the proposed rulemaking. The Board estimates that of this projected total of 61 potentially subject owners and operators, as many as 47 of the potentially subject facility owners and operators would have actual VOC emissions at or above the applicability threshold of 15 pounds (6.8 kilograms) per day of total actual VOC emissions, including related cleaning activities and before consideration of controls. These owners and operators would be subject to the proposed VOC content limit requirements, work practice requirements, compliance monitoring and daily recordkeeping requirements and, if requested by the Department, reporting requirements. The owners and operators of the remaining potentially subject 14 facilities would only be subject to compliance monitoring and daily recordkeeping requirements and, if requested by the Department, reporting requirements.

The Board is aware that of the potentially subject 61 owners and operators who may be subject to this proposed rulemaking, the owners and operators of 13 of these facilities were identified by the Department from its air quality databases. The owners and operators of these 13 facilities manufacture or surface coat, or both, bodies or body parts for new heavier vehicles such as fire trucks, ambulances and tow trucks. The owners and operators at none of these facilities manufacture or surface coat bodies or body parts for automobiles or light-duty trucks, which is the primary focus of the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG. The owners and operators of these 13 facilities would only be subject to this proposed rulemaking if they elected to comply with this proposed rulemaking instead of complying with the proposed rulemaking for § 129.52d. For purposes of discussing the potential impacts of this proposed rulemaking, however, the Board assumed that the owners and operators of these 13 facilities would elect to be subject to this proposed rulemaking. The Commonwealth's Small Business Development Center's Environmental Management Assistance Program (SBDC EMAP) reviewed the list of 13 potentially subject facilities reporting VOC emissions in 2013 identified by the Department from its databases and determined that all 13 of the facilities were considered a small business under the Small Business Administration small business size regulations.

The owners and operators of as many as ten of these facilities may emit 15 pounds (6.8 kilograms) or more of total actual VOC emissions per day, including related cleaning activities and before consideration of controls, and would likely be required to implement the proposed VOC emission reduction measures. These measures include use of complying coatings, compliance monitoring and daily recordkeeping, work practice standards for coating-related activities, and development and implementation of a written work practice plan for cleaning materials. The records would be submitted to the Department in an acceptable format upon receipt of a written request from the Department. The owners and operators of the remaining three facilities would likely emit less than 15 pounds (6.8 kilograms) per day of total actual VOC emissions, including related cleaning activities and before consideration of controls, and would be subject only to the compliance monitoring and daily recordkeeping requirements and, if requested by the Department, reporting requirements of the proposed rulemaking.

The Commonwealth's SBDC EMAP provided the Department with a list of 48 small business-sized nonpermitted facility owners and operators that would potentially be subject to the proposed rulemaking. Of these 48 owners and operators, the Board estimates that as many as 37 would have actual VOC emissions at or above the applicability threshold of 15 pounds (6.8 kilograms) or more of total actual VOC emissions per day, including related cleaning activities and before consideration of controls. These 37 owners and operators would be required to implement VOC emission reduction measures, implement work practice standards for coatings, develop and implement a written work practice plan for cleaning materials, and meet compliance monitoring and daily recordkeeping requirements. The owners and operators of the remaining 11 facilities would likely emit less than 15

pounds (6.8 kilograms) per day of total actual VOC emissions, including related cleaning activities and before consideration of controls, and would be subject only to the compliance monitoring and daily recordkeeping requirements and, if requested by the Department, reporting requirements of the proposed rulemaking.

The difference in estimated projected number of potentially subject facility owners and operators with VOC emissions equal to or greater than 15 pounds (6.8 kilograms) per day of total actual VOC emissions, including related cleaning activities and before consideration of controls, between the Department's list of 10 potentially subject permitted facility owners and operators and the SBDC EMAP's list of 37 potentially subject nonpermitted small business-sized facility owners and operators is likely due to the Department's database being for the owners and operators of previously and currently permitted facilities based on regulatory criteria for acquiring a permit, while the SBDC EMAP list is based on a self-reported business classification about their small-business-sized facility without considering the level of VOC emissions. Most of the owners and operators of permitted facilities in the Department's database have actual emissions, or the potential to have emissions, at or above 8 tpy of VOCs, or installed a new source emitting over 2.7 tons VOC emissions per year, thus requiring a permit. It is possible that the owners and operators of additional facilities that have not been identified could be subject to the proposed rulemaking control measures.

The owners and operators of the 13 facilities identified by the Department from the air quality databases reported actual VOC emissions in 2013 totaling approximately 320 tons. The owners and operators of the ten facilities that may emit 15 pounds (6.8 kilograms) or more of total actual VOC emissions per day, including related cleaning activities and before consideration of controls, reported actual VOC emissions equal to or greater than 2.7 tpy, totaling approximately 319 tons. Implementation of the recommended control measures by these ten potentially subject facility owners and operators could generate reductions of as much as 111 tons of VOC emissions per year from the ten facilities, depending on the level of compliance already being achieved by these owners and operators. The estimated total maximum annual costs to these ten owners and operators could be up to $195,140. The range of cost per regulated facility owner and operator for implementing the proposed VOC emission control measures is estimated to be approximately $10,500 to $19,514 per facility. The range of cost effectiveness to the regulated facility owners and operators would be approximately $940 per ton of VOC emissions reduced to $1,758 per ton reduced on an annual basis.

Similarly, the Board estimates that implementation of the proposed VOC control measures and work practice requirements could generate potential VOC emission reductions of as much as 413 tpy from the 37 potentially subject small business-sized facilities identified by the SBDC EMAP that would likely be subject at or above the applicability threshold of 15 pounds (6.8 kilograms) per day of total actual VOC emissions, including related cleaning activities and before consideration of controls, depending on the level of compliance already being achieved by the owners and operators of these facilities. The estimated annual cost to the owners and operators of these 37 potentially subject nonpermitted facilities would be $726,054. The estimated maximum annual cost per facility owner and operator would be approximately $19,623.

The proposed rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC) on April 3, 2014. The AQTAC voted unanimously to concur with the Department's recommendation to forward the proposed rulemaking to the Board for consideration as proposed rulemaking. The proposed rulemaking was discussed with the Small Business Compliance Advisory Committee (SBCAC) on April 23, 2014. The SBCAC voted unanimously to concur with the Department's recommendation to move the proposed rulemaking to the Board for consideration with a recommendation to consider flexibility for small businesses. The proposed rulemaking was discussed with the Citizens Advisory Council (CAC) Policy and Regulatory Oversight Committee on May 6, 2014. On the recommendation of the Policy and Regulatory Oversight Committee, on June 17, 2014, the CAC concurred with the Department's recommendation to forward the proposed rulemaking to the Board.

E. *Summary of Regulatory Requirements*

§ 129.51. General

Subsection (a) would be amended to establish that compliance with § 129.52e may be achieved by alternative methods.

Subsection (a)(3) would be amended to establish that compliance by a method other than the use of a low-VOC content coating, adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent or cleanup solvent or ink which meets the applicable emission limitation in § 129.52e shall be determined on the basis of equal volumes of solids.

Subsection (a)(6) would be amended to establish that the alternative compliance method is incorporated into a plan approval or operating permit, or both, reviewed by the EPA, including the use of an air cleaning device to comply with § 129.52e.

§ 129.52e. Control of VOC emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations

Under subsection (a)(1), the proposed rulemaking would apply Statewide to the owner and operator of an automobile and light-duty truck assembly coating operation that applies an automobile assembly coating or a light-duty truck assembly coating, or both, to a new automobile body or a new light-duty truck body, a body part for a new automobile or a new light-duty truck, or another part that is coated along with the new automobile body or body part or new light-duty truck body or body part.

Under subsection (a)(2), the proposed rulemaking would apply to the owner and operator of an automobile and light-duty truck assembly coating operation that operates a separate coating line at the facility on which a coating is applied to another part intended for use in a new automobile or new light-duty truck or an aftermarket repair or replacement part for an automobile or light-duty truck if the owner or operator elects to comply with § 129.52e instead of § 129.52d. The election occurs when the owner or operator notifies the Department by submitting a written statement to the appropriate Department regional office Air Quality Program Manager that specifies the intent to comply with § 129.52e instead of § 129.52d. Proposed § 129.52d will be adopted as a final-form rulemaking concurrently with adoption of this proposed rulemaking as a final-form rulemaking.

Under subsection (a)(3), the proposed rulemaking would apply to the owner and operator of a heavier vehicle coating operation that coats a body or body part for a new

heavier vehicle if the owner or operator elects to comply with § 129.52e instead of § 129.52d. The election occurs when the owner or operator notifies the Department by submitting a written statement to the appropriate Department regional office Air Quality Program Manager that specifies the intent to comply with § 129.52e instead of § 129.52d.

Providing the election option under subsection (a)(2) and (3) would effectuate the recommendations in the EPA 2008 Automobile and Light-Duty Truck Assembly Coatings CTG that a state consider giving an owner or operator of a separate coating line at an automobile and light-duty truck assembly coating facility the option of complying with the state's regulation adopted under the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG instead of the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG; and that a state give an owner or operator of a facility that coats bodies or body parts for new heavier vehicles the option to comply with either the state's regulation adopted under the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG or the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG. Heavier vehicle coatings are included in the Miscellaneous Metal Products and Plastic Parts Coatings categories under section 183(e) of the CAA and are therefore covered in the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG. See 2008 Automobile and Light-Duty Truck Assembly Coatings CTG, page 4 and 2008 Miscellaneous Metal and Plastic Parts Coatings CTG, page 4.

Under subsection (a)(4), the proposed rulemaking would apply to the owner and operator of a facility that performs a coating operation subject to § 129.52e on a contractual basis.

Under subsection (a)(5), the proposed rulemaking would not apply to the use or application of an automobile and light-duty truck assembly coating by an owner or operator at a plastic or composite molding facility.

Under subsection (b), the proposed rulemaking would establish 25 definitions to support § 129.52e. A definition of "heavier vehicle" is included upon the request of the AQTAC at its April 3, 2014, meeting to improve the clarity of the proposed rulemaking and further delineate the types of vehicle coating operations subject to the proposed rulemaking.

Under subsection (c), the proposed rulemaking would establish that the requirements of this section would supersede the requirements of a RACT permit issued under §§ 129.91—129.95 (relating to stationary sources of NO_x and VOCs) to the owner or operator of a source subject to this section prior to January 1, 2016, except to the extent the RACT permit contains more stringent requirements.

Under subsection (d)(1), the proposed rulemaking would establish that beginning January 1, 2016, the VOC content limits specified in Tables I and II (relating to VOC content limits for primary assembly coatings; and VOC content limits for additional assembly coatings (grams of VOC per liter of coating excluding water and exempt compounds) as applied) would apply to an owner and operator of a facility that has total actual VOC emissions equal to or greater than 15 pounds (6.8 kilograms) per day, before consideration of controls, from all operations at the facility that apply an assembly coating subject to this section, including related cleaning activities. 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.

Under subsection (d)(2), the proposed rulemaking would establish that the VOC content limits specified in Tables I and II do not apply to an owner and operator of a facility that has total actual VOC emissions below 15 pounds (6.8 kilograms) per day, before consideration of controls, from all operations at the facility that apply an assembly coating subject to this section, including related cleaning activities. This subsection also specifies that the VOC content limits in Tables I and II do not apply to an assembly coating supplied in a container with a net volume of 16 ounces or less or a net weight of 1 pound or less.

Under proposed subsection (e), an owner and operator subject to the VOC content limits specified in Tables I and II must comply with specified work practices for coating-related activities and cleaning materials.

Under proposed subsection (f), compliance monitoring and recordkeeping requirements would be established.

Under proposed subsection (g), measurement, calculation, sampling and testing methodologies would be established. The Automobile Topcoat Protocol specified in subsection (g)(2)(i) for calculation of VOC emissions and rates applies not only to the owner and operator of an automobile and light-duty truck assembly coating operation, but also to the owner and operator of a facility that coats a body or body part for a new heavier vehicle that elects to comply with § 129.52e instead of § 129.52d.

Proposed § 129.52e contains two tables. Table I specifies VOC content limits for primary assembly coatings. The primary assembly coatings are applied to new automobile or new light-duty truck bodies, or to body parts for new automobiles or new light-duty trucks, as well as to other parts that are coated along with these bodies or body parts. These primary coatings are electrodeposition primer, primer-surfacer, topcoat and final repair. The Automobile Topcoat Protocol specified in subsection (g)(2)(i) and referenced in Table I applies not only to the owner and operator of an automobile and light-duty truck assembly coating operation, but also to the owner and operator of a facility that coats a body or body part for a new heavier vehicle that elects to comply with § 129.52e instead of § 129.52d. Table II specifies VOC content limits for additional assembly coatings. These additional coatings are applied during the vehicle assembly process and include glass bonding primer, adhesive, cavity wax, sealer, deadener, gasket/gasket sealing material, underbody coating, trunk interior coating, bedliner, lubricating wax/compound and weatherstrip adhesive. The EPA VOC emission control recommendations included in the 2008 Automobile and Light-Duty Trucks Assembly Coatings CTG, and reflected in the proposed rulemaking, include the VOC content limits for the listed coatings.

The Board specifically requests comment on the proposed emission limit in Table II of 900 grams per liter of coating less water and exempt compounds for automobile and light-duty truck glass bonding primer. A limit of 700 grams per liter of coating less water and exempt compounds applies to a similar category, called automotive glass adhesive primer, in the existing adhesives regulations. See §§ 121.1, 129.77 and 130.702 (relating to definitions; control of emissions from the use or application of adhesives, sealants, primers and solvents; and emission standards). However, the EPA wrote in its notice of availability of the final 2008 Automobile and Light-Duty Trucks Assembly Coatings CTG that the cost of the testing required to confirm material performance and compliance with Federal crash safety standards and windshield integrity requirements would be unreasonable

compared to the small emission reduction that would be achieved by the 700 grams per liter limit it had proposed for the CTG. See 73 FR 58481, 58486. The EPA explained that the small amount of additional emission reductions achieved by the 700 grams per liter limit are negligible compared to reductions potentially achieved by the 900 grams per liter limit and are more technically difficult to implement. See 73 FR 58481, 58486. The EPA thus concluded that the less stringent limit of 900 grams per liter for automobile and light-duty truck glass bonding primer is appropriate and satisfies RACT for automobile and light-duty truck assembly coating operations. See 73 FR 58481, 58486.

F. *Benefits, Costs and Compliance*

Benefits

The Statewide implementation of the VOC emission control measures in the proposed rulemaking would benefit the health and welfare of approximately 12.77 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 threat, causing respiratory illnesses and decreased lung function as well as other adverse health effects leading to a lower quality of life. 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. High levels of ground-level ozone affect animals, including pets, livestock and wildlife, in ways similar to humans.

In addition to causing adverse human and animal health effects, the EPA has concluded that high levels of ground-level ozone affects vegetation and ecosystems leading to: reductions in agricultural crop and commercial forest yields by destroying chlorophyll; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests and other environmental stresses, including harsh weather. In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of parks and recreation areas.

The economic value of some welfare losses due to high concentrations of ground-level ozone can be calculated, such as crop yield loss from reduced size and quality of seeds and visible injury to some leaf crops, including lettuce, spinach and tobacco, as well as visible injury to ornamental plants, including grass, flowers and shrubs. Other types of welfare loss may not be quantifiable, such as the reduced aesthetic value of trees growing in heavily visited parks. The Commonwealth's 62,000 farm families are the stewards of more than 7.7 million acres of farmland, with $6.8 billion in cash receipts annually from production agriculture. In addition to production agriculture, the industry also raises revenue and supplies jobs through support services such as food processing, marketing, transportation and farm equipment. In total, production agriculture and agribusiness contributes nearly $68 billion to the Commonwealth's economy (source: Department of Agriculture).

The Department of Conservation and Natural Resources (DCNR) is the steward of the State-owned forests and parks. DCNR awards millions of dollars in construction contracts each year to build and maintain the facilities in its parks and forests. Timber sales on State forest lands contribute to the $5 billion a year timber industry. Hundreds of concessions throughout the park system help complete the park experience for both State and out-of-State visitors (source: DCNR). Further, the Commonwealth leads the Nation in growing volume of hardwood species, with 17 million acres in forest land. As the leading producer of hardwood lumber in the United States, the Commonwealth also leads in the export of hardwood lumber, exporting nearly $800 million annually in lumber, logs, furniture products and paper products to more than 70 countries around the world. Recent United States Forest Service data shows that the forest growth-to-harvest rate in this Commonwealth is better than 2 to 1. This vast renewable resource puts the hardwoods industry at the forefront of manufacturing in this Commonwealth. Through 2006, the total annual direct economic impact generated by the Commonwealth's wood industry was $18.4 billion. The industry employed 128,000 people, with $4.7 billion in wages and salaries earned. Production was 1.1 billion board feet of lumber annually (source: Strauss, Lord, Powell; Pennsylvania State University, June 2007, cited in Pennsylvania Hardwoods Development Council Biennial Report, 2009-2010).

Through deposition, ground-level ozone also contributes to pollution in the Chesapeake Bay. These effects can have adverse impacts including loss of species diversity and changes to habitat quality and water and nutrient cycles. 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 reduction of ground-level ozone air pollution concentrations directly benefits the human and animal populations in this Commonwealth with improved ambient air quality and healthier environments. The agriculture and timber industries and related businesses benefit directly from reduced economic losses that result from damage to crops and timber. Likewise, the natural areas and infrastructure within this Commonwealth and downwind benefit directly from reduced environmental damage and economic losses.

The Statewide implementation of the VOC emission control measures in the proposed rulemaking could generate reductions of as much as 111 tons of VOC emissions per year from the ten potentially affected facilities identified by the Department in its databases that would likely be subject at or above the applicability threshold of 15 pounds (6.8 kilograms) per day of total actual VOC emissions, including related cleaning activities and before consideration of controls. The owners and operators of these ten facilities would be required to implement the VOC control measures of the proposed rulemaking, depending on the level of compliance already achieved by the owners and operators of these potentially affected facilities. These projected estimated reductions in VOC emissions and the subsequent reduced formation of ground-level ozone would help ensure that the owners and operators of regulated facilities, farms and agricultural enterprises, hardwoods and timber, industries, and tourism-related businesses, and employees, residents of labor communities, citizens and the environment of this Commonwealth experience the benefits of improved

health and welfare resulting from lowered concentrations of ground-level ozone. Commonwealth residents would also potentially benefit from improved groundwater quality through reduced quantities of VOCs and HAPs from the use of low-VOC content and low-HAP content automobile and light-duty truck assembly coatings and implementation of work practices for coating-related and cleaning-related activities. Although the proposed rulemaking is designed primarily to address ozone air quality, the reformulation of high-VOC content coating materials to low-VOC content coating materials or substitution of low-VOC content coating 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 high-HAP content solvents would benefit groundwater quality through reduced loading on water treatment plants and in reduced quantities of high-VOC content and high-HAP content solvents leaching into the ground and streams and rivers.

The Statewide implementation of the proposed rulemaking control measures would assist the Commonwealth in reducing VOC emissions locally and the resultant local formation of ground-level ozone in this Commonwealth from surface coating processes subject to the proposed rulemaking. The Statewide implementation of the proposed rulemaking control measures would also assist the Commonwealth in reducing the 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 ground-level ozone NAAQS and to satisfy related CAA requirements in this Commonwealth.

The proposed rulemaking may create economic opportunities for coating formulators and VOC emission control technology innovators, manufacturers and distributors through an increased demand for new or reformulated coating materials or for new or improved application or control equipment. In addition, the owners and operators of regulated facilities may choose 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 Department reviewed its air quality databases and identified 13 facilities in this Commonwealth whose owners and operators may be subject to the proposed rulemaking if they elect to comply with this proposed rulemaking instead of the proposed rulemaking for § 129.52d. For purposes of discussing the potential impacts of this proposed rulemaking, the Board assumed that the owners and operators of these 13 facilities would elect to be subject to this proposed rulemaking. According to the Department databases, the actual VOC emissions from these 13 facilities assumed to be subject to the proposed rulemaking totaled 320 tons in 2013. Of the 13 facilities reporting VOC emissions in 2013, the owners and operators of 10 of these facilities reported VOC emissions totaling 2.7 tons or more; their combined reported emissions totaled 319 tons in 2013. The owners and operators of these ten facilities would be assumed to emit 15 pounds (6.8 kilograms) or more of total actual VOC emissions per day, including related cleaning activities and before consideration of controls, and would be required to implement the proposed VOC emission reduction measures, which include coating VOC content limits, work practice standards for coatings, development and implementation of a written work practice plan for cleaning materials, and compliance monitoring and daily recordkeeping requirements. The owners and operators of the remaining three facilities reported VOC emissions below 2.7 tons; their combined reported VOC emissions totaled approximately 1 ton in 2013. The owners and operators of these three facilities would be assumed to emit less than 15 pounds (6.8 kilograms) per day of total actual VOC emissions, including related cleaning activities and before consideration of controls, and would be subject only to the compliance monitoring and daily recordkeeping requirements.

For all subject owners and operators, the daily records would be required to be maintained onsite for 2 years, unless a longer period is required under Chapter 127 (relating to construction, modification, reactivation and operation of sources) or a plan approval, operating permit or order issued by the Department. Records would be submitted to the Department in an acceptable format upon receipt of a written request from the Department.

The recommended RACT VOC emission reduction measures included in the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG are largely based on the 2006 and 2007 data supplied by the Alliance of Automobile Manufacturers member companies and nonmember companies and the 2004 NESHAP HAP emission reduction measures. While the owner or operator of an automobile and light-duty truck assembly coating or heavier vehicle surface coating facility area source of HAP may not meet the threshold for implementing the HAP emission reduction measures of the 2004 NESHAP (10 tpy of any single listed HAP or 25 tpy of any combination of HAPs), the owner or operator may meet the applicability threshold limit for implementing the proposed rulemaking measures to control VOC emissions.

The costs estimated by the EPA to implement the recommended RACT measures are largely based on the 1980 NSPS VOC emission limitations and 2004 NESHAP HAP emission reduction measures and costs. The owner and operator of an automobile and light-duty truck assembly coating facility that is already implementing the requirements of the 1980 NSPS or 2004 NESHAP that would potentially be subject to the proposed rulemaking measures would likely not have additional costs to comply with the proposed rulemaking measures. The EPA therefore projected an estimated cost of $0 to the owners and operators of automobile and light-duty truck assembly coating facilities potentially subject to regulations implementing requirements consistent with the recommended RACT measures of the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG.

However, the owners and operators of none of the permitted facilities identified by the Department as potentially subject to the proposed rulemaking have permits implementing the 1980 NSPS or 2004 NESHAP requirements. The Department also determined that the 13 facility owners and operators are likely surface coating bodies and body parts for heavier vehicles and not coating and assembling the automobiles and light-duty trucks that are the primary focus of the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG. Consistent with a recommendation in the EPA 2008 Automobile and Light-Duty Truck Assembly Coatings CTG and the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG, the proposed rulemaking provides the owner or operator of a

facility that coats a body or body part for a new heavier vehicle the option to elect to be regulated under this proposed rulemaking instead of proposed § 129.52d. The EPA wrote in the 2008 CTGs that an owner or operator making this election would achieve at least equivalent, and perhaps greater, control of VOC emissions.

The cost to the potentially affected population will be about the same whether the owners and operators choose to comply with this proposed rulemaking or proposed § 129.52d. The Board developed its estimate of costs for the potentially subject owners and operators implementing the proposed rulemaking measures by using the cost estimates for implementing the recommended RACT measures of the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG. The Board likewise used the EPA's estimate from the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG for the amount of VOC emission reductions implementing the recommended control measures would achieve.

The EPA estimated that the annual cost to owners and operators to comply with regulations based on the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG would be $10,500 per facility and estimated the cost effectiveness for controlling the VOC emissions would be $1,758 per ton of VOC emissions reduced. The EPA also estimated that implementing the RACT measures of the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG would achieve VOC emission reductions of 35%. Both 2008 CTGs also recommend work practices for reducing VOC emissions from coatings and cleaning materials. The EPA believes that the work practice recommendations in both 2008 CTGs will result in a net cost savings for affected owners and operators. Implementing the required work practices for coating-related activities and cleaning materials would reduce the amounts of VOC emissions overall from coating operations by reducing the amounts of VOC-containing coating and cleaning materials that are lost to evaporation, spillage and waste, and reducing or eliminating associated VOC emissions, thereby reducing the costs of purchasing coating and cleaning materials for use in the operation as well as decreasing the amount of annual emissions fees that must be paid for VOC emissions.

The Board estimates that the maximum potential amount of actual annual VOC emission reductions that could be achieved by implementing the proposed rulemaking would be approximately 111 tons, based on the 2013 reported VOC emissions of 319 tons by the ten potentially subject permitted facility owners and operators identified from the Department's databases that would be required to implement the VOC control measures of the proposed rulemaking (35% reduction x 319 tons VOC emissions = 111 tons reduced). The estimated annual cost to the owners and operators of these ten potentially subject permitted facilities would be a total of $195,138 (111 tons reduced x $1,758 per ton reduced = $195,138). The cost per facility owner and operator would be approximately $19,514 ($195,138 / 10 facilities = $19,514), which is higher than the EPA's estimated cost per facility of $10,500 for implementing the recommended RACT measures of the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG. This may be due in part to the Commonwealth-specific emission data used in the calculation.

The Board also calculated the cost effectiveness for the owners and operators of the ten potentially subject facilities in this Commonwealth using the EPA's cost of $10,500 per facility. The estimated total maximum anticipated annual costs to the potentially subject ten facility owners and operators could be $105,000 ($10,500 x 10 facilities = $105,000). The cost effectiveness for the reductions of 111 tons of VOC emissions could be as little as $946 per ton of VOC emissions reduced ($105,000 / 111 tons reduced = $946 per ton reduced) on an annual basis. This is less than the cost effectiveness of $1,758 per ton reduced estimated by the EPA for implementing the recommended RACT measures of the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG. Again, this may be due in part to the Commonwealth-specific emission data used in the calculation.

The Board estimates that the range of cost effectiveness to these ten facility owners and operators for implementing the proposed rulemaking is $946/ton VOC emissions reduced to $1,758/ton reduced on an annual basis. The range of cost to this group for implementing the proposed VOC emission control measures is estimated to be $10,500 to $19,514 per year per facility. The estimated total annual cost of implementing the proposed rulemaking for this group of potentially subject owners and operators ranges from $105,000 to $195,138. The Board expects that the annual costs to the regulated industry in this Commonwealth will be at the lower end of these ranges because low-VOC content coating materials are likely to be readily available at a cost that is not significantly greater than the high-VOC content coatings they replace as a result of the development of NSPS-compliant low-VOC content coating materials and NESHAP-compliant low-HAP content coating materials, since lower HAP content usually means lower VOC content.

Further, the Board expects that the annual financial impact to these owners and operators will be less than the estimated maximum costs due to flexibility in choosing compliance options. The proposed rulemaking provides for compliance through the use of complying coating materials and through work practice standards for coating-related activities and cleaning materials. Flexibility in compliance is provided for an owner or operator of a separate coating line at an automobile and light-duty truck assembly coating facility and an owner or operator of a facility that coats bodies or body parts for new heavier vehicles by the option to remain subject to the requirements of proposed § 129.52d or to elect to be subject to proposed § 129.52e. The proposed rulemaking provides flexibility to all of the potentially affected owners and operators by amending § 129.51(a) to extend its applicability to the owner and operator of a coating operation subject to this proposed rulemaking. Section 129.51(a) authorizes the owner or operator to achieve compliance through an alternative method, which would achieve VOC emission reductions equal to or greater than those of the proposed rulemaking, by submitting the alternative method to the Department for review and approval in an applicable plan approval or operating permit, or both.

The VOC 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, as specified under § 127.463(c) (relating to operating permit revisions to incorporate applicable standards). If 3 years or more remain in the permit term, the requirements would be incorporated as applicable requirements in the permit within 18 months of the promulgation of the final-form rulemaking, as required under § 127.463(b). Most impor-

tantly, § 127.463(e) specifies that "[r]egardless of whether a revision is required under this section, the permittee shall meet the applicable standards or regulations promulgated under the Clean Air Act within the time frame required by standards or regulations." Consequently, upon promulgation as final-form rulemaking, the proposed requirements would apply to affected owners and operators irrespective of a modification to the Operating Permit.

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 owners and operators of facilities less able to handle permitting matters with in-house staff.

Paperwork requirements

All subject owners and operators that have operations at the facility that apply an assembly coating subject to § 129.52e would be required to maintain records sufficient to demonstrate compliance with the proposed requirements, including daily records of specified parameters for each coating, thinner, component or cleaning material as supplied, and a daily record of the VOC content of each coating and cleaning material as applied. This includes those owners and operators that have total actual VOC emissions below 15 pounds (6.8 kilograms) per day, before consideration of controls, including related cleaning activities.

The daily records must be maintained onsite for 2 years by all subject owners and operators, unless a longer period is required under Chapter 127 or a plan approval, operating permit or order issued by the Department. Records would be submitted to the Department upon receipt of a written request from the Department.

The owner or operator of a subject facility that has total actual VOC emissions equal to or greater than 15 pounds (6.8 kilograms) per day, before consideration of controls, from all operations at the facility that apply an assembly coating subject to this section, including related cleaning activities, would also be required to implement work practices for coating materials as well as develop and implement a written work practice plan to minimize VOC emissions from cleaning and purging of equipment associated with all coating operations for which emission limits are required. The written work practice plan would be submitted to the Department upon receipt of a written request.

The financial and administrative costs for complying with the recordkeeping and reporting requirements for owners and operators at, above and below the emissions threshold for implementing control measures should be minimal. All owners and operators of surface coating processes in this Commonwealth, regardless of the facility's annual emission rate, are currently required to develop daily records of certain parameters under § 129.52(c) for coatings, thinners and other components as supplied and the VOC content of as applied coatings, and to maintain the records for 2 years under § 129.52(g). The daily records required under proposed § 129.52e(f) for owners and operators of surface coating processes subject to the proposed rulemaking are equivalent to the daily records required under existing § 129.52(c) for all surface coating process owners and operators. The Board expects that the owners and operators of facilities that are potentially subject to the proposed rulemaking would already be developing and keeping the required records; therefore, there should be minimal additional financial or administrative burden for subject owners and operators to comply with the proposed rulemaking recordkeeping provisions.

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 facility owners and operators that permanently achieve or move beyond compliance.

Statewide implementation of the VOC emission control measures in the proposed rulemaking could generate reductions of as much as 111 tons of VOC emissions per year from the ten potentially subject facilities identified by the Department in its databases that would likely be subject at or above the applicability threshold of 15 pounds (6.8 kilograms) per day of total actual VOC emissions, including related cleaning activities and before consideration of controls. The owners and operators of these ten facilities would be required to implement the VOC control measures of the proposed rulemaking depending on the level of compliance already demonstrated by the owners and operators of these facilities. These projected estimated reductions in VOC emissions and the subsequent reduced formation of ground-level ozone would help ensure that the owners and operators of regulated facilities, farms and agricultural enterprises, hardwoods and timber industries, and tourism-related businesses, and employees, residents of labor communities and citizens and the environment of this Commonwealth experience the benefits of improved ground-level ozone air quality. Commonwealth residents would also potentially benefit from improved groundwater quality through the use of low-VOC content and low-HAP content automobile and light-duty truck assembly coatings, heavier vehicle coatings and cleaning materials. Although the proposed rulemaking is designed primarily to address ozone air quality, the reformulation of high-VOC content coating materials to low-VOC content coating materials or substitution of low-VOC content coating 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 high-HAP content solvents would benefit groundwater quality through reduced loading on water treatment plants and in reduced quantities of high-VOC content and high-HAP content solvents leaching into the ground, streams and rivers.

The proposed rulemaking provides for compliance through the use of complying coating materials and through work practice standards for coating-related activities and cleaning materials. Flexibility in compliance is provided for an owner or operator of a separate coating line at an automobile and light-duty truck assembly coating facility and an owner or operator of a facility that coats bodies or body parts for new heavier vehicles by the

option to remain subject to the requirements of proposed § 129.52d or to elect to be subject to proposed § 129.52e. The proposed rulemaking provides flexibility to all of the potentially affected owners and operators by amending § 129.51(a) to extend its applicability to the owner and operator of a coating operation subject to this proposed rulemaking. Section 129.51(a) authorizes the owner or operator to achieve compliance through an alternative method, which would achieve VOC emission reductions equal to or greater than those of the proposed rulemaking, by submitting the alternative method to the Department for review and approval in an applicable plan approval or operating permit, or both.

The development and implementation of a written work practice standard for the use and application of cleaning materials, as well as implementation of work practices for coating-related activities, is expected to result in a net cost savings for affected owners and operators. Implementing the required work practices for coating-related activities and cleaning materials would reduce the amounts of VOC emissions overall from coating operations by reducing the amounts of VOC-containing coating and cleaning materials that are lost to evaporation, spillage and waste, and reducing or eliminating associated VOC emissions, thereby reducing the costs of purchasing coating and cleaning materials for use in the operation as well as decreasing the amount of annual emissions fees that must be paid for VOC emissions.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 13, 2015, 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*

It is noted in this preamble that this rulemaking proposes to establish requirements in § 129.52e(c) and (d)(1) that suggest a compliance date of January 1, 2016. The Board is particularly interested in receiving comments regarding this date, with consideration of establishing a compliance date of May 1, 2016, instead, in the final-form rulemaking. For more information, refer to section E of this preamble.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Board. Comments, suggestions or objections must be received by the Board by October 13, 2015. 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 October 13, 2015. 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 eComment system at http://www.ahs.dep.pa.gov/eComment.

Comments may be submitted to the Board by e-mail at 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:

September 8, 2015	Department of Environmental Protection Southeast Regional Office Schuylkill Conference Room 2 East Main Street Norristown, PA 19401
September 9, 2015	Department of Environmental Protection Rachel Carson State Office Building Conference Room 105 400 Market Street Harrisburg, PA 17105
September 10, 2015	Department of Environmental Protection Southwest Regional Office Monongahela Conference Room 400 Waterfront Drive Pittsburgh, PA 15222

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.

JOHN QUIGLEY,
Chairperson

Fiscal Note: 7-490. No fiscal impact; (8) recommends adoption.

(*Editor's Note*: See 45 Pa.B. 4366 (August 8, 2015) for a related proposed rulemaking adding § 129.52d, which will be adopted on or before the date of final adoption of this proposed rulemaking.)

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

§ 129.51. General.

(a) *Equivalency.* Compliance with §§ 129.52, 129.52a, 129.52b, 129.52c, **129.52e,** 129.54—129.69, 129.71—129.73 and 129.77 may be achieved by alternative methods if the following exist:

(1) The alternative method is approved by the Department in an applicable plan approval or operating permit, or both.

(2) The resulting emissions are equal to or less than the emissions that would have been discharged by complying with the applicable emission limitation.

(3) Compliance by a method other than the use of a low VOC coating, adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent, cleanup solvent, cleaning solution, fountain solution or ink which meets the applicable emission limitation in §§ 129.52, 129.52a, 129.52b, 129.52c, **129.52e,** 129.67, 129.67a, 129.67b, 129.73 and 129.77 shall be determined on the basis of equal volumes of solids.

(4) Capture efficiency testing and emissions testing are conducted in accordance with methods approved by the EPA.

(5) Adequate records are maintained to ensure enforceability.

(6) The alternative compliance method is incorporated into a plan approval or operating permit, or both, reviewed by the EPA, including the use of an air cleaning device to comply with § 129.52, § 129.52a, § 129.52b, § 129.52c, § **129.52e,** § 129.67, § 129.67a, § 129.67b, § 129.68(b)(2) and (c)(2), § 129.73 or § 129.77.

* * * * *

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

§ 129.52e. Control of VOC emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations.

(a) *Applicability.*

(1) This section applies to the owner and operator of an automobile and light-duty truck assembly coating operation that applies an automobile assembly coating or a light-duty truck assembly coating, or both, to one or more of the following:

(i) A new automobile body or a new light-duty truck body.

(ii) A body part for a new automobile or for a new light-duty truck.

(iii) Another part that is coated along with the new automobile body or body part or new light-duty truck body or body part.

(2) This section applies to the owner and operator of an automobile and light-duty truck assembly coating operation that operates a separate coating line at the facility on which a coating is applied to another part intended for use in a new automobile or new light-duty truck or an aftermarket repair or replacement part for an automobile or light-duty truck if the owner or operator elects to comply with this section instead of § 129.52d (relating to control of VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings). The election occurs when the owner or operator notifies the Department by submitting a written statement to the appropriate Department regional office Air Quality Program Manager that specifies the intent to comply with this section instead of § 129.52d.

(3) This section applies to the owner and operator of a facility that coats a body or body part for a new heavier vehicle if the owner or operator elects to comply with this section instead of § 129.52d. The election occurs when the owner or operator notifies the Department by submitting a written statement to the appropriate Department regional office Air Quality Program Manager that specifies the intent to comply with this section instead of § 129.52d.

(4) This section applies to the owner and operator of a facility that performs a coating operation subject to this section on a contractual basis.

(5) This section does not apply to the use or application of an automobile and light-duty truck assembly coating by an owner or operator at a plastic or composites molding facility.

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

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

Assembly coating—The term includes the primary and additional surface coatings applied during the vehicle assembly process.

(i) Primary coatings include the following:

(A) Electrodeposition primer.

(B) Primer-surfacer (including anti-chip coatings).

(C) Topcoat (including basecoat and clearcoat).

(D) Final repair.

(ii) Additional coatings include the following:

(A) Glass bonding primer.

(B) Adhesives.

(C) Cavity wax.

(D) Sealer.

(E) Deadener.

(F) Gasket/gasket sealing material.

(G) Underbody coating.

(H) Trunk interior coating.

(I) Bedliner.

(J) Weatherstrip adhesive.

(K) Lubricating waxes and compounds.

(iii) The term does not include aerosol coatings.

Automobile—

(i) A motor vehicle designed to carry up to eight passengers.

(ii) The term does not include vans, sport utility vehicles and motor vehicles designed primarily to transport light loads of property.

Automobile and light-duty truck adhesive—An adhesive, including glass bonding adhesive, used at an automobile and light-duty truck assembly coating operation, applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.

Automobile and light-duty truck assembly coating operation—An operation that applies an assembly coating to a new automobile body or a new light-duty truck body, or both, or a body part for a new automobile or for a new light-duty truck, or both, or another part that is coated along with the new automobile body or body part or new light-duty truck body or body part. The operation consists of one or more of the following processes:

(i) Surface preparing.

(ii) Priming, including application of either of the following:

(A) Electrodeposition primer.

(B) Primer-surfacer.

(iii) Topcoating.

(iv) Final repairing.

(v) Cleaning activities related to the vehicle coating operations.

Automobile and light-duty truck bedliner—A multicomponent coating, used at an automobile and light-duty truck assembly coating operation, applied to a cargo bed after the application of topcoat and outside of the topcoat operation to provide additional durability and chip resistance.

Automobile and light-duty truck cavity wax—A coating, used at an automobile and light-duty truck assembly coating operation, applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

Automobile and light-duty truck deadener—A coating, used at an automobile and light-duty truck assembly coating operation, applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

Automobile and light-duty truck gasket/gasket sealing material—

(i) A fluid, used at an automobile and light-duty truck assembly coating operation, applied to coat a gasket or replace and perform the same function as a gasket.

(ii) The term includes room temperature vulcanization seal material.

Automobile and light-duty truck glass bonding primer—

(i) A primer, used at an automobile and light-duty truck assembly coating operation, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass bonding adhesives or the installation of adhesive bonded glass.

(ii) The term includes glass bonding and cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of adhesive or the installation of adhesive bonded glass.

Automobile and light-duty truck lubricating wax/compound—A protective lubricating material, used at an automobile and light-duty truck assembly coating operation, applied to vehicle hubs and hinges.

Automobile and light-duty truck sealer—

(i) A high viscosity material, used at an automobile and light-duty truck assembly coating operation, generally, but not always, applied in the paint shop after the body has received an EDP coating and before the application of subsequent coatings (for example, primer-surfacer). The primary purpose of the material is to fill body joints completely so that there is no intrusion of water, gases or corrosive materials into the passenger area of the body compartment.

(ii) The term is also known as sealant, sealant primer or caulk.

Automobile and light-duty truck trunk interior coating—A coating, used at an automobile and light-duty truck assembly coating operation outside of the primer-surfacer and topcoat operations, applied to the trunk interior to provide chip protection.

Automobile and light-duty truck underbody coating—A coating, used at an automobile and light-duty truck assembly coating operation, applied to the undercarriage or firewall to prevent corrosion or provide chip protection, or both.

Automobile and light-duty truck weatherstrip adhesive—An adhesive, used at an automobile and light-duty truck assembly coating operation, applied to weatherstripping materials for the purpose of bonding the weatherstrip material to the surface of the vehicle.

Automobile Topcoat Protocol—A guidance document by the United States Environmental Protection Agency for determining the daily volatile organic compound emission rate of automobile and light-duty truck primer-surfacer and topcoat operations (EPA-453/R-08-002, September 2008, or revisions).

Body part—

(i) An exterior part of a motor vehicle including the hood, fender, door, roof, quarter panel, deck lid, tail gate and cargo bed.

(ii) The term does not include a bumper, fascia or cladding.

EDP—Electrodeposition primer—

(i) A process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas. It is a dip coating method that uses an electrical field to apply or deposit the conductive coating onto the part. The object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank.

(ii) The term is also known as E-Coat, Uni-Prime and ELPO primer.

Final repair—The operations performed and coating or coatings applied to completely assembled motor vehicles or to parts that are not yet on a completely assembled vehicle to correct damage or imperfections in the coating. The curing of the coatings applied in these operations is accomplished at a lower temperature than that used for curing primer-surfacer and topcoat. This lower temperature cure avoids the need to send parts that are not yet on a completely assembled vehicle through the same type of curing process used for primer-surfacer and topcoat and is necessary to protect heat sensitive components on completely assembled vehicles.

Heavier vehicle—A self-propelled vehicle designed for transporting persons or property on a street or highway that has a gross vehicle weight rating over 8,500 pounds.

In-line repair—

(i) The operation performed and coating or coatings applied to correct damage or imperfections in the topcoat on parts that are not yet on a completely assembled vehicle. The curing of the coatings applied in these operations is accomplished at essentially the same temperature as that used for curing the previously applied topcoat. This operation is considered part of the topcoat operation.

(ii) The term is also known as high bake repair or high bake reprocess.

Light-duty truck—A van, sport utility vehicle or motor vehicle designed primarily to transport light loads of property with a gross vehicle weight rating of 8,500 pounds or less.

Primer-surfacer—

(i) An intermediate protective coating applied over the EDP and under the topcoat. The coating provides adhesion, protection and appearance properties to the total finish.

(ii) The coating operation may include one or more other coatings, including antichip, lower-body antichip, chip-resistant edge primer, spot primer, blackout, deadener, interior color, basecoat replacement coating or other coating, that is applied in the same spray booth.

(iii) The term is also known as guide coat or surfacer.

Solids turnover ratio (R_T)—The ratio of total volume of coating solids that is added to the EDP system in a calendar month divided by the total volume design capacity of the EDP system.

Topcoat—

(i) The final coating system applied to provide the final color or a protective finish, or both. The coating may be a monocoat color or basecoat/clearcoat system.

(ii) The coating operation may include one or more other coatings including blackout, interior color or other coating that is applied in the same spray booth.

(iii) The term includes in-line repair and two-tone.

(c) *Existing RACT permit.* The requirements of this section supersede the requirements of a RACT permit issued under §§ 129.91—129.95 (relating to stationary sources of NO_x and VOCs) to the owner or operator of a source subject to this section prior to January 1, 2016, except to the extent the RACT permit contains more stringent requirements.

(d) *VOC content limits.*

(1) Beginning January 1, 2016, the VOC content limits specified in Tables I and II apply to an owner and operator of a facility that has total actual VOC emissions equal to or greater than 15 pounds (6.8 kilograms) per day, before consideration of controls, from all operations at the facility that apply an assembly coating subject to this section, including related cleaning activities.

(2) Beginning January 1, 2016, the VOC content limits specified in Tables I and II do not apply to the following:

(i) An owner and operator of a facility that has total actual VOC emissions below 15 pounds (6.8 kilograms) per day, before consideration of controls, from all operations at the facility that apply an assembly coating subject to this section, including related cleaning activities.

(ii) An assembly coating supplied in a container with a net volume of 16 ounces or less or a net weight of 1 pound or less.

(e) *Work practice requirements.* Beginning January 1, 2016, an owner and operator subject to subsection (d)(1) shall comply with the following work practices for:

(1) Coating-related activities. An owner and operator shall:

(i) Store all VOC-containing coatings, thinners and coating-related waste materials in closed containers.

(ii) Ensure that mixing and storage containers used for VOC-containing coatings, thinners and coating-related waste materials are kept closed at all times except when depositing or removing these materials.

(iii) Minimize spills of VOC-containing coatings, thinners and coating-related waste materials and clean up spills immediately.

(iv) Convey VOC-containing coatings, thinners and coating-related waste materials from one location to another in closed containers or pipes.

(v) Minimize VOC emissions from cleaning of storage, mixing and conveying equipment.

(2) Cleaning materials. An owner and operator shall develop and implement a written work practice plan to minimize VOC emissions from cleaning and purging of equipment associated with all coating operations for which emission limits are required. The written plan must specify practices and procedures to ensure that VOC emissions from the following operations are minimized:

(i) Vehicle body wiping.

(ii) Coating line purging.

(iii) Flushing of coating systems.

(iv) Cleaning of spray booth grates.

(v) Cleaning of spray booth walls.

(vi) Cleaning of spray booth equipment.

(vii) Cleaning external spray booth areas.

(viii) Other housekeeping measures, including:

(A) Storing all VOC-containing cleaning materials and used shop towels in closed containers.

(B) Ensuring that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials.

(C) Minimizing spills of VOC-containing cleaning materials and cleaning up spills immediately.

(D) Conveying VOC-containing cleaning materials from one location to another in closed containers or pipes.

(E) Minimizing VOC emissions from cleaning of storage, mixing and conveying equipment.

(f) *Compliance monitoring and recordkeeping.* An owner or operator subject to this section shall maintain records sufficient to demonstrate compliance with this section.

(1) The owner or operator shall maintain daily records of the following parameters for each coating, thinner, component or cleaning material as supplied:

(i) The name and identification number.

(ii) The volume used.

(iii) The mix ratio.

(iv) The density or specific gravity.

(v) The weight percent of total volatiles, water, solids and exempt solvents.

(vi) The volume percent of solids for each EDP coating.

(vii) The VOC content.

(2) The owner or operator shall maintain a daily record of the VOC content of each as applied coating or cleaning material.

(3) The owner or operator shall:

(i) Maintain the records onsite for 2 years, unless a longer period is required under Chapter 127 (relating to construction, modification, reactivation and operation of sources) or a plan approval, operating permit or order issued by the Department.

(ii) Submit the records to the Department in an acceptable format upon receipt of a written request from the Department.

(4) The owner or operator subject to subsection (e) shall maintain the written work practice plan specified in subsection (e)(2) onsite and make it available to the Department upon request.

(g) *Measurement, calculation, sampling and testing methodologies.* The following measurement, calculation, sampling and testing methodologies shall be used to determine the amount of VOC emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations, as appropriate:

(1) Measurements of the volatile fraction of coatings shall be performed according to the following, as applicable:

(i) EPA Reference Method 24.

(ii) Appendix A of 40 CFR Part 63, Subpart PPPP (relating to National emission standards for hazardous air pollutants for surface coating of plastic parts and products), regarding determination of weight volatile matter content and weight solids content of reactive adhesives.

(iii) Manufacturer's formulation data.

(2) Calculations of the VOC emissions and rates shall be performed according to the following, as applicable:

(i) Automobile Topcoat Protocol—*Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat Operations*, EPA-453/R-08-002, including updates and revisions. This protocol applies to the owner and operator of a facility that coats a body or body part for a new heavier vehicle that elects under subsection (a)(3) to comply with this section instead of § 129.52d.

(ii) *A Guideline for Surface Coating Calculations*, EPA-340/1-86-016, including updates and revisions.

(iii) *Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings*, EPA-450 3-84-019, including updates and revisions.

(3) Sampling and testing shall be performed according to the procedures and test methods specified in Chapter 139 (relating to sampling and testing).

(4) Another method or procedure that has been approved in writing by the Department and the EPA.

Table I. VOC Content Limits for Primary Assembly Coatings

Assembly Coating	*VOC Emission Limit*		
EDP operations (including application area, spray and rinse stations and curing oven)	When $R_T^1 < 0.040$	When $0.040 <= R_T^1 < 0.160$	When $R_T^1 => 0.160$
	No VOC emission limit.	$0.084 \times 350^{0.160-R_T}$ kg VOC/liter coating solids applied or	0.084 kg VOC/liter coating solids applied or
		$0.084 \times 350^{0.160-R_T} \times 8.34$ lb VOC/gal coating solids applied	0.7 lb VOC/gal coating solids applied
Primer-surfacer operations (including application area, flash-off area, and oven)	1.44 kg VOC/liter of deposited solids or 12.0 lbs VOC/gal deposited solids on a daily weighted average basis as determined by following the procedures in the revised Automobile Topcoat Protocol.		
Topcoat operations (including application area, flash-off area, and oven)	1.44 kg VOC/liter of deposited solids or 12.0 lbs VOC/gal deposited solids on a daily weighted average basis as determined by following the procedures in the revised Automobile Topcoat Protocol.		

Assembly Coating	*VOC Emission Limit*
Final repair operations	0.58 kg VOC/liter less water and less exempt solvents or 4.8 lbs VOC/gallon of coating less water and less exempt solvents on a daily weighted average basis or as an occurrence weighted average.
Combined primer-surfacer and topcoat operations	1.44 kg VOC/liter of deposited solids or 12.0 lbs VOC/gal deposited solids on a daily weighted average basis as determined by following the procedures in the revised Automobile Topcoat Protocol.

[1] R_T is the solids turnover ratio. "Solids turnover ratio" is defined in subsection (b).

Table II. VOC Content Limits for Additional Assembly Coatings (grams of VOC per liter of coating excluding water and exempt compounds) as Applied

Material[2]	*g VOC/liter coating less water and exempt compounds*	*lb VOC/gal coating less water and exempt compounds*
Automobile and Light-duty Truck Glass Bonding Primer	900	7.51
Automobile and Light-duty Truck Adhesive	250	2.09
Automobile and Light-duty Truck Cavity Wax	650	5.4
Automobile and Light-duty Truck Sealer	650	5.4
Automobile and Light-duty Truck Deadener	650	5.4
Automobile and Light-duty Truck Gasket/Gasket Sealing Material	200	1.7
Automobile and Light-duty Truck Underbody Coating	650	5.4
Automobile and Light-duty Truck Trunk Interior Coating	650	5.4
Automobile and Light-duty Truck Bedliner	200	1.7
Automobile and Light-duty Truck Lubricating Wax/Compound	700	5.8
Automobile and Light-duty Truck Weatherstrip Adhesive	750	6.26

[2] The owner and operator of a facility that coats a body or body part, or both, for a new heavier vehicle that elects under subsection (a)(3) to comply with this section instead of § 129.52d shall comply with these limits for equivalent coating materials.

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[25 PA. CODE CH. 129]

Control of Volatile Organic Compound Emissions from Miscellaneous Metal Parts Surface Coating Processes, Miscellaneous Plastic Parts Surface Coating Processes and Pleasure Craft Surface Coatings

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 § 129.52d (relating to control of VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings) to adopt reasonably available control technology (RACT) requirements and RACT emission limitations for stationary sources of volatile organic compound (VOC) emissions from miscellaneous metal parts surface coating processes and miscellaneous plastic parts surface coating processes. These processes include surface coating of automotive and transportation plastic parts, business machine plastic parts, pleasure craft, and bodies or body parts for new heavier vehicles, and surface coating performed on a separate coating line at an automobile and light-duty truck assembly coating facility on which coatings are applied to other parts intended for use in new automobiles or new light-duty trucks or to aftermarket repair or replacement parts for automobiles or light-duty trucks, as well as related cleaning activities. The proposed rulemaking would also add terms and definitions to § 129.52d to support the interpretation of the proposed measures and amend §§ 129.51, 129.52, 129.67 and 129.75 to support the addition of § 129.52d.

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 rulemaking.

This proposed rulemaking is given under Board order at its meeting of October 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 (select "Public Participation Center," then "Environmental Quality Board").

C. *Statutory Authority*

The proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (act) (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 act 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 miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings. These processes include surface coating of automotive and transportation plastic parts, business machine plastic parts, pleasure craft, and bodies or body parts for new heavier vehicles, and surface coating performed on a separate coating line at an automobile and light-duty truck assembly coating facility on which coatings are applied to other parts intended for use in new automobiles or new light-duty trucks or to aftermarket repair or replacement parts for automobiles or light-duty trucks, as well as related cleaning activities.

Miscellaneous metal parts and products and miscellaneous plastic parts and products include metal and plastic components of the following types of products as well as the products themselves: fabricated metal products; molded plastic parts; small and large farm machinery; commercial and industrial machinery and equipment; automotive or transportation equipment; interior or exterior automotive parts; construction equipment; motor vehicle accessories; bicycles and sporting goods; toys; recreational vehicles; pleasure craft (recreational boats); extruded aluminum structural components; railroad cars; heavier vehicles; lawn and garden equipment; business machines; laboratory and medical equipment; electronic equipment; steel drums; metal pipes; and numerous other industrial and household products.

VOCs are precursors for ground-level ozone formation. Ground-level ozone, a public health and welfare hazard, is not emitted directly to the atmosphere from these sources but is formed by a photochemical reaction between VOCs and nitrogen oxides (NOx) 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 Miscellaneous Metal and Plastic Parts Coatings Control Techniques Guidelines (CTG) for these sources in this Commonwealth. See 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, NOx, carbon monoxide, sulfur dioxide and lead. Section 109 of the CAA (42 U.S.C.A. § 7409) established two types of NAAQS: primary standards, which are set to protect public health; and secondary standards, which are 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 2014 ozone season, all monitored areas of the 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 primary and secondary ozone 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 July 20, 2015, and that they continue to maintain the standard thereafter. The United States Court of Appeals for the District of Columbia Circuit ruled in December 2014, that the EPA could not extend the attainment date for "marginal" nonattainment areas, for the 2008 ozone NAAQS, to December 2015, See *NRDC v. EPA*, 2014 U.S. App. LEXIS 24253 (D.C. Cir. Dec. 23, 2014).

On November 25, 2014, the EPA proposed a revised ozone NAAQS ranging from 65 to 70 ppb. The EPA is also seeking comment on a 60 ppb ozone standard and retention of the 2008 75 ppb standard. See 79 FR 75234 (December 17, 2014). Evaluation of Department air monitoring system 2012-2014 ozone monitoring data indicates that, if the EPA adopts a 65 ppb ozone NAAQS, approximately 88% of the ozone samplers in this Commonwealth would violate the revised standard; an estimated 33% of the samplers would be in violation of a 70 ppb ozone standard. If the EPA lowers the 2015 ozone NAAQS to 60 ppb, all monitors in this Commonwealth, except a single monitor in southeastern Pennsylvania, would be in violation of the standard. The EPA has been ordered by the Court to finalize the new standard by October 1, 2015.

With regard to the 2008 ozone standard of 75 ppb, the Department's analysis of preliminary 2014 ambient air ozone concentrations shows that all ozone samplers in this Commonwealth except the Harrison sampler in Allegheny County, are monitoring attainment. The Department will develop Redesignation Requests and Maintenance Plans for submission to the EPA seeking redesignation of the nonattainment areas to attainment of the 2008 ozone standard; maintenance plans have already been submitted to the EPA and approved for the 1997 ozone standard. The CAA prescribes that the Maintenance Plans, including control measures, must provide for the maintenance of the ozone NAAQS for at least 10 years following the EPA's redesignation of the areas to attainment. Eight years after the EPA redesignates an area to attainment, an additional Maintenance Plan approved by the EPA must also provide for the maintenance of the ozone standard for another 10 years following the expiration of the initial 10-year period.

Reductions in VOC emissions that are achieved following the adoption and implementation of VOC RACT emission control measures for source categories covered by CTGs, including miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings, will allow the Commonwealth to make substantial progress in achieving and maintaining the 1997 and 2008 8-hour ozone NAAQS; these reductions will also be necessary for the attainment and maintenance of the new ozone NAAQS that the Department anticipates will be promulgated by the EPA in October 2015.

There are no Federal statutory or regulatory RACT limits for VOC emissions from these miscellaneous metal parts surface coating processes and miscellaneous plastic parts surface coating processes. In 2004, however, the EPA promulgated 40 CFR Part 63, Subpart MMMM and Subpart PPPP (relating to National emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products; and National emission standards for hazardous air pollutants for surface coating of plastic parts and products) (collectively referred to as 2004 NESHAPs). See 69 FR 130 (January 2, 2004) and 69 FR 20968 (April 19, 2004). These 2004 NESHAPs established organic hazardous air pollutant (HAP) emission limits based on low-HAP-content coatings and low-volatile-emitting (nonatomizing) coating application technology for the respective surface coating categories.

When developing the control measure recommendations included in its 2008 Miscellaneous Metal and Plastic Parts Coatings CTG for reducing VOC emissions from these sources, the EPA took into account the HAP emission reduction measures of the 2004 NESHAPs for the metal parts and products and the plastic parts and products coating industries. Many HAPs are VOCs, but not all VOCs are HAPs. The requirements of the 2004 NESHAPs apply to "major sources" of HAP emissions from miscellaneous metal parts and products coating facilities and plastic parts and products coating facilities. 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 69 FR 130, 131 and 69 FR 20968, 20969. Most of the Federal recommendations for control of VOC emissions included in the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG are based on the HAP content and emission rate limits for surface coating of miscellaneous metal parts and products and surface coating of plastic parts and products and other requirements in the 2004 NESHAPs for these categories.

For pleasure craft coatings, the EPA took into account California regulations when developing the CTG. California was the only state at that time with regulations governing VOC emissions from pleasure craft coatings. After the EPA finalized the CTG, the pleasure craft coatings industry asserted to the EPA that three of the VOC emission limits in the CTG were too low considering the performance requirements of the pleasure craft coatings and that the VOC emission limits recommended did not represent RACT for the National pleasure craft coatings industry. The industry suggested several options for revision. The EPA did not take action on the concerns, but left it up to the states to address the concerns. On June 1, 2010, the EPA issued a memorandum entitled "Control Technique Guidelines for Miscellaneous Metal and Plastic Part Coatings—Industry Request for Reconsideration," in which the EPA stated that each state could determine what would be appropriate for the pleasure craft coatings industry in its jurisdiction.

State regulations to control VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings, as well as the related cleaning activities, are required under Federal law. The state regulations will be reviewed by the EPA and will be 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 44 FR 53761 (September 17, 1979).

Section 110(a) of the CAA (42 U.S.C.A. § 7410(a)) provides that each state shall adopt and submit to the EPA a plan to implement measures (a SIP) to enforce the NAAQS or revision to the NAAQS promulgated under section 109(b) of the CAA. 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 a 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 where 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 miscellaneous metal products coatings and plastic parts coatings on its section 183(e) list and, in 2008, issued a CTG for these product categories. See 60 FR 15264, 15267 (March 23, 1995) and 73 FR 58481. See *Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings*, EPA-453/R-08-003, Office of Air Quality Planning and Standards, EPA, September 2008. The 2008 Miscellaneous Metal and Plastic Parts Coatings CTG document is available on the EPA web site at 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 2008 Miscellaneous Metal and Plastic Parts Coatings CTG would be substantially as effective as National regulations in reducing VOC emissions from the miscellaneous metal products coatings and plastic parts coatings product categories, as well as pleasure craft surface coatings, 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 Miscellaneous Metal and Plastic Parts Coatings CTG for their applicability to the ground-level ozone reduction measures necessary for this Commonwealth. The Bureau of Air Quality determined that the VOC emission reduction measures provided in the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG are appropriate to be implemented in this Commonwealth as RACT for these categories. The Bureau of Air Quality determined that three VOC content limits applicable to the pleasure craft coatings industry should be altered slightly from the CTG to represent RACT for that industry, based on the June 1, 2010, memorandum from the EPA entitled, "Control Technique Guidelines for Miscellaneous Metal and Plastic Part Coatings—Industry Request for Reconsideration." The EPA wrote the memorandum in response to input from the pleasure craft coatings industry following the EPA's publication of the CTG.

This proposed rulemaking would apply to the owner and operator of a facility that manufactures metal parts or products or plastic parts or products, including automotive and transportation plastic parts, business machine plastic parts, pleasure craft, or bodies or body parts for new heavier vehicles, on which subject surface coatings are applied by the owner and operator, as well as to the owner and operator of a facility that applies subject surface coatings to affected parts and products on a contractual basis. This proposed rulemaking would also apply to the owner and operator of a separate coating line at an automobile and light-duty truck assembly coating facility on which subject surface coatings are applied to other parts intended for use in new automobiles or new light-duty trucks or to aftermarket repair or replacement parts for automobiles or light-duty trucks.

The Board is aware of 160 manufacturing facilities in this Commonwealth whose owners and operators may be subject to the proposed VOC emission reduction measures. The owners and operators of as many as 139 of these facilities may emit 2.7 tons or more of actual VOC emissions per 12-month rolling period threshold, including related cleaning activities and before consideration of controls, and would likely be required to implement the proposed VOC emission control measures, work practice standards and recordkeeping requirements. The owners and operators of the remaining 21 affected facilities with actual VOC emissions below the 2.7 tons per 12-month rolling period threshold, including related cleaning activities and before consideration of controls, would be subject only to the recordkeeping requirements and, if requested by the Department, reporting requirements of the proposed rulemaking. It is possible that the owners and operators of additional facilities that have not been identified could be subject to the proposed rulemaking control measures.

Implementation of the recommended control measures could generate reductions of as much as 1,586 tons of VOC emissions per 12-month rolling period from the 139 facilities. The estimated total maximum annual costs to the affected regulated industry could be up to $2.8 million. The range of cost per regulated facility for implementing the proposed VOC emission control measures is estimated to be $10,500 to $20,000 per facility. The range of cost effectiveness to the regulated industry would be approximately $920 per ton of VOC emissions reduced to $1,758 per ton reduced on an annual basis.

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 sources of VOC emissions from surface coating processes subject to the proposed rulemaking, as well as the related cleaning activities. Adoption of VOC emission requirements for these sources 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 ground-level 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 ground-level ozone NAAQS and to satisfy related CAA requirements in this Commonwealth. If published as a final-form rulemaking in the *Pennsylvania Bulletin*, this proposed rulemaking will be submitted to the EPA as a revision to the Commonwealth's SIP.

The Air Quality Technical Advisory Committee and the Small Business Compliance Advisory Committee were briefed on the proposed rulemaking on February 20, 2014, and April 23, 2014, respectively. Both committees voted unanimously to concur with the Department's recommendation to move the proposed rulemaking forward to the Board for consideration. In addition, the proposed rulemaking was discussed with the Citizens Advisory Council (CAC) Policy and Regulatory Oversight Committee on March 12, 2014. On the recommendation of the Policy

and Regulatory Oversight 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*

§ 129.52d. Control of VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings

Under subsection (a)(1), the proposed rulemaking would apply Statewide to the owner and operator of a miscellaneous metal part surface coating process or miscellaneous plastic part surface coating process, or both, if the total actual VOC emissions from all miscellaneous metal part coating units and miscellaneous plastic part coating units, including related cleaning activities, at the facility are equal to or greater than 2.7 tons per 12-month rolling period, before consideration of controls. As with all RACT regulations, an owner or operator would remain subject to the regulation even if the throughput or VOC emissions fall below the applicability threshold.

Subsection (a)(2) specifies that the proposed rulemaking would apply Statewide to the owner and operator of a miscellaneous metal part surface coating process or miscellaneous plastic part surface coating process, or both, if the total actual VOC emissions from all miscellaneous metal part coating units and miscellaneous plastic part coating units, including related cleaning activities, at the facility are below 2.7 tons per 12-month rolling period, before consideration of controls. The only requirements that would apply to an owner or operator subject to subsection (a)(2) would be recordkeeping requirements and, if requested by the Department, reporting requirements.

Proposed subsection (a)(3) specifies that compliance with the VOC emission limits and other requirements of this section assures compliance with the VOC emission limits and other requirements of § 129.52 (relating to surface coating processes) for the miscellaneous metal parts and products surface coating processes as specified in § 129.52, Table I, Category 10.

Proposed subsection (a)(4) specifies that if an owner or operator elects to comply with § 129.52e (relating to control of VOC emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations) under subsection (a)(2) or (3), then § 129.52e instead of this section applies to the separate coating line at the facility, or to the coating of a body or body part for a new heavier vehicle at the facility, or both, for which the election is made. This effectuates the recommendations in the EPA's *Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings*, EPA-453/R-08-006, Office of Air Quality Planning and Standards, EPA, September 2008, that a state consider giving an owner or operator of a separate coating line at an automobile and light-duty truck assembly coating facility the option of complying with the state's regulation adopted under the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG instead of the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG, and that a state give an owner or operator of a facility that coats bodies or body parts for new heavier vehicles the option to comply with the state's regulation adopted under the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG or the 2008 Automobile and Light-Duty Truck Assembly Coatings CTG. See 2008 Automobile and Light-Duty Truck Assembly Coatings CTG, p. 4 and 2008 Miscellaneous Metal and Plastic Parts Coatings CTG, p. 4.

Subsection (a)(5) specifies that the proposed rulemaking would not apply to an affected owner or operator in the use or application of coatings under certain operating circumstances.

Under subsection (b), the proposed rulemaking establishes 72 definitions to support this section.

Under subsection (c), the proposed rulemaking establishes that the requirements of this section would supersede the requirements of a RACT permit issued under §§ 129.91—129.95 (relating to stationary sources of NO_x and VOCs) to the owner or operator of a source subject to subsection (a) prior to January 1, 2016, except to the extent the RACT permit contains more stringent requirements.

Under subsection (d), the proposed rulemaking establishes emission limitations beginning January 1, 2016, for a person subject to subsection (a)(1). Three options for meeting the emission limitations are proposed: in subsection (d)(1), use of compliant materials that meet the VOC content limit for the applicable coating category specified in the applicable table of VOC content limits in Tables I—V; in subsection (d)(2), a combination of one or more VOC-containing coatings, as applied, that meet the emission rate limits for the applicable coating category specified in the applicable table of emission rate limits in Tables VI—IX, and one or more VOC emissions capture systems and one or more add-on air pollution control devices that meet the requirements of subsection (e)(2); or in subsection (d)(3), use of a VOC emissions capture system and add-on air pollution control device that is acceptable under § 129.51(a) (relating to general) and meets the requirements of subsection (e)(2). Under the third option, the overall control efficiency of a control system, as determined by the test methods and procedures specified in Chapter 139 (relating to sampling and testing), may be no less than 90%.

Under subsection (d)(4), the proposed rulemaking establishes that if more than one VOC content limit or VOC emission rate limit applies to a specific coating, then the least restrictive VOC content limit or VOC emission rate limit applies.

Under subsection (d)(5), the proposed rulemaking establishes that for a miscellaneous metal part or miscellaneous plastic part coating that does not meet the coating categories listed in Table I, II, VI or VII, the VOC content limit or VOC emission rate limit shall be determined by classifying the coating as a general one component coating or general multicomponent coating. The corresponding general one component coating or general multicomponent coating limit applies.

Under subsection (d)(6), the proposed rulemaking establishes that for a pleasure craft coating that does not meet the coating categories listed in Table IV or IX, the VOC content limit or VOC emission rate limit shall be determined by classifying the coating as an "all other pleasure craft surface coatings for metal or plastic." The "all other pleasure craft surface coatings for metal or plastic" limit applies.

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

Under subsection (f), recordkeeping and reporting requirements are established.

Under subsection (g), the proposed rulemaking establishes that a person subject to subsection (a)(1) may not cause or permit the emission into the outdoor atmosphere of VOCs from a miscellaneous metal part coating unit or

miscellaneous plastic part coating unit, or both, unless the coatings are applied using one or more specified coating application methods.

Under subsection (h), exempt coatings and exempt coating unit operations are established.

Under subsection (i), work practice requirements for coating-related activities are established.

Under subsection (j), work practice requirements for cleaning materials are established.

Under subsection (k), requirements for measurements and calculations are established.

Proposed § 129.52d contains nine tables. Tables I and II propose surface coating VOC content limits for the overarching surface coating categories of metal parts and products and plastic parts and products, respectively. Tables III—V propose surface coating VOC content limits for the miscellaneous metal and plastic parts surface coating categories of automotive/transportation and business machine plastic parts, pleasure craft and motor vehicle materials. Tables I—V would be used to meet the first option for complying with emission limitations, in proposed subsection (d)(1), namely the use of compliant materials. Tables VI—IX propose surface coating VOC emission rate limits for the same surface coating categories as Tables I—V, though there is not a table of VOC emission rate limits specific to motor vehicle materials coatings. Tables VI—IX would be used to meet the second or third option for complying with emission limitations in proposed subsection (d)(2) or (3). The second option is use of a combination of complying coating materials, a VOC emissions capture system and an add-on air pollution control device. The third option is use of a VOC emissions capture system and an add-on air pollution control device.

Three VOC content limits in Table IV differ from the CTG and reflect the input the EPA received from the pleasure craft coatings industry regarding technological infeasibility following the EPA's publication of the final CTG. These VOC content limits are for Antifoulant Sealer/Tiecoat (not in CTG), Extreme High-gloss Topcoat (more stringent in CTG) and Other Substrate Antifoulant Coating (more stringent in CTG). The Board expects that these revised VOC content limits for the pleasure craft surface coatings would have a de minimis impact on the amount of VOC emission reductions achieved from the implementation of the proposed rulemaking.

The proposed rulemaking would make minor clarifying changes to §§ 129.51, 129.52, 129.67 and 129.75 to support the addition of § 129.52d.

F. *Benefits, Costs and Compliance*

Benefits

The Statewide 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 threat, causing respiratory illnesses and decreased lung function, leading to a lower quality of life. 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. High levels of ground-level ozone affect animals including pets, livestock and wildlife, in ways similar to humans.

In addition to causing adverse human and animal health effects, the EPA has concluded that high levels of ground-level ozone affects vegetation and ecosystems leading to: reductions in agricultural crop and commercial forest yields by destroying chlorophyll; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests and other environmental stresses, including harsh weather. In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of parks and recreation areas.

The economic value of some welfare losses due to high concentrations of ground-level ozone can be calculated, such as crop yield loss from both reduced seed production and visible injury to some leaf crops, including lettuce, spinach and tobacco, as well as visible injury to ornamental plants, including grass, flowers and shrubs. Other types of welfare loss may not be quantifiable, such as the reduced aesthetic value of trees growing in heavily visited parks. The Commonwealth's 62,000 farm families are the stewards of more than 7.7 million acres of farmland, with $6.8 billion in cash receipts annually from production agriculture. In addition to production agriculture, the industry also raises revenue and supplies jobs through support services such as food processing, marketing, transportation and farm equipment. In total, production agriculture and agribusiness contributes nearly $68 billion to the Commonwealth's economy (source: Department of Agriculture).

The Department of Conservation and Natural Resources (DCNR) is the steward of the State-owned forests and parks. DCNR awards millions of dollars in construction contracts each year to build and maintain the facilities in its parks and forests. Timber sales on State forest lands contribute to the $5 billion a year timber industry. Hundreds of concessions throughout the park system help complete the park experience for both State and out-of-State visitors (source: DCNR). Further, the Commonwealth leads the Nation in growing volume of hardwood species, with 17 million acres in forest land. As the leading producer of hardwood lumber in the United States, the Commonwealth also leads in the export of hardwood lumber, exporting nearly $800 million annually in lumber, logs, furniture products and paper products to more than 70 countries around the world. Recent United States Forest Service data shows that the forest growth-to-harvest rate in this Commonwealth is better than 2 to 1. This vast renewable resource puts the hardwoods industry at the forefront of manufacturing in this Commonwealth. Through 2006, the total annual direct economic impact generated by the Commonwealth's wood industry was $18.4 billion. The industry employed 128,000 people, with $4.7 billion in wages and salaries earned. Production was 1.1 billion board feet of lumber annually (source: Strauss, Lord, Powell; Pennsylvania State University, June 2007, cited in Pennsylvania Hardwoods Development Council Biennial Report, 2009-2010).

Through deposition, ground-level ozone also contributes to pollution in the Chesapeake Bay. These effects can

have adverse impacts including loss of species diversity and changes to habitat quality and water and nutrient cycles. 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 reduction of ground-level ozone air pollution concentrations directly benefits the human and animal populations in this Commonwealth with improved ambient air quality and healthier environments. The agriculture and timber industries and related businesses benefit directly from reduced economic losses that result from damage to crops and timber. Likewise, the natural areas and infrastructure within this Commonwealth and downwind benefit directly from reduced environmental damage and economic losses.

This proposed rulemaking is designed to adopt the standards and recommendations in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings 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 VOC emission control measures in the proposed rulemaking could generate reductions of as much as 1,586 tons of VOC emissions per 12-month rolling period from the 139 potentially affected facilities identified by the Department in its databases, depending on the level of compliance already demonstrated by the owners and operators of these potentially affected facilities. These projected estimated reductions in VOC emissions and the subsequent reduced formation of ozone would help ensure that the owners and operators of regulated facilities, farms and agricultural enterprises, hardwoods and timber industries, and tourism-related businesses, and residents of labor communities, citizens and the environment of this Commonwealth experience the benefits of improved ground-level ozone air quality. Commonwealth residents would also potentially benefit from improved groundwater quality through reduced quantities of VOCs and HAPs from low-VOC content and low-HAP content miscellaneous metal parts and miscellaneous plastic parts coatings and cleaning materials. Although the proposed rulemaking is designed primarily to address ozone air quality, the reformulation of high-VOC content coating materials to low-VOC content coating materials or substitution of low-VOC content coating 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 high-HAP content solvents would benefit groundwater quality through reduced loading on water treatment plants and in reduced quantities of high-VOC content and high-HAP content solvents leaching into the ground and streams and rivers.

The Statewide implementation of the proposed rulemaking control measures would assist the Commonwealth in reducing VOC emissions locally and the resultant local formation of ground-level ozone in this Commonwealth from surface coating processes subject to the proposed rulemaking. The Statewide implementation of the proposed rulemaking control measures would also assist the Commonwealth in reducing the 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 ground-level 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 regulations, thereby creating an economic opportunity for the emissions monitoring industry.

Compliance costs

The Department reviewed its air quality databases and identified 160 manufacturing facilities in this Commonwealth whose owners and operators may be subject to the proposed rulemaking. According to the Department databases, the actual VOC emissions from these 160 facilities assumed to be subject to the proposed rulemaking totaled 4,552 tons in 2012. Of the 160 facilities reporting VOC emissions in 2012, the owners and operators of 139 of these facilities reported VOC emissions totaling 2.7 tons or more; their combined reported emissions totaled 4,531 tons in 2012. Accordingly, the owners and operators of these 139 facilities would be assumed to emit 2.7 tons or more of actual VOC emissions per 12-month rolling period threshold, including related cleaning activities and before consideration of controls, and would be required to implement VOC emission reduction measures, work practice standards and recordkeeping requirements. The records would be submitted to the Department in an acceptable format upon receipt of a written request from the Department. The owners and operators of the remaining 21 manufacturing facilities reported VOC emissions below 2.7 tons; their combined reported emissions totaled 21 tons in 2012. The owners and operators of these 21 facilities would be subject only to the recordkeeping requirements and, if requested by the Department, reporting requirements of the proposed rulemaking.

The Board anticipates that implementation of the proposed rulemaking provisions would have minimal financial impact on the owners and operators of affected facilities. The Board expects that the owners and operators of facilities subject to the applicability threshold of 15 pounds per day or the equivalent 2.7 tons per 12-month rolling period, including related cleaning activities and before consideration of controls, will use the reformulation of high-VOC content coating materials to low-VOC content coating materials option because it is more cost effective than installation and operation of VOC emission capture systems and add-on air pollution control devices. The owner and operator of a subject facility that already complies with the requirements of the 2004 NESHAPs or other applicable Best Available Technology permitting requirements through the use of VOC emission capture systems and add-on air pollution control devices may already comply with the requirements of this proposed rulemaking and, if so, might have no additional annual costs.

The EPA based its cost effectiveness information in the CTG on the analysis it performed for the 2004 NESHAPs. The EPA assumed that the owners and operators of facilities subject to the CTG applicability threshold of 2.7 tons per 12-month rolling period would use the reformulation of high-VOC content coating materials to low-VOC content coating materials control option because reformulation of coatings is more cost effective than the installa-

tion and operation of VOC emission capture systems and add-on air pollution control devices. The EPA used costs in the 2004 NESHAPs for reformulation of high-HAP content coating materials to low-HAP content coating materials because these costs are thought to be similar to the costs of reformulating high-VOC content coating materials to low-VOC content coating materials. The EPA estimated the cost averaged across all sizes of facilities subject to the 2004 NESHAPs to be $10,500 per facility, based on the reformulation of high-HAP content coating materials to low-HAP content coating materials and use of low-HAP content coating materials. The EPA applied the NESHAP-derived cost of $10,500 per facility to the number of facilities it identified Nationwide as subject to the CTG to calculate a cost effectiveness for implementation of the VOC emission control measures. The EPA estimated a cost effectiveness of $1,758 per ton of VOC emissions reduced.

The EPA stated in the CTG for these categories that it estimates that implementing the recommended control measures would reduce the emissions of VOC from those facilities at or above the threshold of 15 pounds per day by 35%. See 2008 Miscellaneous Metal and Plastic Parts Coatings CTG, page 32. Therefore, the Board estimates that implementation of the recommended control measures could generate reductions of as much as 1,586 tons (4,531 tons x 35%) of VOC emissions per 12-month rolling period from the 139 facilities identified by the Department in its databases as emitting at or above the 2.7 tons per 12-month rolling period threshold, including related cleaning activities and before consideration of controls, and therefore required to implement the proposed VOC emission reduction control measures. Using the EPA's cost effectiveness of $1,758/ton of VOC emissions reduced, the Board estimates that the total maximum annual costs to the affected regulated industry in this Commonwealth could be up to $2.8 million ($1,758/ton VOC emissions reduced x 1,586 tons). The approximate annual cost per facility could be as high as $20,000 ($2.8 million/139 facilities). This estimated cost of $20,000 per facility is higher than the EPA's estimate of $10,500 per facility. This difference in cost may be due in part to the Commonwealth-specific emission data used in the calculation.

The Board also calculated the cost effectiveness for the owners and operators of the 139 potentially affected facilities in this Commonwealth using the EPA's cost of $10,500 per facility. The estimated total maximum anticipated annual costs to the affected regulated industry could be up to $1.46 million ($10,500 x 139 facilities). Therefore, the cost effectiveness for the reductions of 1,586 tons of VOC emissions would be approximately $920 per ton of VOC emissions reduced ($1.46 million/1,586 tons) on an annual basis, which is lower than the EPA estimate of $1,758 per ton of VOC emissions reduced on an annual basis. Again, this may be due in part to the Commonwealth-specific emission data used in the calculation. The Board therefore estimates that the range of cost effectiveness to the regulated industry for implementing the proposed rulemaking is $920 per ton VOC emissions reduced to $1,758 per ton reduced. The range of cost per regulated facility for implementing the proposed VOC emission control measures is estimated to be $10,500 to $20,000 per year per facility. The Board expects that the costs to the regulated industry in this Commonwealth will be at the lower end of these ranges because low-VOC content coating materials are likely to be readily available at a cost that is not significantly greater than the high-VOC content coating materials they replace as a result of the development of NESHAP-compliant low-HAP content coating materials, since lower HAP content usually means lower VOC content. Therefore, the research and development of low-VOC content coating materials should already be complete and these expenses would not be a factor in the cost of complying with the proposed rulemaking VOC emission control measures.

The compliance cost per facility may be even lower given that the proposed rulemaking provides as one compliance option the use of individual compliant coating materials in proposed § 129.52d(d)(1). Coatings that are compliant with the HAP content limits of the 2004 NESHAPs and with the proposed rulemaking VOC content limits are readily available to the owners and operators of all sizes of subject facilities. The proposed rulemaking would provide flexibility in compliance through the second option of using a combination of VOC content limit compliant coating materials and specified high-transfer-efficient application methods with a VOC emissions capture system and add-on air pollution control device in subsection (d)(2). The third compliance option, the use of a VOC emissions capture system and add-on air pollution control device with an overall control efficiency of at least 90%, instead of the use of complying coating materials and specified high-transfer-efficient application methods, is provided in subsection (d)(3). However, because of the wide availability and lower cost (compared to installation and operation of a VOC emission capture system and add-on air pollution control device) of compliant VOC content coating materials and high-transfer-efficient coating application methods, compliant coating materials and specified high-transfer-efficient coating application methods are generally expected to be used by affected owners and operators to reduce VOC emissions from miscellaneous metal parts surface coating processes and miscellaneous plastic parts surface coating processes.

The implementation of the work practices for the use and application of cleaning materials is expected to result in a net cost savings. The recommended work practices for cleaning activities should reduce the amounts of cleaning materials used by reducing the amounts that are lost to evaporation, spillage and waste.

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, as specified under § 127.463(c) (relating to operating permit revisions to incorporate applicable standards). If 3 years or more remain in the permit term, the requirements would be incorporated as applicable requirements in the permit within 18 months of the promulgation of the final-form rulemaking, as required under § 127.463(b). Most importantly, § 127.463(e) specifies that "[r]egardless of whether a revision is required under this section, the permittee shall meet the applicable standards or regulations promulgated under the Clean Air Act within the time frame required by standards or regulations." Consequently, upon promulgation as final-form rulemaking, the proposed requirements would apply to affected owners and operators irrespective of a modification to the Operating Permit.

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 owners and operators facilities less able to handle permitting matters with in-house staff.

Paperwork requirements

The recordkeeping and reporting requirements for owners and operators of affected facilities at, above or below the threshold for control measures should be minimal because the records required by the proposed rulemaking are in line with what the industry currently tracks for inventory purposes or is required in current permits. The owner or operator of a facility subject to the proposed rulemaking is required to maintain records sufficient to demonstrate compliance with the applicable requirements. Records maintained for compliance demonstrations may include purchase, use, production and other records. The records would be maintained onsite for 2 years, unless a longer period is required by an order, plan approval or operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources).

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 facility owners and operators that permanently achieve or move beyond compliance.

Statewide implementation of the VOC emission control measures in the proposed rulemaking could generate reductions of as much as 1,586 tons of VOC emissions per 12-month rolling period from the 139 facilities identified by the Department in its databases, depending on the level of compliance already demonstrated by the owners and operators of these facilities. These projected estimated reductions in VOC emissions and the subsequent reduced formation of ozone would help ensure that the owners and operators of regulated facilities, farms and agricultural enterprises, hardwoods and timber industries, and tourism-related businesses, and residents of labor communities and citizens and the environment of this Commonwealth experience the benefits of improved ground-level ozone air quality. Commonwealth residents would also potentially benefit from improved groundwater quality through reduced quantities of VOCs and HAPs from low-VOC content and low-HAP content miscellaneous metal parts and miscellaneous plastic parts coatings and cleaning materials. Although the proposed rulemaking is designed primarily to address ozone air quality, the reformulation of high-VOC content coating materials to low-VOC content coating materials or substitution of low-VOC content coating 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 high-HAP content solvents would benefit groundwater quality through reduced loading on water treatment plants and in reduced quantities of high-VOC content and high-HAP content solvents leaching into the ground, streams and rivers.

The proposed rulemaking provides as one compliance option the use of individual compliant coating materials in proposed § 129.52d(d)(1). Coatings that are compliant with the HAP content limits and emission rate limits of the 2004 NESHAPs and with the proposed rulemaking VOC content limits and emission rate limits are readily available to the owners and operators of all sizes of subject facilities. The proposed rulemaking would provide flexibility in compliance through the second option of using a combination of VOC content limit compliant coating materials and specified high-transfer-efficient application methods with a VOC emissions capture system and add-on air pollution control device in subsection (d)(2). A third compliance option, the use of a VOC emissions capture system and add-on air pollution control device with an overall control efficiency of at least 90%, instead of the use of complying coating materials and specified high-transfer-efficient application methods, is provided in subsection (d)(3). However, because of the wide availability and lower cost (compared to installation and operation of VOC emissions capture systems and add-on air pollution control devices) of compliant VOC content coating materials and high-transfer-efficient coating application methods, compliant coating materials and specified high-transfer-efficient coating application methods are generally expected to be used by affected owners and operators to reduce VOC emissions from surface coating processes subject to this proposed rulemaking.

The implementation of the work practices for the use and application of cleaning materials is expected to result in a net cost savings. The recommended work practices for cleaning activities should reduce the amounts of cleaning materials used by reducing the amounts that are lost to evaporation, spillage and waste.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 13, 2015, 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*

It is noted in this preamble that this rulemaking proposes to establish requirements in § 129.52d(c) and

(d)(1) that suggest a compliance date of January 1, 2016. The Board is particularly interested in receiving comments regarding this date, with consideration of establishing a compliance date of May 1, 2016, instead, in the final-form rulemaking. For more information, refer to section E of this preamble.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Board. Comments, suggestions or objections must be received by the Board by October 13, 2015. 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 October 13, 2015. 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 eComment system at http://www.ahs.dep.pa.gov/eComment.

Comments may be submitted to the Board by e-mail at 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 10 a.m. on the following dates:

September 8, 2015	Department of Environmental Protection Southeast Regional Office Schuylkill Conference Room 2 East Main Street Norristown, PA 19401
September 9, 2015	Department of Environmental Protection Rachel Carson State Office Building Conference Room 105 400 Market Street Harrisburg, PA 17105
September 10, 2015	Department of Environmental Protection Southwest Regional Office Monongahela Conference Room 400 Waterfront Drive Pittsburgh, PA 15222

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.

JOHN QUIGLEY,
Chairperson

Fiscal Note: 7-491. No fiscal impact; (8) recommends adoption.

(*Editor's Note*: See 45 Pa.B. 4351 (August 8, 2015) for a related proposed rulemaking adding § 129.52e, which will be adopted on or before the date of final adoption of this proposed rulemaking.)

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

§ 129.51. General.

(a) *Equivalency.* Compliance with §§ 129.52, 129.52a, 129.52b, 129.52c, **129.52d,** 129.54—129.69, 129.71—129.73 and 129.77 may be achieved by alternative methods if the following exist:

(1) The alternative method is approved by the Department in an applicable plan approval or operating permit, or both.

(2) The resulting emissions are equal to or less than the emissions that would have been discharged by complying with the applicable emission limitation.

(3) Compliance by a method other than the use of a low VOC coating, adhesive, sealant, adhesive primer, sealant primer, surface preparation solvent, cleanup solvent, cleaning solution, fountain solution or ink which meets the applicable emission limitation in §§ 129.52, 129.52a, 129.52b, 129.52c, **129.52d,** 129.67, 129.67a, 129.67b, 129.73 and 129.77 shall be determined on the basis of equal volumes of solids.

(4) Capture efficiency testing and emissions testing are conducted in accordance with methods approved by the EPA.

(5) Adequate records are maintained to ensure enforceability.

(6) The alternative compliance method is incorporated into a plan approval or operating permit, or both, reviewed by the EPA, including the use of an air cleaning device to comply with § 129.52, § 129.52a, § 129.52b, § 129.52c, **§ 129.52d,** § 129.67, § 129.67a, § 129.67b, § 129.68(b)(2) and (c)(2), § 129.73 or § 129.77.

* * * * *

§ 129.52. Surface coating processes.

* * * * *

(g) The records shall be maintained **onsite** for 2 years **[and], unless a longer period is required by an order, 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** on a schedule reasonably prescribed by the Department.

* * * * *

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

§ 129.52d. Control of VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings.

(a) *Applicability.*

(1) This section applies to the owner and operator of a miscellaneous metal part surface coating process or miscellaneous plastic part surface coating process, or both, if the total actual VOC emissions from all miscellaneous metal part coating units and miscellaneous plastic part coating units, including related cleaning activities, at the facility are equal to or greater than 2.7 tons per 12-month rolling period, before consideration of controls.

(2) This section applies, as specified, to the owner and operator of a miscellaneous metal part surface coating process or miscellaneous plastic part surface coating process, or both, if the total actual VOC emissions from all miscellaneous metal part coating units and miscellaneous plastic part coating units, including related cleaning activities, at the facility are below 2.7 tons per 12-month rolling period, before consideration of controls.

(3) Compliance with the VOC emission limits and other requirements of this section assures compliance with the VOC emission limits and other requirements of § 129.52 (relating to surface coating processes) for the miscellaneous metal parts and products surface coating processes as specified in § 129.52, Table I Category 10.

(4) If an owner or operator elects to comply with § 129.52e (relating to control of VOC emissions from automobile and light-duty truck assembly surface coating operations and heavier vehicle coating operations) under § 129.52e(a)(2) or (3), then § 129.52e instead of this section applies to the separate coating line at the facility, or to the coating of a body or body part for a new heavier vehicle at the facility, or both, for which the election is made.

(5) This section does not apply to an owner or operator in the use or application of the following:

(i) Aerosol coatings.

(ii) Aerospace coatings.

(iii) Architectural coatings.

(iv) Automobile refinishing coatings.

(v) Auto and light-duty truck assembly coatings.

(vi) Can, coil or magnet wire coatings.

(vii) Coating applied to a test panel or coupon, or both, in research and development, quality control or performance testing activities, if records are maintained as required under subsections (e) and (f).

(viii) Fiberglass boat manufacturing materials.

(ix) Flat wood paneling coatings.

(x) Large appliance coatings.

(xi) Metal furniture coatings.

(xii) Miscellaneous industrial adhesives.

(xiii) Paper, film and foil coatings.

(xiv) Shipbuilding and repair coatings.

(xv) Wood furniture coatings.

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

Adhesion primer—A coating applied to a polyolefin part to promote the adhesion of a subsequent coating. This type of coating is clearly identified on its accompanying MSDS by this term or as an adhesion promoter.

Air-dried coating—A coating that is cured or dried at a temperature below 90°C (194°F).

Antifoulant or *antifouling coating*—A coating applied to the underwater portion of a pleasure craft to prevent or reduce the attachment of biological organisms, and registered with the EPA as a pesticide under section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. § 136).

Appurtenance—An accessory to a stationary structure that is coated at the facility. The term includes:

(i) Bathroom and kitchen fixtures.

(ii) Cabinets.

(iii) Concrete forms.

(iv) Doors.

(v) Elevators.

(vi) Fences.

(vii) Hand railings.

(viii) Heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools.

(ix) Lampposts.

(x) Partitions.

(xi) Pipes and piping systems.

(xii) Rain gutters and downspouts.

(xiii) Stairways.

(xiv) Fixed ladders.

(xv) Catwalks and fire escapes.

(xvi) Window screens.

Baked coating—A coating cured at a temperature at or above 90°C (194°F).

Black coating—A coating that meets either of the following:

(i) Both of the following criteria, which are based on Cielab color space, 0/45 geometry:

(A) Maximum lightness: 23 units.

(B) Saturation: less than 2.8, where saturation equals the square root of $A^2 + B^2$.

(ii) For spherical geometry, specular included, maximum lightness is 33 units.

Business machine—

(i) A device that uses an electronic or mechanical method to process information, perform calculations, print or copy information, or convert sound into electrical impulses for transmission.

(ii) The term includes the following:

(A) Devices listed in *Standard Industrial Classification Codes* 3572, 3573, 3574, 3579 and 3661.

(B) Photocopy machines, a subcategory of *Standard Industrial Classification Code* 3861.

Camouflage coating—A coating used principally by the military to conceal equipment from detection.

Cleaning material or *cleaning solvent*—A material used during cleaning activities or cleaning operations to remove residue or other unwanted materials from equipment.

Clear coating—

(i) A colorless coating that contains binders, but no pigment, and is formulated to form a transparent film.

(ii) The term includes a transparent coating that uses the undercoat as a reflectant base or undertone color.

Clear wood finishes—A clear or semitransparent topcoat applied to a wood substrate to provide a transparent or translucent film.

Coating—

(i) A material applied onto or into a substrate for protective, decorative or functional purposes.

(ii) The term includes paints, sealants, caulks, primers, inks and maskants.

(iii) The term does not include protective oils, acids or bases, or combinations of these materials.

Coating unit—A series of one or more coating applicators and associated drying area or oven or both wherein a coating is applied and dried or cured, or both. The unit ends at the point where the coating is dried or cured, or prior to subsequent application of a different coating.

Drum—A cylindrical metal shipping container larger than 12 gallons capacity but not larger than 110 gallons capacity.

EMI/RFI shielding coating—A coating used on electrical or electronic equipment to provide shielding against electromagnetic interference, radio frequency interference or static discharge.

Electric dissipating coating—A coating that rapidly dissipates a high voltage electric charge.

Electric-insulating varnish—A non-convertible-type coating applied to electric motors, components of electric motors or power transformers to provide electrical, mechanical or environmental protection or resistance.

Electrostatic prep coating—A coating applied to a plastic part solely to provide conductivity for the subsequent application of a primer, a topcoat or other coating through the use of electrostatic application methods. This term is clearly identified as an electrostatic prep coat on its accompanying MSDS.

Etching filler—A coating that contains less than 23% solids by weight and at least 0.5% acid by weight, and is used instead of applying a pretreatment coating followed by a primer.

Extreme high-gloss coating—A coating that achieves the following:

(i) For miscellaneous metal part surface coatings or miscellaneous plastic part surface coatings, other than pleasure craft surface coatings, a coating when tested by the American Society for Testing Material Test Method D-523-08 shows a reflectance of at least 75% on a 60° meter.

(ii) For pleasure craft surface coatings, a coating that shows a reflectance of at least 90% on a 60° meter when tested by American Society for Testing Material Test Method D-523-08.

Extreme-performance coating—

(i) A coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to one or more of the following:

(A) Chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures or solutions.

(B) Repeated exposure to temperatures in excess of 250°F.

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

(ii) The term includes coatings applied to locomotives, railroad cars, farm machinery and heavy duty trucks.

Finish primer/surfacer—A coating applied with a wet film thickness of less than 10 mils prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, a moisture barrier or promotion of a uniform surface necessary for filling in surface imperfections.

Flexible primer—A coating required to comply with engineering specifications for impact resistance, mandrel bend or elongation as defined by the original equipment manufacturer.

Fog coat—A coating applied to a plastic part, at a thickness of no more than 0.5 mil of coating solids, for the purpose of color matching without masking a molded-in texture.

Gloss reducer—A coating applied to a plastic part, at a thickness of no more than 0.5 mil of coating solids, solely to reduce the shine of the part.

Heat-resistant coating—A coating that must withstand a temperature of at least 400°F during normal use.

Heavier vehicle—A self-propelled vehicle designed for transporting persons or property on a street or highway that has a gross vehicle weight rating over 8,500 pounds.

High bake coating—A coating designed to cure only at temperatures of more than 90°C (194°F).

High build primer/surfacer—A coating applied with a wet film thickness of 10 mils or more prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, a moisture barrier or promotion of a uniform surface necessary for filling in surface imperfections.

High gloss coating—A coating that achieves at least 85% reflectance on a 60° meter when tested by ASTM Method D-523-08.

High-performance architectural coating—A coating used to protect aluminum architectural subsections and which meets the requirements of the American Architectural Manufacturers Association's publication number AAMA 2604 (Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coat-

ings on Aluminum Extrusions and Panels) or 2605 (Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels), including updates and revisions.

High-temperature coating—A coating certified to withstand a temperature of 1,000°F for 24 hours.

Mask coating—A thin film coating applied through a template to coat a small portion of a substrate.

Metal particles—Pieces of a pure elemental metal or a combination of elemental metals.

Metallic coating—A coating that contains more than 5 grams of metal particles per liter of coating as applied.

Military specification coating—A coating that has a formulation approved by a United States Military Agency for use on military equipment.

Miscellaneous metal parts and miscellaneous plastic parts—Metal or plastic components of parts or products, as well as the parts or products themselves, constructed either entirely or partially from metal or plastic, or both, including the following:

(i) Fabricated metal products.

(ii) Molded plastic parts.

(iii) Farm machinery.

(iv) Commercial and industrial machinery and equipment.

(v) Automotive or transportation equipment.

(vi) Interior or exterior automotive parts.

(vii) Construction equipment.

(viii) Motor vehicle accessories.

(ix) Bicycles and sporting goods.

(x) Toys.

(xi) Recreational vehicles.

(xii) Watercraft.

(xiii) Extruded aluminum structural components.

(xiv) Railroad cars.

(xv) Heavier vehicles.

(xvi) Lawn and garden equipment.

(xvii) Business machines.

(xviii) Laboratory and medical equipment.

(xix) Electronic equipment.

(xx) Steel drums.

(xxi) Metal pipes.

Mold-release coating—A coating applied to a mold to prevent the molded product from sticking to the mold as it is removed.

Mold-seal coating—The initial coating applied to a new or repaired mold to provide a smooth surface that when coated with a mold-release coating prevents products from sticking to the mold.

Motor vehicle bedliner—A multicomponent coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to a cargo bed after the application of topcoat to provide additional durability and chip resistance.

Motor vehicle cavity wax—A coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied into the cavities of the vehicle primarily to enhance corrosion protection.

Motor vehicle deadener—A coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to selected vehicle surfaces primarily to reduce the sound of road noise in the passenger compartment.

Motor vehicle gasket/sealing material—

(i) A fluid, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to coat a gasket or replace and perform the same function as a gasket.

(ii) The term includes room temperature vulcanization seal material.

Motor vehicle lubricating wax/compound—A protective lubricating material, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to vehicle hubs and hinges.

Motor vehicle sealer—A high viscosity material, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (for example, a primer/surfacer). The primary purpose of the material is to fill body joints completely so that there is no intrusion of water, gases or corrosive materials into the passenger area of the body compartment. The material is also referred to as sealant, sealant primer or caulk.

Motor vehicle trunk interior coating—A coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to the trunk interior to provide chip protection.

Motor vehicle underbody coating—A coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to the undercarriage or firewall to prevent corrosion or provide chip protection, or both.

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

Multicomponent coating—A coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to the substrate to form an acceptable dry film.

One-component coating—A coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner may be added to reduce the viscosity, but is not considered a component.

Optical coating—A coating applied to an optical lens.

Pan-backing coating—A coating applied to the surface of pots, pans or other cooking implements that are exposed directly to a flame or other heating element.

Pleasure craft—A vessel that is manufactured or operated primarily for recreational purposes, or leased, rented or chartered to a person or business for recreational purposes.

Pleasure craft coating—A marine coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller or other means to a pleasure craft.

Powder coating—A coating applied as a dry, finely divided solid that, when melted and fused, adheres to the substrate as a paint film.

Prefabricated architectural component coating—A coating applied to a prefabricated metal part or product if the part or product is to be used as an architectural appurtenance or structure. The appurtenance is detached from the structure when coated in a shop setting.

Pretreatment coating—A coating that contains no more than 12% solids by weight and at least 0.5% acid by weight that is used to provide surface etching and that is applied directly to metal surfaces to provide corrosion resistance, adhesion and ease of stripping.

Pretreatment wash primer—A coating that contains no more than 12% solids by weight and at least 0.5% acid by weight that is used to provide surface etching and that is applied directly to fiberglass and metal surfaces to provide corrosion resistance and adhesion of subsequent coatings.

Red coating—A coating that meets the following:

(i) All of the following criteria, which are based on Cielab color space, 0/45 geometry:

(A) Yellow limit: the hue of hostaperm scarlet.

(B) Blue limit: the hue of monastral red-violet.

(C) Lightness limit for metallics: 35% aluminum flake.

(D) Lightness limit for solids: 50% titanium dioxide white.

(E) Solid reds: hue angle of -11 to 38 degrees and maximum lightness of 23 to 45 units.

(F) Metallic reds: hue angle of -16 to 35 degrees and maximum lightness of 28 to 45 units.

(ii) For spherical geometry, specular included, the upper limit is 49 units.

Repair coating—A coating used to recoat portions of a previously coated product that has sustained mechanical damage to the coating following normal coating operations.

Resist coating—A coating that is applied to a plastic part before metallic plating to prevent deposits of metal on portions of the plastic part.

Shock-free coating—A coating applied to electrical components to protect the user from electric shock. The coating has characteristics of being of low capacitance and high resistance, and being resistant to breaking down under high voltage.

Silicone-release coating—A coating which contains silicone resin and is intended to prevent food from sticking to metal surfaces, such as baking pans.

Solar-absorbent coating—A coating which has as its prime purpose the absorption of solar radiation.

Stencil coating—An ink or coating that is applied onto a template, stamp or stencil to add identifying letters, numbers or decorative designs, or a combination of these, to a metal or plastic part or product.

Texture coat—A coating that is applied to a plastic part which, in its finished form, consists of discrete raised spots of the coating.

Topcoat—A final coating applied in a surface coating process that applies two or more coatings.

Touch-up coating—A coating used to cover minor coating imperfections appearing after the main coating operation.

Translucent coating—A coating that contains binders and pigment and is formulated to form a colored, but not opaque, film.

Two-component coating—A coating requiring the addition of a separate reactive resin, commonly known as a catalyst, before application to form an acceptable dry film.

Vacuum-metalizing coating—A coating meeting either of the following:

(i) An undercoat applied to a substrate on which the metal is deposited prior to a vacuum-metalizing process.

(ii) An overcoat applied directly to the metal film after a vacuum-metalizing process.

Vacuum-metalizing process—The process of evaporating metals inside a vacuum chamber and depositing them on a substrate to achieve a uniform metalized layer.

(c) *Existing RACT permit.* The requirements of this section supersede the requirements of a RACT permit issued under §§ 129.91—129.95 (relating to stationary sources of NO_x and VOCs) to the owner or operator of a source subject to subsection (a) prior to January 1, 2016, to control, reduce or minimize VOCs from a miscellaneous metal part or miscellaneous plastic part surface coating process, except to the extent the RACT permit contains more stringent requirements.

(d) *Emission limitations.* Beginning January 1, 2016, a person subject to subsection (a)(1) may not cause or permit the emission into the outdoor atmosphere of VOCs from a miscellaneous metal part coating unit or miscellaneous plastic part coating unit, or both, unless emissions of VOCs are controlled in accordance with paragraph (1), (2) or (3).

(1) *Compliant materials option.* The VOC content of each miscellaneous metal part coating or each miscellaneous plastic part coating, as applied, excluding water and exempt compounds, is equal to or less than the VOC content limit for the applicable coating category specified in the applicable table of VOC content limits in Tables I—V.

(2) *Combination of compliant materials, VOC emissions capture system and add-on air pollution control device option.* The combination of one or more VOC-containing coatings, as applied, that meet the emission rate limits for the applicable coating category specified in the applicable table of emission rate limits in Tables VI—IX, and one or more VOC emissions capture systems and one or more add-on air pollution control devices that meet the requirements of subsection (e)(2).

(3) *VOC emissions capture system and add-on air pollution control device option.* The overall weight of VOCs emitted to the atmosphere is reduced through the use of vapor recovery, oxidation, incineration or another method that is acceptable under § 129.51(a) (relating to general) and meets the requirements of subsection (e)(2). The overall control efficiency of a control system, as determined by the test methods and procedures specified in Chapter 139 (relating to sampling and testing), may be no less than 90%.

(4) *Least restrictive VOC limit.* If more than one VOC content limit or VOC emission rate limit applies to a specific coating, then the least restrictive VOC content limit or VOC emission rate limit applies.

(5) *Coatings not listed in Table I, II, VI or VII.* For a miscellaneous metal part or miscellaneous plastic part coating that does not meet the coating categories listed in Table I, II, VI or VII, the VOC content limit or VOC

emission rate limit shall be determined by classifying the coating as a general one component coating or general multicomponent coating. The corresponding general one component coating or general multicomponent coating limit applies.

(6) *Coatings not listed in Table IV or IX.* For a pleasure craft coating that does not meet the coating categories listed in Table IV or IX, the VOC content limit or VOC emission rate limit shall be determined by classifying the coating as an "all other pleasure craft surface coatings for metal or plastic." The "all other pleasure craft surface coatings for metal or plastic" limit applies.

(e) *Compliance and monitoring requirements.*

(1) *All owners and operators.* Regardless of the facility's VOC emissions, the owner or operator of a miscellaneous metal part surface coating process or miscellaneous plastic part surface coating process, or both, subject to subsection (a)(1) or (2), shall comply with this section as specified throughout this section. For an owner or operator subject only to subsection (a)(2), the compliance requirements are the recordkeeping requirements in subsection (f)(2).

(2) *VOC emissions capture system and add-on air pollution control device.* The owner or operator of a facility subject to subsection (a)(1) that elects to comply with the emission limitations of subsection (d) through installation of a VOC emissions capture system and add-on air pollution control device under subsection (d)(2) or (3) shall submit an application for 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:

(i) 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.

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

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

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

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

(vi) 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 subparagraph (ii) and the compliance monitoring equipment described in subparagraph (iii).

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

(viii) 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.

(f) *Recordkeeping and reporting requirements.*

(1) The owner or operator of a miscellaneous metal part coating unit or miscellaneous plastic part coating unit, or both, subject to subsection (a)(1) shall maintain monthly records sufficient to demonstrate compliance with this section. The records must include the following information:

(i) The following parameters for each coating, thinner, component and cleaning solvent as supplied:

(A) Name and identification number of the coating, thinner, other component or cleaning solvent.

(B) Volume used.

(C) Mix ratio.

(D) Density or specific gravity.

(E) Weight percent of total volatiles, water, solids and exempt solvents.

(F) Volume percent of total volatiles, water and exempt solvents for the applicable table of limits in Tables I—V.

(G) Volume percent of solids for the applicable table of limits in Tables VI—IX.

(ii) The VOC content of each coating, thinner, other component and cleaning solvent as supplied.

(iii) The VOC content of each as applied coating or cleaning solvent.

(iv) The calculations performed for each applicable requirement under subsections (d) and (e).

(v) The information required in a plan approval issued under subsection (e)(2).

(2) An owner or operator subject to subsection (a)(2), or otherwise claiming an exemption or exception in this section, shall maintain records sufficient to verify the applicability of subsection (a)(2), the exemption or exception. Records maintained for compliance demonstrations may include purchase, use, production and other records.

(3) The records shall be maintained onsite for 2 years, unless a longer period is required by an order, plan approval or operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources).

(4) The records shall be submitted to the Department in an acceptable format upon receipt of a written request from the Department.

(g) *Coating application methods.* A person subject to subsection (a)(1) may not cause or permit the emission into the outdoor atmosphere of VOCs from a miscellaneous metal part coating unit or miscellaneous plastic part coating unit, or both, unless the coatings are applied using one or more of the following coating application methods:

(1) Electrostatic coating.

(2) Flow coating.

(3) Dip coating, including electrodeposition.

(4) Roll coating.

(5) High volume-low pressure (HVLP) spray coating.

(6) Airless spray coating.

(7) Air-assisted airless spray coating.

(8) Other coating application method if approved in writing by the Department prior to use.

(i) The coating application method must be capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spray coating.

(ii) The owner or operator shall submit the request for approval to the Department in writing.

(h) *Exempt coatings and exempt coating unit operations.*

(1) The requirements of subsections (d) and (g) do not apply to the application of the following coatings to a metal part:

(i) Stencil coating.

(ii) Safety-indicating coating.

(iii) Solid-film lubricant.

(iv) Electric-insulating and thermal-conducting coating.

(v) Magnetic data storage disk coating.

(vi) Plastic extruded onto metal parts to form a coating.

(vii) Powder coating.

(2) The requirements of subsection (d) do not apply to the application of the following coatings to a plastic part:

(i) Touch-up and repair coating.

(ii) Stencil coating applied on a clear or transparent substrate.

(iii) Clear or translucent coating.

(iv) Coating applied at a paint manufacturing facility while conducting performance tests on coating.

(v) Reflective coating applied to highway cones.

(vi) Mask coating, if the coating is less than 0.5 millimeter thick (dried) and the area coated is less than 25 square inches.

(vii) EMI/RFI shielding coating.

(viii) Heparin-benzalkonium chloride (HBAC)-containing coating applied to a medical device, provided that the total usage of HBAC-containing coatings does not exceed 100 gallons in 1 calendar year at the facility.

(ix) Powder coating.

(x) An individual coating category used in an amount less than 50 gallons in 1 calendar year provided that the total usage of all of the coatings, combined, does not exceed 200 gallons per year at the facility. This exception applies only if substitute compliant coatings are not available.

(3) The requirements of subsection (d) do not apply to the application of the following coatings to automotive-transportation and business machine parts:

(i) Texture coat.

(ii) Vacuum-metalizing coating.

(iii) Gloss reducer.

(iv) Texture topcoat.

(v) Adhesion primer.

(vi) Electrostatic prep coat.

(vii) Resist coating.

(viii) Stencil coating.

(ix) Powder coating.

(4) The requirements of subsection (g) do not apply to the following activities:

(i) Application of a touch-up coating, repair coating or textured finish to a metal part.

(ii) Application of a powder coating to the following:

(A) Plastic part.

(B) Automotive-transportation plastic part.

(C) Business machine plastic part.

(iii) Airbrush application of coating to a metal part or plastic part using no more than 5 gallons of coating per year.

(iv) Use of an add-on air pollution control device to comply with subsection (d).

(v) Application of extreme high-gloss coating in a pleasure craft surface coating operation.

(i) *Work practice requirements for coating-related activities.* The owner or operator of a miscellaneous metal part coating unit or miscellaneous plastic part coating unit, or both, subject to subsection (a)(1) shall comply with the following work practices for coating-related activities:

(1) Store all VOC-containing coatings, thinners or coating-related waste materials in closed containers.

(2) Ensure that mixing and storage containers used for VOC-containing coatings, thinners or coating-related waste materials are kept closed at all times, except when depositing or removing these coatings, thinners or waste materials.

(3) Minimize spills of VOC-containing coatings, thinners or coating-related waste materials and clean up spills immediately.

(4) Convey VOC-containing coatings, thinners or coating-related waste materials from one location to another in closed containers or pipes.

(j) *Work practice requirements for cleaning materials.* The owner or operator of a miscellaneous metal part coating unit or miscellaneous plastic part coating unit subject to subsection (a)(1) shall comply with the following work practices for cleaning materials:

(1) Store all VOC-containing cleaning materials and used shop towels in closed containers.

(2) Ensure that mixing vessels and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials.

(3) Minimize spills of VOC-containing cleaning materials and clean up spills immediately.

(4) Convey VOC-containing cleaning materials from one location to another in closed containers or pipes.

(5) Minimize VOC emissions from cleaning of application, storage, mixing or conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(k) *Measurements and calculations.* To determine the properties of a coating or component used in a miscellaneous metal parts surface coating process or miscellaneous plastic parts surface coating process, measurements and calculations shall be performed according to one or more of the following:

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

(2) Manufacturer's formulation data.

(3) Sampling and testing done in accordance with the procedures and test methods specified in Chapter 139.

(4) Other test method 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.

(5) Add-on air pollution control devices shall be equipped with the applicable monitoring equipment according to manufacturers' specifications. The monitoring equipment shall be installed, calibrated, operated and maintained according to manufacturers' specifications at all times the add-on air pollution control device is in use.

(6) EPA calculations information in the following:

(i) *A Guideline for Surface Coating Calculations*, EPA-340/1-86-016, including updates and revisions.

(ii) *Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings*, EPA-450/3-84-019, including updates and revisions.

Table I. VOC Content Limits for Metal Parts and Products Surface Coatings

Weight of VOC per Volume of Coating, Less Water and Exempt Compounds, as Applied

	Air Dried		*Baked*	
Coating Category	*kg VOC/ l coating*	*lb VOC/ gal coating*	*kg VOC/ l coating*	*lb VOC/ gal coating*
General One-component	0.34	2.8	0.28	2.3
General Multicomponent	0.34	2.8	0.28	2.3
Camouflage	0.42	3.5	0.42	3.5
Electric-insulating Varnish	0.42	3.5	0.42	3.5
Etching Filler	0.42	3.5	0.42	3.5
Extreme High-gloss	0.42	3.5	0.36	3.0
Extreme Performance	0.42	3.5	0.36	3.0
Heat-resistant	0.42	3.5	0.36	3.0
High-performance Architectural	0.74	6.2	0.74	6.2
High-temperature	0.42	3.5	0.42	3.5
Metallic	0.42	3.5	0.42	3.5
Military Specification	0.34	2.8	0.28	2.3
Mold-seal	0.42	3.5	0.42	3.5
Pan-backing	0.42	3.5	0.42	3.5
Prefabricated Architectural Multicomponent	0.42	3.5	0.28	2.3
Prefabricated Architectural One-component	0.42	3.5	0.28	2.3
Pretreatment	0.42	3.5	0.42	3.5
Touch-up and Repair	0.42	3.5	0.36	3.0
Silicone-release	0.42	3.5	0.42	3.5
Solar-absorbent	0.42	3.5	0.36	3.0
Vacuum-metalizing	0.42	3.5	0.42	3.5
Drum Coating, New, Exterior	0.34	2.8	0.34	2.8
Drum Coating, New, Interior	0.42	3.5	0.42	3.5
Drum Coating, Reconditioned, Exterior	0.42	3.5	0.42	3.5
Drum Coating, Reconditioned, Interior	0.50	4.2	0.50	4.2

Table II. VOC Content Limits for Plastic Parts and Products Surface Coatings

Weight of VOC per Volume of Coating, Less Water and Exempt Compounds, as Applied

Coating Category	*kg VOC/ l coating*	*lb VOC/ gal coating*
General One-component	0.28	2.3
General Multicomponent	0.42	3.5
Electric Dissipating and Shock-free	0.80	6.7
Extreme Performance (2-pack coatings)	0.42	3.5
Metallic	0.42	3.5
Military Specification (1-pack)	0.34	2.8
Military Specification (2-pack)	0.42	3.5
Mold-seal	0.76	6.3
Multicolored	0.68	5.7
Optical	0.80	6.7
Vacuum-metalizing	0.80	6.7

Table III. VOC Content Limits for Automotive/Transportation and Business Machine Plastic Parts Surface Coatings

Weight of VOC per Volume of Coating, Less Water and Exempt Compounds, as Applied

*Automotive/Transportation Coatings**

Coating Category	*kg VOC/ l coating*	*lb VOC/ gal coating*
I. High Bake Coatings—Interior and Exterior Parts		
Flexible Primer	0.54	4.5
Nonflexible Primer	0.42	3.5
Basecoat	0.52	4.3
Clear Coat	0.48	4.0
Non-basecoat/Clear Coat	0.52	4.3
II. Low Bake/Air Dried Coatings—Exterior Parts		
Primer	0.58	4.8
Basecoat	0.60	5.0
Clear Coat	0.54	4.5
Non-basecoat/Clear Coat	0.60	5.0
III. Low Bake/Air Dried Coatings—Interior Parts	0.60	5.0
IV. Touch-up and Repair	0.62	5.2

* For red, yellow and black automotive coatings, except touch-up and repair coatings, the limit is determined by multiplying the appropriate limit in this table by 1.15.

Business Machine Coatings

Coating Category	*kg VOC/ l coating*	*lb VOC/ gal coating*
Primer	0.35	2.9
Topcoat	0.35	2.9
Texture Coat	0.35	2.9
Fog Coat	0.26	2.2
Touch-up and Repair	0.35	2.9

Table IV. VOC Content Limits for Pleasure Craft Surface Coatings

Weight of VOC per Volume of Coating, Less Water and Exempt Compounds, as Applied

Coating Category	*kg VOC/ l coating*	*lb VOC/ gal coating*
Extreme High-gloss Topcoat	0.60	5.0
High Gloss Topcoat	0.42	3.5
Pretreatment Wash Primer	0.78	6.5
Finish Primer/Surfacer	0.42	3.5
High Build Primer Surfacer	0.34	2.8
Aluminum Substrate Antifoulant Coating	0.56	4.7
Antifoulant Sealer/Tiecoat	0.42	3.5
Other Substrate Antifoulant Coating	0.40	3.3
All Other Pleasure Craft Surface Coatings for Metal or Plastic	0.42	3.5

Table V. VOC Content Limits for Motor Vehicle Materials Surface Coatings

Weight of VOC per Volume of Coating, Less Water and Exempt Compounds, as Applied

Coating Category	*kg VOC/ l coating*	*lb VOC/ gal coating*
Motor Vehicle Cavity Wax	0.65	5.4
Motor Vehicle Sealer	0.65	5.4
Motor Vehicle Deadener	0.65	5.4
Motor Vehicle Gasket/Gasket Sealing Material	0.20	1.7
Motor Vehicle Underbody Coating	0.65	5.4
Motor Vehicle Trunk Interior Coating	0.65	5.4
Motor Vehicle Bedliner	0.20	1.7
Motor Vehicle Lubricating Wax/Compound	0.70	5.8

Table VI. VOC Emission Rate Limits for Metal Parts and Products Surface Coatings

Weight of VOC per Volume of Coating Solids, as Applied

	Air Dried		*Baked*	
Coating Category	*kg VOC/ l solids*	*lb VOC/ gal solids*	*kg VOC/ l solids*	*lb VOC/ gal solids*
General One-component	0.54	4.52	0.40	3.35
General Multicomponent	0.54	4.52	0.40	3.35

Coating Category	Air Dried		Baked	
	kg VOC/ l solids	*lb VOC/ gal solids*	*kg VOC/ l solids*	*lb VOC/ gal solids*
Camouflage	0.80	6.67	0.80	6.67
Electric-insulating Varnish	0.80	6.67	0.80	6.67
Etching Filler	0.80	6.67	0.80	6.67
Extreme High-gloss	0.80	6.67	0.61	5.06
Extreme Performance	0.80	6.67	0.61	5.06
Heat-resistant	0.80	6.67	0.61	5.06
High-performance Architectural	4.56	38.0	4.56	38.0
High-temperature	0.80	6.67	0.80	6.67
Metallic	0.80	6.67	0.80	6.67
Military Specification	0.54	4.52	0.40	3.35
Mold-seal	0.80	6.67	0.80	6.67
Pan-backing	0.80	6.67	0.80	6.67
Prefabricated Architectural Multicomponent	0.80	6.67	0.40	3.35
Prefabricated Architectural One-component	0.80	6.67	0.40	3.35
Pretreatment	0.80	6.67	0.80	6.67
Silicone-release	0.80	6.67	0.80	6.67
Solar-absorbent	0.80	6.67	0.61	5.06
Vacuum-metalizing	0.80	6.67	0.80	6.67
Drum Coating, New, Exterior	0.54	4.52	0.54	4.52
Drum Coating, New, Interior	0.80	6.67	0.80	6.67
Drum Coating, Reconditioned, Exterior	0.80	6.67	0.80	6.67
Drum Coating, Reconditioned, Interior	1.17	9.78	1.17	9.78

Table VII. VOC Emission Rate Limits for Plastic Parts and Products Surface Coatings

Weight of VOC per Volume of Coating Solids, as Applied

Coating Category	*kg VOC/ l solids*	*lb VOC/ gal solids*
General One-component	0.40	3.35
General Multicomponent	0.80	6.67
Electric Dissipating and Shock-free	8.96	74.7
Extreme Performance (2-pack coatings)	0.80	6.67
Metallic	0.80	6.67
Military Specification (1-pack)	0.54	4.52
Military Specification (2-pack)	0.80	6.67
Mold-seal	5.24	43.7
Multicolored	3.04	25.3
Optical	8.96	74.7
Vacuum-metalizing	8.96	74.7

Table VIII. VOC Emission Rate Limits for Automotive/Transportation and Business Machine Plastic Parts Surface Coatings

Weight of VOC per Volume of Coating Solids, as Applied

*Automotive/Transportation Coatings**

Coating Category	*kg VOC/ l solids*	*lb VOC/ gal solids*
I. High Bake Coatings—Interior and Exterior Parts		
Flexible Primer	1.39	11.58
Nonflexible Primer	0.80	6.67
Basecoat	1.24	10.34
Clear Coat	1.05	8.76
Non-basecoat/Clear Coat	1.24	10.34
II. Low Bake/Air Dried Coatings—Exterior Parts		
Primer	1.66	13.80
Basecoat	1.87	15.59
Clear Coat	1.39	11.58
Non-basecoat/Clear Coat	1.87	15.59
III. Low Bake/Air Dried Coatings—Interior Parts	1.87	15.59
IV. Touch-up and Repair	2.13	17.72

* For red, yellow and black automotive coatings, except touch-up and repair coatings, the limit is determined by multiplying the appropriate limit in this table by 1.15.

Business Machine Coatings

Coating Category	*kg VOC/ l solids*	*lb VOC/ gal solids*
Primer	0.57	4.80
Topcoat	0.57	4.80
Texture Coat	0.57	4.80
Fog Coat	0.38	3.14
Touch-up and Repair	0.57	4.80

Table IX. VOC Emission Rate Limits for Pleasure Craft Surface Coatings

Weight of VOC per Volume of Coating Solids, as Applied

Coating Category	*kg VOC/ l solids*	*lb VOC/ gal solids*
Extreme High-gloss Topcoat	1.10	9.2
High Gloss Topcoat	0.80	6.7
Pretreatment Wash Primer	6.67	55.6
Finish Primer/Surfacer	0.80	6.7
High Build Primer Surfacer	0.55	4.6
Aluminum Substrate Antifoulant Coating	1.53	12.8
Other Substrate Antifoulant Coating	0.53	4.4
All Other Pleasure Craft Surface Coatings for Metal or Plastic	0.80	6.7

§ 129.67. Graphic arts systems.

(a) This section applies as follows:

(1) This section applies to the owner and operator of a facility whose rotogravure and flexographic printing presses by themselves or in combination with a surface coating operation subject to § 129.52, § 129.52a, § 129.52b **[or],** § 129.52c **or § 129.52d** or in combination with a flexible packaging printing press subject to § 129.67a (relating to control of VOC emissions from flexible packaging printing presses) have the potential to emit or have emitted VOCs into the outdoor atmosphere in quantities greater than 1,000 pounds (460 kilograms) per day or 100 tons (90,900 kilograms) per year during any calendar year since January 1, 1987.

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§ 129.75. Mobile equipment repair and refinishing.

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(b) This section does not apply to a person who applies surface coating to mobile equipment or mobile equipment components under one of the following circumstances:

(1) The surface coating process is subject to the miscellaneous metal parts finishing requirements of § 129.52 (relating to surface coating processes) **or the requirements of § 129.52d (relating to the control of VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings)**.

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STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Appraisal Management Companies

The State Board of Certified Real Estate Appraisers (Board) proposes the initial general rulemaking implementing the Appraisal Management Company Registration Act (act) (63 P. S. §§ 457.21—457.31). This proposed rulemaking amends Chapter 36 by deleting Subchapter D and replacing it by adding Subchapter E (relating to appraisal management companies) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 4(a) of the act (63 P. S. § 457.24(a)) authorizes the Board to implement, administer and enforce the act, including the power to adopt rules and regulations consistent with the act. Previously, the Board adopted temporary regulations in Subchapter D, which under section 4(b) of the act were not subject to sections 201—203 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1203), known as the Commonwealth Documents Law, or the Regulatory Review Act (71 P. S. §§ 745.1—745.12a). See 43 Pa.B. 3098 (June 8, 2013).

The Board is also authorized by 2 Pa.C.S. § 102 (relating to implementing regulations) to promulgate, amend and repeal reasonable regulations implementing 2 Pa.C.S. (relating to administrative law and procedure). Therefore, as it relates to procedures for processing applications, registering appraisal management companies (AMC), and obtaining security or satisfying claims, the Board also relies upon 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) for authority to promulgate regulations.

The act is the third professional licensing statute under the Board's jurisdiction, following the Real Estate Appraisers Certification Act (REACA) (63 P. S. §§ 457.1—457.19) and the Assessors Certification Act (ACA) (63 P. S. §§ 458.1—458.16). All three statutes relate to the valuation of real property in this Commonwealth. Therefore, the Board has undertaken to promulgate Subchapter E to be consistent with the statutes and regulations regarding the other laws under the Board's jurisdiction.

Background and Need for the Proposed Rulemaking

The temporary regulations pertaining to AMCs in Subchapter D expired on February 1, 2015. Upon expiration of the temporary regulations, there are no regulations implementing the act until an initial general rulemaking is adopted.

Legislative History

On February 2, 2012, Governor Corbett signed the act into law. The act is in response to National trends in the real estate appraisal and lending sectors. These trends had been developing for decades, but have accelerated in the last 5 to 10 years.

The earliest landmark in the emergence of these trends was the enactment of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. No. 101-73, 103 Stat. 183), which was enacted in the aftermath of the savings and loan financial crisis. With the passage of FIRREA, the United States Congress required each state to begin the regulation, oversight and licensure of real estate appraisers by an agency that was separate from agencies that had oversight of real estate sales or lending functions. See section 1118(b)(3) of FIRREA (12 U.S.C.A. § 3347(b)(3)). As the official United States Congressional report noted:

> Paragraph (3) of subsection (b) requires the Appraisal Subcommittee to disapprove appraiser certifications or licenses from State agencies whose "decisions concerning appraisal standards, appraiser qualifications, and supervision of appraiser practices are not made in a manner that carries out the purposes of this title." In this regard, *it is the Committee's intention that these decisions be made by individuals whose responsibilities do not include the regulation or supervision of nonappraiser activities or conduct. Such independence is necessary to insure against conflicts of interest between the appraisal function and the functions of promoting or financing real estate related financial transactions.*

(Emphasis added.) H.R. REP. 101-54, 482-483, 1989 U.S.C.C.A.N. 86, 278—279.

Although the Federally-mandated separation of governmental regulatory functions succeeded in separating oversight and discipline of the appraisal profession from the real estate sales and lending industry, some practices within the industry undermined the objective of Federal and state laws. As the Federal Trade Commission wrote:

> All parties to the loan transaction have some incentive to obtain an appraisal at the highest possible value. Borrowers want an appraisal valuation high enough that they can obtain a loan to purchase the property at the sales price. Lenders have a strong interest in ensuring that the property is accurately valued to assess whether it provides adequate security in the event of a foreclosure, but they also want the appraisal to meet the sales price amount so that the loan is made. Mortgage brokers have an incentive to obtain a sufficiently high appraisal because they only get paid if the loan is made, and their commissions usually are based on the loan amount.

See the letter of the Office of Policy Planning and the Bureau of Economics of the Federal Trade Commission to the Federal Home Loan Mortgage Corporation (Freddie Mac) dated April 30, 2008, commenting on the proposed Home Valuation Code of Conduct. In particular, even after enactment of FIRREA, individuals employed within the real estate sales and mortgage origination functions continued to have a hand in selecting real estate appraisers for transactions and then evaluating the appraisal results, which had the effect of giving lenders and real estate brokers influence over the appraisal function.

In 2008, the New York State Attorney General pursued an investigation and lawsuit into systemic mortgage fraud, particularly by Washington Mutual, First American Corporation and its subsidiary eAppraiseIt, one of the largest real estate AMCs in the United States. The New York Attorney General found that Washington Mutual, First American and eAppraiseIt colluded to inflate the appraisal values of homes. Specifically, New York charged that ". . . eAppraiseIT improperly allows WaMu's loan production staff to hand-pick appraisers who bring in appraisal values high enough to permit WaMu's loans to close, and improperly permits WaMu to pressure eAppraiseIT appraisers to change appraisal values that are too low to permit loans to close." *The State of New York vs. First American Corporation and EAppraiseIt*, Case No. 406796 of 2007, Complaint, ¶ 8. New York also found that the Federal National Mortgage Association (Fannie Mae) and Freddie Mac bought Washington Mutual securitized mortgages that were based upon fraudulent appraisals. The bundling of failed mortgages purchased by investors had the effect of exposing the entire banking system to the losses resulting from mortgage foreclosures.

At the time of the New York lawsuit, the president of The Appraisal Institute was quoted as follows:

> I wish I could say I am shocked by the discoveries made by the Attorney General and his staff. Sadly, what allegedly happened between First American and Washington Mutual is not an isolated incident. Rather, it is symbolic of a problem that has plagued the appraisal industry for years. As the allegations against First American show, the mortgage industry's dirty secret has been that banks exert tremendous pressure to extort appraisers.

See the press release of the New York State Office of Attorney General, November 7, 2007, http://www.ag.ny.gov/press-release/new-york-attorney-general-cuomo-sends-letters-notice-and-demand-freddie-mac-and-fannie.

As a result of these legal actions, the New York State Attorney General entered into a settlement agreement with Fannie Mae and Freddie Mac adopting what has been referred to as the Home Valuation Code of Conduct (HVCC). Although the jurisdiction of the New York State Attorney General extended only to the borders of New York, the adoption of the HVCC by the two largest National government sponsored enterprises in the residential mortgage marketplace created a de facto National standard widely adopted in all states and throughout the industry.

Following the adoption of the HVCC, the United States Congress wrestled with the same issues and abuses in adopting legislation in response to the 2008 financial collapse. The United States Congress found that AMCs were subject to little direct oversight, and that there had been instances when individuals who lost their appraisal

licenses or certifications opened AMCs to manage the work of other appraisers. See H.R. Rep. No. 94, 111th Cong., 1st Sess. 2009, 2009 WL 1227832, p. 59.

The United States Congress also noted warnings that the growth of AMCs may lead to a decline in appraisal quality because many AMCs take as much as 60% of the fee charged to consumers as their "management" cost. Because appraisal fees are disclosed in a single line on closing documents, consumers and regulators do not know how much money is being paid for the appraisal itself, or whether they are paying mostly for appraisal management services. See H.R. Rep. No. 94, 111th Cong., 1st Sess. 2009, 2009 WL 1227832, ps. 59 and 60.

In addition, the National Community Reinvestment Coalition and The Appraisal Institute raised concerns about other methods for home valuation. For example, witnesses before the United States House of Representatives Committee on Financial Services questioned the reliability of and confidence in automated valuation models (AVM) often used to develop estimates of home values. They also raised questions about the quality of home value estimates developed by real estate brokers through broker price opinions (BPO), which are used for collateral purposes, particularly for purchase mortgages. See H.R. Rep. No. 94, 111th Cong., 1st Sess. 2009, 2009 WL 1227832, ps. 59 and 60.

As these events unfolded on the National level, the Pennsylvania General Assembly became one of the pioneers in enactment of legislation to register and oversee AMCs. On March 16, 2010, Representative Richard Stevenson introduced House Bill (HB) 2334, joined by 40 cosponsors from both caucuses. HB 2334 provided for the registration of AMCs and was promptly referred to the House Professional Licensure Committee (HPLC).

On June 16, 2010, the HPLC conducted a hearing on HB 2334. See http://www.legis.state.pa.us/cfdocs/legis/tr/transcripts/2010_0108T.pdf. The HPLC took extensive testimony from seven witnesses: Representative Stevenson, sponsor of HB 2334; Basil L. Merenda, Esq., Commissioner of Professional and Occupational Affairs; Daniel A. Bradley, Chairperson of the Board; Michelle C. Bradley, Chairperson of the Appraisal Management Company Task Force of the Pennsylvania Association of Realtors; Tim O'Brien, Senior Vice President of RELS Valuation, an AMC; and a panel from the Pennsylvania Chapters of The Appraisal Institute, including John Sozansky, Pittsburgh Metropolitan Chapter, and Louise M. Jeffers, Philadelphia Metropolitan Chapter.

Witnesses before the Committee identified several areas of concern. The witnesses referred to the use of coercive practices that impair the appraiser's independence and credibility. Examples of coercive practices cited by witnesses included: nonpayment, delayed payment or threat of withholding payment of appraisal fees; the increasing share of appraisal fees going to AMCs for management of the appraisal services and a diminishing share of fees going to appraisers; the lack of transparency to consumers and lenders of the fees going to AMCs; arbitrary or punitive removal of appraisers who do not produce opinions of value to support the mortgage underwriting requirements; and AMC alteration or revision of appraisal reports.

In addition to coercive practices, witnesses also testified to several instances in which individuals who, because of professional misfeasance, lost their appraisal certification, mortgage broker license or a license to practice another profession, or started an AMC since that industry was not subject to licensure or registration requirements.

The witnesses referenced provisions of HB 2334 that addressed these types of concerns. Furthermore, Commissioner Merenda and Chairperson Bradley recommended amendments to strengthen the consumer protection objectives of the legislation and promote administrative efficiency.

While the General Assembly undertook consideration of HB 2334, the United States Congress continued work on Federal legislation in response to the financial crisis. Almost 5 weeks after the public hearing on HB 2334, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (Pub. L. No. 111-203, 124 Stat. 1376). For the text of the enrolled bill, see http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.

On July 21, 2010, Dodd-Frank was signed into law by President Obama. Dodd-Frank included several provisions relevant to the Board's jurisdiction, including changes to oversight and certification of the profession of certified real estate appraisers, as well as a mandate for state appraiser regulatory boards to register certain AMCs and to enforce Federal standards. The relevant provisions are in Title XIV of Dodd-Frank, known as the Mortgage Reform and Anti-Predatory Lending Act, in particular, Subtitle F (relating to appraisal activities).

On December 2, 2010, the Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision and National Credit Union Association issued Interagency Appraisal and Evaluation Guidelines (Interagency Guidelines). See 75 FR 77449 (December 10, 2010). The Interagency Guidelines offered a temporary elaboration upon some of the appraisal requirements in Dodd-Frank. These same agencies already promulgated regulations that relate to appraisal and evaluation requirements, minimum appraisal standards, appraiser independence and other subjects. The Interagency Guidelines serve to amplify some of the rules in the regulations. At the time of publication of the Interagency Guidelines, these agencies announced that they would begin drafting permanent regulations to be promulgated at a later date.

Although HB 2334 was not passed by the General Assembly during the 2009-2010 legislative session, on February 2, 2011, Representative Stevenson again introduced HB 398, with more than 40 cosponsors, seeking to regulate AMCs. HB 398 was based upon the prior bill, but also incorporated virtually all of the amendments recommended by the Board. In the House of Representatives, Representative Stevenson explained that "[a]lthough situations with less than forthright appraisal management companies may be infrequent, State law must not allow these companies to fall through the cracks or go unnoticed. To ensure the integrity of the appraisal process, we must have the tools in place to require accountability and to appropriately respond to unlawful activity." See *House Journal*, May 2, 2011, p. 806.

Highlighting several provisions of HB 398, Representative Stevenson noted that AMCs would be required to register with the Board but, in accord with Federal law, AMCs that were subsidiaries of Federally regulated financial institutions would be exempt from registration. Representative Stevenson also noted that "[u]nder the bill, all AMCs must have a system in place to ensure that all appraisals on property located in the Commonwealth are performed by certified appraisers in good standing with the board and that the appraisal reviews are conducted by a certified or licensed appraiser." See *House Journal*, May 2, 2011, p. 806.

After HB 398 passed in the House of Representatives, it was referred to the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), which made several technical amendments and also amended HB 398 to permit an AMC to use a letter of credit as security, rather than a surety bond. As amended, HB 398 was passed unanimously on January 18, 2012, and returned to the House of Representatives which concurred in the amendments on January 23, 2012. See Remarks of Representative Stevenson, *House Journal*, January 23, 2012, p. 58. Following passage in the General Assembly, HB 398 was signed by Governor Tom Corbett as the act of February 2, 2012 (P. L. 30, No. 4).

Regulatory History

Section 4(b) of the act authorized the Board to promulgate temporary regulations to facilitate the prompt implementation of the act. Section 4 of the act was based upon a similar provision in section 6(h) of the Real Estate Appraisers Certification Act (63 P. S. § 457.6(h)) (repealed). Temporary regulations serve two purposes. First, they greatly reduce the time and expense of promulgating initial regulations. Second, they permit a proving ground to test the procedures and requirements in the temporary regulations as a forerunner to a permanent regulations.

The Board initiated the process of drafting the temporary regulations on December 22, 2011, in anticipation of the passage of HB 398. The temporary regulations were the subject of discussion in public meetings beginning on January 12, 2012. Actual drafting of temporary regulations began at the Board's meeting on February 9, 2012. In addition to the act itself, the Board also considered the requirements of Dodd-Frank and the Interagency Guidelines to make the temporary regulations consistent with the most recent developments and requirements at the Federal level.

Although not required by the act, the Board solicited and received extensive input from a broad cross-section of interested persons, including the Pennsylvania Bankers Association, the Pennsylvania Association of Realtors, the Title Appraisal Vendor Management Association, certified appraisers and representatives of AMCs. The input included a series of drafting sessions at public meetings. On May 10, 2012, the Board issued an exposure draft to stakeholders. Thereafter, the Board conducted a series of online drafting webinars, which were open to members of the public and included active participation by a number of stakeholders, including representatives of the regulated community of firms in the appraisal management services industry.

The Board met in public session to review the comments and suggestions made in its extensive public participation campaign, which involved the active participation of representatives of thousands of individuals involved real estate appraisal, mortgage and appraisal management services industry. Based upon commentary and recommendations of the participants, the Board adopted a temporary general rulemaking, which it submitted for review and approval under Executive Order 1996-1, "Regulatory Review and Promulgation." Following a rigorous and thorough review by the Office of General Counsel, the Governor's Budget Office, the Governor's Policy Office and the Office of Attorney General, the temporary regulations were published at 43 Pa.B. 3098 and became effective June 8, 2013. The Board issued its first AMC registration on August 20, 2013, and by December 31, 2013, had registered 100 AMCs. After 1 year, the Board registered 141 AMCs. Of those registered AMCs, 139 remain active as of the 1-year anniversary date. Despite the influx of applications and the extensive information required by the application process, the typical processing time for issuance of registration was completed within 3 weeks to 6 weeks of the filing of the application. Thus, the criteria and procedures established by the temporary rulemaking proved highly successful and efficient.

During the first year of registration of AMCs, the Board did not encounter significant problems or issues. There is no evidence of confusion or uncertainty among the regulated community. Other affected individuals, such as banks, certified appraisers and consumers, have not submitted a significant number of complaints alleging violations by AMCs, or that the act or the temporary regulations do not adequately protect the public interest. The Board believes that the small number of complaints received, the rapid and timely disposition of those complaints, and the apparent absence of chronic or systemic issues in the first year suggests that the temporary regulations have struck the proper balance of restraint, flexibility and public protection in service to compelling public interests, and yield appropriate benefits that exceed the cost of regulations. These principles should be the touchstone of an agency's regulations. See Executive Order 1996-1.

Upon implementation of the temporary rulemaking, the Board began drafting this permanent initial general rulemaking. Because the experience of the temporary regulations has proven the validity of the choices made by the Board, the temporary regulations served as a starting point for drafting these permanent regulations.

The Board conducted a series of drafting sessions and received additional comment from the original stakeholders and new participants. Following those drafting sessions, on April 9, 2014, the Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, National Credit Union Association, Bureau of Consumer Financial Protection and Federal Housing Finance Agency (Federal financial institution regulatory agencies) published a joint notice of proposed rulemaking (JNPR) at 79 FR 19521 (April 9, 2014) to implement the minimum requirements of section 1473 of Dodd-Frank (section 1124 of FIRREA) (12 U.S.C.A. § 3353) to be applied by states in the registration and supervision of AMCs. The comment period on the JNPR closed on June 9, 2014. The JNPR was published as a final-form rulemaking at 80 FR 32658 (June 9, 2015), effective August 10, 2015. The JNPR would also implement the requirements of Dodd-Frank for states to report to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council the information required for the new National registry of AMCs.

Following the close of the JNPR comment period, the Board undertook some revisions of this proposed rulemaking, which have been incorporated Annex A. The revisions took into account the most recent developments and comments on the subject of AMC regulation and appraiser independence. Several of the individuals who commented on the JNPR also commented on the Board's exposure draft and participated in the drafting of the proposed rulemaking. In addition to the overlapping commentators, several topics in the comments to the JNPR echo issues or comments raised before the Board, especially regarding the application and relevance of the Truth in Lending Act (TILA) (15 U.S.C.A. §§ 1601—1667f) to appraiser independence requirements.

Description of the Proposed Rulemaking

General provisions

Definitions

Section 36.401 (relating to definitions) sets forth definitions for terms used in Subchapter E. Several of the terms are standard provisions common to regulations promulgated by administrative agencies. The following terms are defined as in section 2 of the act (63 P. S. § 457.22): "compliance person," "exempt company" and "key person." In addition to incorporating statutory definitions, to avoid confusion or doubt, the Board added that "exempt company" is synonymous with the term "Federally regulated AMC" which is the term used in the JNPR to refer to AMCs that are exempt from registration with state agencies under section 1124(c) of FIRREA.

The definition of "owner" as has been derived from section 5(b)(3) of the act (63 P. S. § 457.25(b)(3)), which requires an application to include the name, street address, telephone number and other contact information of a person who owns 10% or more of the applicant. This definition is consistent with the recently proposed joint Federal regulations prohibiting the registration of an AMC if a person who owns more than 10% lacks good moral character or fails to submit to a background investigation.

The Board has defined other terms in its regulations promulgated under REACA in § 36.1 (relating to definitions), including "AQB," "Bureau," "FIRREA," "Federally-related transaction," "non-Federally related transaction" and "real estate-related financial transaction." These definitions are included in § 36.401 in the interest of maintaining uniformity across the various individuals and firms under its jurisdiction.

The proposed definitions of "AMCRA" and "Department" are standard definitions commonly adopted by administrative agencies in the Bureau of Professional and Occupational Affairs. "CHRIA" is used in the regulations to refer to 18 Pa.C.S. Chapter 91 (relating to Criminal History Record Information Act). "NRSRO" is an acronym used in the regulations of other Commonwealth agencies, for example, 34 Pa. Code § 125.2 (relating to definitions), and is based upon section 15E of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o-7) for the registration of Nationally-recognized statistical rating organizations.

"The Appraisal Foundation" is recognized by Federal law as the authority to promulgate standards of appraisal practice (Uniform Standards of Professional Appraisal Practice (USPAP)) under section 1110 of FIRREA (12 U.S.C.A. § 3339) and minimum qualifications for real estate appraisers under section 1116 of FIRREA (12 U.S.C.A. § 3345). "REARA—Real Estate Appraisal Reform Amendments" and "TILA" are acronyms of Federal statutes that relate to real estate appraising and appraisal management services, among other subjects.

In addition to these familiar or standard terms, the Board proposes to introduce several terms that are new to the Board's jurisdiction. In choosing to add these terms, the Board intends to adopt terms that are necessary for clear understanding of the requirements and prohibitions governing AMCs. In defining these words and phrases, the Board preferred to rely upon definitions that have been well-established by Federal or State statutes, other regulations or by case law.

"AMC National Registry" was used in the JNPR. Since this is a term employed by Federal agencies and relates to the requirements applicable to registration of AMCs, the Board proposes to use the JNPR definition. The Board also proposes to use the JNPR definition of "appraiser panel."

The definition of "assignment" is derived from USPAP. See USPAP, Definitions, p. U-1, lines 33-34 (USPAP 2014-2015 Edition).

"AVM—automated valuation model" is defined in accordance with section 1125(d) of FIRREA (12 U.S.C.A. § 3354(d)). Significantly, the Federal definition of AVM is distinct from the definition of "appraisal" in REACA. In section 2 of REACA (63 P. S. § 457.2), an "appraisal" is "a written analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real property. . . ." By comparison, in section 1125(d) of FIRREA an AVM is a "computerized model used by mortgage originators and secondary market issuers to determine collateral worth of a mortgage secured by a consumer's principal dwelling."

The differences between these two definitions are subtle, but significant. First, an appraisal is a written analysis, opinion or conclusion, but an AVM is a computerized model. Computers do not have analyses, opinions or conclusions. A computer holds data and algorithms. The computer's circuits process the data and generate a result determined by the algorithm that has been programmed into the computer. This differs from an appraisal because an appraisal represents the thinking of a human being.

Second, an AVM is used by mortgage originators and secondary market issuers. It is true that an AVM could be used by persons other than mortgage originators and secondary market issuers. However, for purposes of Dodd-Frank and regulation of the appraisal profession and AMCs in this Commonwealth, this definition of "AVM" only applies when used by mortgage originators and secondary market issuers. A computerized model when used by other persons is not subject to this definition.

Finally, under this definition, an AVM is used specifically for the purpose of determining collateral worth of a mortgage secured by a consumer's principal dwelling. "Collateral worth" is not defined by statute or regulation. "Consumer" and "dwelling" are not defined by FIRREA, but are defined in section 103 of TILA (15 U.S.C.A. § 1602), along with "residential mortgage transaction." This definition of "AVM" makes it clear that the use of this term applies to the mortgage underwriting function performed by financial institutions. It is not a term that defines the scope of practice for certified appraisers or the jurisdiction of State agencies such as the Board to regulate appraisal activities. The importance of this distinction will be discussed in greater detail with respect to proposed §§ 36.431, 36.441 and 36.442 (relating to compliance with USPAP; prohibited acts; and improper influence and other prohibited practices).

"BPO—broker price opinion" is defined as the term is defined in section 1126(b) of FIRREA (12 U.S.C.A. § 3355(b)). As discussed regarding § 36.434 (relating to broker price opinions and evaluations), Federal law includes a general prohibition against the use of BPOs by financial institutions in conjunction with the purchase ofa consumer's principal dwelling as the primary basis to determine the value of a piece of property. BPO is distinguished from comparative market analysis (CMA). "Comparative market analysis" is defined by the Board in this proposed rulemaking consistent with section 201 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. § 455.201).

The definition of "conviction" mirrors the term as used in section 5(b)(7) of the act and section 10(a)(5) of the act (63 P. S. § 457.30(a)(5)) and makes it clear that a disposition other than a conviction is not a disqualifying or disabling condition.

The language used in this definition was extracted from several authorities. *Commonwealth v. Hughes*, 581 Pa. 274, 865 A.2d 761 (2004) and *Commonwealth v. Kimmel*, 523 Pa. 107, 111, 565 A.2d 426, 428 (1989) are the source of the initial clause defining conviction as an ascertainment of guilt and judgment thereon. Section 9102 of 18 Pa.C.S. (relating to definitions) defines "disposition." "Guilty but mentally ill" is defined in 18 Pa.C.S. § 314 (relating to guilty but mentally ill). Adjudications of delinquency are not to be considered convictions under 42 Pa.C.S. § 6354(a) (relating to effect of adjudication).

"Evaluation" is defined according to usage of regulations promulgated by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration. Each agency has promulgated a set of uniform regulations covering financial institutions under the agency's jurisdiction. See 12 CFR 34.41—34.47, 1 225.61—225.67, 323.1—323.7, 564.1—564.8 and 722.1—722.7.

For purposes of this discussion of regulation of certified real estate appraisers and AMCs, there are several key features of these Federal appraisal regulations. First, as a general rule, an appraisal must be performed by a certified or licensed real estate appraiser for real estate-related financial transactions. Second, there are 12 enumerated exceptions to the general requirement of an appraisal. Third, for 3 of the 12 exceptions an "evaluation" is required. Those three exceptions include the appraisal threshold exemption, the business transaction exemption and the subsequent transaction exemption. See 12 CFR 34.43(a)(1), (5) and (7), 225.63(a)(1), (5) and (7), 323.3(a)(1), (5) and (7), 564.3(a)(1), (5) and (7) and 722.3(a)(1) and (5). The National Credit Union Administration does not have a business transaction exemption.

The regulations of the Federal financial institution regulatory agencies do not define "evaluation." However, what Federal regulations and guidelines refer to as an "evaluation" falls within the definition of an "appraisal" under REACA. As will be discussed in greater detail regarding § 36.434, this conjunction of terminology has been a source of confusion and uncertainty which the Board intends to clarify and resolve through this proposed rulemaking.

The phrase "in good standing" was not part of the temporary rulemaking. It is proposed to be added at the request of several stakeholders who asked for clarification and specificity regarding the various statuses of certification and licensure. In particular, stakeholders asked whether a license or certificate subject to probation would be considered to be "in good standing" as used in § 36.404(b)(2) (relating to content of application). This definition clarifies that an appraiser on probation is in good standing.

"Appraiser panel," "order," "order solicitation," "panel solicitation," "solicit or solicitation" and "supervisor" are introduced for purposes of Subchapter E to define particular aspects of appraisal management and appraisal practice. These terms have been developed after consultation with stakeholders and deliberation by the Board.

One significant change from the temporary regulations for this set of terms is the replacement of "panel" with "appraiser panel." There were two reasons for this change. First, stakeholders requested a revision of the definition for "panel" because they believed it needed to be more specific in distinguishing appraisers who are employees of the AMC from those appraisers who are independent contractors. Second, the JNPR uses "appraiser panel." Therefore, for clarity and consistency with Federal terminology, Subchapter E uses the terminology and definition used in Federal regulations.

Prior to the promulgation of the temporary regulations, some stakeholders questioned whether a "relocation company" is an AMC as defined by the act. As stated in the preamble to the temporary regulations, the Board is incorporating an explanation into this preamble in response to that inquiry. Because stakeholders no longer express a need for clarification, the Board concludes that the statutory and regulatory definitions sufficiently distinguish relocation services from appraisal management services, and that the Board's decision to provide an explanation in the preamble is a better option for clarifying this point.

A "relocation company" is generally defined as one which contracts with other firms to arrange the relocation of employees from one city to another. The service generally handles the sale of the employee's home and purchase of a new home.

Section 2 of the act defines an AMC as "a person that provides appraisal management services and acts as a third-party intermediary between a person seeking a valuation of real estate located in this Commonwealth and an appraiser or firm of appraisers." "Appraisal management services" is defined in section 2 of the act to include recruiting appraisers, contracting with appraisers to perform appraisals, negotiating fees with appraisers, receiving appraisal orders and appraisals, submitting appraisals received from appraisers to the client, and providing related administrative and clerical duties.

Although an AMC may also offer relocation services, it is not necessarily true that a relocation company is an AMC. While a relocation company may, in fact, recruit appraisers and order appraisals, in a typical relocation company transaction, the relocation company purchases an employee's home and resells the home. Therefore, in this typical type of relocation transaction, the relocation company may engage the services of an appraiser, but it is seeking an appraisal for its own benefit and not for a third party. The purpose of an appraisal in this scenario is to assist the relocation company in determining how much it will pay for the employee's house and how much it may expect to recover upon resale. Therefore, the "third-party intermediary" element of the definition of an AMC is not satisfied.

Procedural rules

Section 36.402 (relating to applicability of general rules) makes clear that individuals and other persons may avail themselves of the applicable remedies and procedures available under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Applications

Section 36.404 and §§ 36.403 and 36.405 (relating to application procedure; and fees) provide the procedures for registering AMCs. Section 36.403 memorializes current practices for processing applications used by the Board. Upon consideration of comments from stakeholders, the Board made one minor change to subsection (e) from the temporary regulation by enumerating the grounds on which the Board may provisionally deny an

application, that is, the application is incomplete, information is believed to be not true and correct, or the applicant is believed to be not qualified for registration for some other reason. This does not reflect a change in Board procedures or policies. It clarifies why an application may be provisionally denied.

Section 36.404 provides for the content of applications, including the information provided in section 5(b) of the act. There is no longer a procedure for expedited review as provided in the temporary regulations because an AMC that has an existing practice in this Commonwealth should already be registered with the Board and therefore there is not a prospect of an interruption of business in this Commonwealth while an application is pending. At the suggestion of several stakeholders, the Board made several clarifying changes to subsection (b). First, the Board specifies certified residential and certified general appraisers in paragraph (1). Second, several stakeholders commented that the Board should be more specific about a client's requests for appraisal reviews to make it clear that an AMC is not obligated to perform uncompensated appraisal reviews at the whim of a client. Since the Board originally intended in its temporary regulations to express both of these points, the Board included changes as suggested by stakeholders.

Section 36.405 provides for the initial registration fee, biennial renewal fee and fees for notice of change of corporate organization, letter of good standing, notification of change of key person or compliance person, and late fee for reinstatement. The fee for biennial renewal of registration is based upon the costs associated with staff who process the renewal of registrations and the anticipated additional costs of administering the act.

Registration

Qualifications of AMCs, owners, key persons and compliance persons

To perform appraisal management services, a company that is not otherwise exempt under the act shall be registered as an AMC. Registration is conditioned upon the company satisfying certain requirements in § 36.411 (relating to qualifications for registration as appraisal management company), including the designation of a compliance person, the establishment of policies that are reasonably designed to prevent conduct or practices that compromise appraiser independence, verify appraiser certification and qualifications, and review appraisal services for USPAP compliance. These requirements are essential standards that shall be met under Dodd-Frank. The Board has not prescribed particular procedures or systems to satisfy these requirements and, therefore, AMCs have latitude to design and implement policies, so long as the policies are reasonably calculated to meet the required Dodd-Frank standards.

In addition, AMCs shall have processes for resolution of consumer complaints and appraiser complaints. The Board intends that resolution of consumer and appraiser complaints does not mean that every complaint must be resolved to the satisfaction of the complainant. However, the process must be reasonable and afford the complainant the opportunity to have the AMC respond to complaints in a prompt fashion.

Section 36.412 (relating to qualifications of owners and key persons) clarifies provisions of section 8 of the act (63 P. S. § 457.28) and section 10 of the act as they apply to owners and key persons. Section 8(d) of the act provides that individuals who are disqualified from being real estate appraisers may not be owners, key persons or compliance persons. The regulations clarify that individuals who have been disqualified from certification as real estate appraisers due to disciplinary violations are disqualified from being owners or key persons of an AMC. The absence of requisite education or experience for real estate appraisers is not grounds for disqualification as an owner or key person of an AMC. In addition, under section 10(a)(3) and (4) of the act, persons are disqualified from being owners or key persons if they have been disciplined by the State Real Estate Commission or by the Department of Banking and Securities.

As a condition of doing business, an AMC shall have a compliance person, that is, a person who has been designated with the responsibility to assure that the AMC adheres to the requirements of the act and the Board's regulations. See section 7(c)(1) of the act (63 P. S. § 457.27(c)(1)). Section 36.413 (relating to qualifications of compliance person) provides for the qualifications of compliance persons. In addition to meeting the requirements for a key person or owner, a compliance person shall also be authorized by the AMC to bind the AMC and submit reports or filings required under the act or applicable Federal consumer protection laws.

Some stakeholders expressed concern regarding § 36.413(b)(1) which would require a compliance person to possess authority to bind the AMC to comply with requirements of, among others, Title XI of FIRREA (12 U.S.C.A. §§ 3331—3355), known as the Real Estate Appraisal Reform Amendments, and TILA. Those stakeholders argue that the Board does not have authority to enforce these Federal statutes. Stakeholders point to section 130 of TILA (15 U.S.C.A. § 1640), specifically subsection (e). Section 130(e) of TILA authorizes state attorneys general to begin actions in Federal or state courts to enforce the provisions of TILA, including sections 129E and 129H (15 U.S.C.A. §§ 1639e and 1639h).

The Board undertook thorough consideration of this group of comments and determined that they are erroneous for several reasons. First, section 130(b) of TILA is not an exclusive remedy for violations of TILA. As noted in *In re First Alliance Mortg. Co.*, 280 B.R. 240, 244 (U.S.D.C., C.D. California 2002), section 130(e) of TILA only expands the scope of potential TILA plaintiffs in a civil action to recover damages. The statutory language does not limit the authority of regulatory agencies to enforce standards of practice within a profession. In fact, section 1473(a)(4) of FIRREA requires that the Board enforce appraisal independence standards in TILA. Specifically, the Federal financial institution regulatory agencies establish minimum requirements to be applied by a state in the registration of AMCs, including a requirement "... that appraisals are conducted independently and free from inappropriate influence and coercion ...." Notably, this requirement, as well as the other threerequirements of section 1473(a) of FIRREA, apply to exempt AMCs. See section 1473(c) of FIRREA. Finally, section 1473(b) of FIRREA provides "[n]othing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a)."

Second, the JNPR makes it abundantly clear that the Board must enforce appraisal independence standards. Under the JNPR, the Board must "discipline, suspend, terminate or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders ...." See 12 CFR 34.213(a)(6) (relating to appraisal management company registration). Also, the Board must impose requirements on AMCs that are not

exempt to "establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i)." See 12 CFR 34.213(b)(5).

To the extent that stakeholders have contended that § 36.413 suggests that the Board claims jurisdiction over private causes of action under TILA, the Board states that this provision is not intended to make this claim. Furthermore, upon review of this section, the Board concludes that a reasonable interpretation of the language would not permit this interpretation. In the implementation of this section, the Board has never encountered a case or suggestion to the contrary. Accordingly, the Board declines to remove or change this section.

Reporting change of information

Section 36.414 (relating to reporting change of information) requires an AMC to report to the Board a change of information regarding ownership, key persons and other information regarding the business. This provision is consistent with section 7(c)(3) of the act, which requires reporting of a change in the compliance person within 30 days.

Requirements for exempt company

Section 36.415 (relating to requirements for exempt company) was not addressed in the temporary regulations. As previously discussed, exempt companies, or Federally regulated AMCs as they are called in the JNPR, are subject to the Board's enforcement powers for violations of appraisal independence standards and other appraisal-related laws and regulations. Subsection (a) memorializes this principle. In addition, in furtherance of the requirements of the JNPR regarding reporting information for the AMC National Registry, the Board incorporates that requirement by reference in subsection (b).

Renewal of registration

Expiration and renewal

Section 36.421 (relating to expiration of registration) provides for the expiration of AMC registration on the last day of June of each odd-numbered year. This expiration date coincides with the expiration dates for certifications issued by the Board for certified real estate appraisers and certified Pennsylvania evaluators.

Early termination of registration

Section 36.422 (relating to early termination of registration) provides for early termination of registration. An AMC that becomes an exempt company through acquisition by a bank or other financial institution, or that ceases business in this Commonwealth, may not want to continue obligations to report changes in personnel or other obligations under the act or the Board's regulations. Accordingly, this section provides for a procedure by which the AMC may terminate its registration before the expiration date. The information required under this section would assist in the protection of consumers and appraisers by recording information that will permit service of process on the AMC or its principals, and obtain payment for any damages or unpaid fees.

Section 36.423 (relating to duration and validity of registration) specifies that AMCs must register for each biennial period in accordance with section 6(c)(1) of the act (63 P. S. § 457.26(c)(1)). Subsection (b) clarifies that registration is valid throughout this Commonwealth for the entire biennial registration period, and registration is not assignable or transferable. Therefore, an AMC may not sell its registration to another company. A company acquiring a registered AMC will be required to be register, if it is not already registered in this Commonwealth.

Section 36.424 (relating to renewal of registration) is also a new provision. The Board's temporary regulations did not include this provision because it was not necessary at the time. This section specifies that renewal of registration is to be made on an application provided by the Board and include the fee prescribed in § 36.405.

Standards of practice

Sections 36.431—36.437 (relating to standards of practice) cover the standards of practice for appraisal management services under the act. As previously discussed, section 1473 of Dodd-Frank added section 1124 to FIRREA to provide for registration of AMCs. The new section provides that an AMC owned and controlled by a Federally-regulated financial institution is not required to register with states, but is otherwise subject to the enforcement of appraisal management service standards and regulations. Notably, Dodd-Frank provides that states may establish requirements in addition to rules promulgated under Dodd-Frank. See section 1124(b) of FIRREA.

USPAP compliance

Section 36.431 provides that AMCs shall require appraisals to be performed in compliance with USPAP. This provision is necessary because both State and Federal laws include this requirement. Section 5(1) of REACA (63 P. S. § 457.5(1)) directs the Board to adopt standards of professional appraisal practice. In accordance with this mandate, § 36.51 (relating to compliance with USPAP) requires appraisals performed by licensed real estate appraisers to be USPAP compliant. In addition to this State law, Dodd-Frank also requires USPAP compliance for all appraisals. See section 1124(a)(3) of FIRREA.

In furtherance of USPAP compliance, § 36.431(b) and (c) requires AMCs to establish systems for appraisal review to assure USPAP compliance and prohibit AMCs from using valuation services that violate applicable State and Federal laws. Because appraisal management services include, by definition, contracting for appraisal services and related services and duties, it is necessary that those services be provided in accordance with Federal and State law and in furtherance of the consumer protection objectives of Dodd-Frank, FIRREA, REACA and other laws.

Verification of certification; appraisal reviews

Section 36.432 (relating to verification of appraiser certification) is intended to require that AMCs are providing services that comply with Federal and State law. Asthe appointed intermediary for a lender, it is the function of the AMC to assure that the appraiser who performs the appraisal is competent and qualified for each particular assignment.

Appraisal reviews are a specific type of appraisal that is also covered by USPAP under Standard 3. Therefore, § 36.433 (relating to appraisal reviews) includes a requirement that appraisal reviews be performed in compliance with USPAP and reiterates the proviso of the act and Dodd-Frank that examination or review of an appraisal report for grammatical or typographical errors, or for completeness, is not an appraisal review for which USPAP compliance is required.

BPOs and evaluations

Section 36.434 pertains to the standards required for the use of BPOs. A BPO is a type of valuation service and

has been defined by Dodd-Frank. The definition is in section 1126(b) of FIRREA. The Dodd-Frank definition is included in § 36.401 and is defined as an estimate prepared by a real estate broker, agent or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable sales, but does not include an AVM, as defined in section 1125(c) of FIRREA. Significantly, Dodd-Frank prohibits the use of BPOs as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by the piece of property. See section 1126(a) of FIRREA. While this Federal prohibition is limited, it does not preclude states from adopting a higher standard.

BPOs are a type of valuation service that would be rendered by individuals licensed by the State Real Estate Commission. However, BPOs are not recognized by RELRA, and are not within the permissible scope of practice authorized by RELRA. Instead, RELRA authorizes a similar, but distinct, type of service which is termed CMA. A CMA is defined in section 201 of RELRA as:

> A written analysis, opinion or conclusion by a contracted buyer's agent, transactional licensee, or an actual or potential seller's agent relating to the probable sale price of a specified piece of real estate in an identified real estate market at a specified time, *offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer or for the purpose of securing a listing agreement with a seller.*

(Emphasis added.) The significant distinction between a BPO and a CMA is that a CMA may only be performed to determine an offering price by an actual or potential buyer, or to secure a listing with a seller.

Given this limitation on CMAs in this Commonwealth, an AMC may not lawfully order or use a BPO as a valuation service. Therefore, subsection (a) clarifies that an AMC may not use a BPO as an evaluation in a non-Federally related transaction.

As a result of the unreported judicial opinion in *Fidelity National Information Solutions, Inc. (FNIS) v. Sinclair*, 2004 WL 764834 (U.S.D.C. M.D. Pa. 2004), there has been some confusion regarding the legality of BPOs and other types of valuation services in Federally-related transactions in this Commonwealth. In *FNIS*, the District Court held that REACA is pre-empted by section 1112(b) of FIRREA (12 U.S.C.A. § 3341(b)), which authorizes Federal financial institution regulatory agencies to exempt some Federally-related transactions from the requirement that a financial institution obtain an appraisal.

The analysis of the District Court in *FNIS*, if not unique, was exceptional in that the District Court acknowledged that FIRREA did not occupy the field being regulated and thereby pre-empt all state regulation of the subject matter—real estate appraisals. The court determined that even though REACA's standards exceeded the minimum standards established by FIRREA, that the higher standards conflicted with FIRREA and therefore were pre-empted. The Board does not know of other cases in which a state law establishing a higher standard than Federal law was deemed to conflict with the National standard and therefore be pre-empted.

Still, section 1126(a) of FIRREA makes it clear that even in Federally-related transactions, a financial institution may not use a BPO as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential loan secured by a piece of property. This language, however, implies that under Federal law a financial institution may use a BPO other than as a primary basis to determine the value of a piece of property or for a purpose other than loan origination of a residential mortgage loan secured by a piece of property.

Whatever may be permitted by Federal law as a standard for mortgage underwriting purposes, REACA's broad definition of an appraisal and the concomitant scope of practice of real estate appraising in this Commonwealth would include BPOs, as well as evaluations as used, but not defined, by Federal statute. See section 1112(c) of FIRREA. "Evaluation" is defined in the Interagency Guidelines as "a valuation permitted by the Agencies' appraisal regulations for transactions that qualify for the appraisal threshold exemption, business loan exemption or subsequent transaction exemption." See Interagency Guidelines, Glossary, p. 41.

The Interagency Guidelines also specify the content of an evaluation. See Interagency Guidelines, page 13. This information must include the property's location, description, zoning, market, neighborhood and physical condition, as well as an account of the analytical methods used, supporting data and the work performed to complete the evaluation. Given those requirements, an evaluation would constitute an appraisal under REACA. Therefore, if REACA applies to a particular valuation assignment, clearly that function may only be performed by a certified real estate appraiser.

At the time it promulgated the temporary regulations, the Board operated on the understanding that the decision in *FNIS* remained a valid precedent. Several stakeholders have contended that Federal law continues to pre-empt REACA's requirement that appraisals be performed by a certified real estate appraiser in Federally-related transactions. However, since adoption of the temporary regulations, the Board scrutinized the voluminous provisions of Dodd-Frank, as well as the rules promulgated by Federal financial institution regulatory agencies.

The Board's detailed review of the applicable statutes and regulations led the Board to examine the statutory authority supporting the regulatory requirements for evaluations. See, for example, 12 CFR 34.43 (relating to appraisals required; transactions requiring a State certified or licensed appraiser). Among the provisions cited as authority for 12 CFR 34.43 were section 5136C of the Consumer Financial Protection Act of 2010 (12 U.S.C.A. § 25b) and section 6 of the Consumer Financial Protection Act of 2010 (12 U.S.C.A. § 1465). These provisions were added by Dodd-Frank and specifically relate to state law pre-emption standards for National banks and subsidiaries, and state law pre-emption standards for Federal savings associations, respectively.

The pre-emption standard expressed by Dodd-Frank is that a "State consumer financial law" is pre-empted only if the application of the state law would have a discriminatory effect on National banks in comparison with the effect of the law on a bank chartered by that state, if the state law prevents or significantly interferes with the exercise by the National bank of its powers or if the state law is pre-empted by a Federal law other than title 62 of the Revised Statutes.

According to section 5136C of the Consumer Financial Protection Act of 2010, a state consumer financial law is

one which ". . . does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction . . . with respect to a consumer." In light of this definition, REACA, which was enacted explicitly for the purpose of carrying out the Commonwealth's obligations under FIRREA, regulates the manner, content, and terms and conditions of consumer financial transactions by defining "appraisal" to include a broad range of valuation services and requiring that appraisals be performed by a duly trained and qualified certified real estate appraiser.

Furthermore, because REACA applies equally to both Federally-regulated financial institutions as well as financial institutions that are not Federally-regulated, REACA does not have discriminatory effect on National banks or Federal savings associations. REACA also does nothing to interfere with or prevent National banks or other Federal financial institutions from exercising its powers, nor is REACA pre-empted by other provisions of Federal law. Therefore, under the pre-emption standard adopted by Dodd-Frank in 2010, the holding in *FNIS* has been abrogated and REACA may no longer be considered pre-empted by FIRREA. Based upon the foregoing analysis, the Board proposes § 36.434 with a clear statement that an AMC may not order or solicit BPOs or evaluations.

Recordkeeping

Section 36.435 (relating to recordkeeping) contains minimum recordkeeping requirements. This section is specifically authorized by section 7(b)(1)(ii) of the act. The recordkeeping requirements represent what is necessary for an AMC to fulfill its duties under the act and Dodd-Frank to review and verify the work of appraisers for compliance with USPAP and to assure appraisal independence.

Subsection (a)(1) sets forth the information that is to be in records regarding each assignment that is ordered. Subsection (a)(2) provides for recordkeeping relating to fee schedules. At the recommendation of stakeholders, the Board clarified the reference to TILA to specify the provisions that relate to appraisal standards or appraisal management services. Subsection (a)(3) provides for the recordkeeping relating to rosters or panels of appraisers. Also, at the suggestion of stakeholders, the Board clarified that the date on which an appraiser is removed from an appraiser panel is only required if the appraiser has, in fact, been removed.

Subsection (b) establishes a 5-year period for record retention beginning from the date of final action of the assignment or from the final disposition of a court proceeding, whichever is later. This provision is authorized by section 7(b)(2)(iii) of the act. In furtherance of the act's provision that the Board may inspect required records at any time, this section states that records be produced for inspection and copying within 30 days of a request.

Finally, subsection (c) is proposed to provide a specific time frame for the duty to open records for inspection as set forth in section 7(b)(3) of the act.

Solicitation or order of appraisals

Section 36.436 (relating to requirements for solicitation or order of appraisals) establishes minimum standards that an AMC shall meet when it solicits or orders appraisals. The purpose of this section is to ensure reasonable clarity of the terms and conditions of the appraiser's rights and duties for the assignment. These provisions are required to implement the provisions of Dodd-Frank regarding appraisal independence that prohibit withholding payments of fees, prohibit untimely payment of fees and require that appraisal fees be customary and reasonable under section 129E(b)(4) of TILA. An AMC may satisfy this requirement either by providing the required information with each assignment or in a written agreement when an AMC and an appraiser begin an ongoing relationship.

Duties of compliance person

Section 36.437 (relating to duties of compliance persons) defines and clarifies the responsibility of the compliance person, which is a position required under section 7(c) of the act. This section establishes that an AMC is responsible for the acts and omissions of its compliance person, provides for the general duty of a compliance person to comply with section 8 of the act, pertaining to prohibited activities, and, more specifically, requires a compliance person to report known or suspected violations of TILA, the act or the Board's regulations that relate to appraisal independence.

Disciplinary action

Section 36.441 provides that the Board may impose sanctions authorized by the act for violations of the act or this subchapter, violations of FIRREA or TILA, or a violation of AMC laws of another jurisdiction.

Section 36.442 provides greater detail and specificity regarding practices that violate appraiser independence. This section classifies improper influence or other prohibited practices into those that require proof of intent versus those practices that require no evidence of intent because they inherently compromise appraiser independence or are inherently coercive.

Subsection (a) lists practices that inherently compromise appraiser independence or are inherently coercive, or both. Subsection (b) lists practices that could be considered improper influence or coercive and which may compromise appraiser independence if those acts are committed with the intent of harassing, retaliating or influencing an appraiser's professional judgment.

Surety bonds and letters of credit

Section 6(b) of the act requires an AMC to post a surety bond or letter of credit in an amount no less than $20,000. The security, whether a surety bond or letter of credit, is to accrue or be made payable to the Commonwealth for the benefit of a person suffering damages for a failure of the AMC to perform obligations under the act or an appraiser who has performed an appraisal and has not been paid.

Section 36.451 (relating to requirements for surety bond or letter of credit) contains the standards for the security that have been previously adopted by other state agencies to assure that the financial institution or bond company is credit worthy. Subsection (d) includes definitions of "claimant" and "faithful performance of the registrant's obligations under AMCRA."

The definition of "claimant" clarifies that this may include the Commonwealth or a person who has a right to receive compensation under the act. Persons include consumers who have paid for an appraisal, a financial institution that has paid for appraisal management services or an appraiser who has performed an appraisal but who has not been paid. The definition of "faithful performance of the registrant's obligations under AMCRA" clarifies that the posted security may be used for payment of a civil penalty, restitution or costs of investiga-

tion under the act, or similar amounts levied under the act of July 2, 1993 (P. L. 345, No. 48) (63 P. S. §§ 2201—2207). The security may be used to pay for the performance of a contractual obligation or satisfaction of a duty owed for conduct subject to the act.

Upon consideration, the Board determined at the time of adoption of the temporary regulations that the minimum amount of a surety bond or letter of credit should be $40,000, as stated in § 36.452 (relating to amount of surety bond or letter of credit), to ensure that security is sufficient to cover anticipated losses to consumers or appraisers and to ensure that civil penalties levied by the Board, which may be up to $10,000 per violation, will also be paid. Although this amount is greater than the statutory minimum, particularly in light of the relatively modest cost of a surety bond (typically approximately 2% of the secured amount) the difference between $20,000 and $40,000 is minimal compared to the benefit of ensuring that affected individuals can be made whole.

Some stakeholders questioned the necessity of raising the amount of security. Based upon the points that were made, the Board undertook further investigation of this issue. The Board concluded that there is ample evidence to support the Board's decision. In fact, a larger amount of security may be warranted, but the Board will reserve that judgment for the future. Specifically, the Board reviewed records filed in bankruptcy proceedings for ES Appraisal Services LLC, Case Number 3:13-bk-00447, U. S. District Court for the Middle District of Florida. In that bankruptcy proceeding, the debtor, ES Appraisal Services, which was an AMC, filed a list of creditors that included 88 individuals who are certified real estate appraisers in this Commonwealth and owed a total of $252,855 in unpaid appraisal fees. The median debt owed to Commonwealth appraisers was $1,388 and one appraisal firm was owed more than $30,000. The total amount of unpaid appraisal fees owed to appraisers across the United States exceeded $1.6 million.

Although ES Appraisal is an exceptional case, the Board is cognizant of the fact that a typical AMC is offering services in multiple states and engaging dozens, if not hundreds, of real estate appraisers. Therefore, a default by an AMC is likely to affect many individuals whose total amount of loss would exceed $20,000. Accordingly, balancing the additional cost of a higher amount of security against the need to protect the public, the Board reaffirms its decision to require $40,000 in security.

The Board relied upon provisions adopted by other agencies in defining the contents of the form of a surety bond or letter of credit in §§ 36.453 and 36.454 (relating to form of surety bond; and form of letter of credit). In addition, § 36.455 (relating to maintenance of surety bond or letter of credit) requires that a registrant maintain the amount of a surety bond or letter of credit in the event that a claim is made. Finally, the Board has provided for a procedure for making claims against a surety or obligor on a letter of credit in § 36.456 (relating to claims against surety or obligor). The procedures adopted by the Board allow for the Department, through the Prosecution Division of the Bureau of Professional and Occupational Affairs, to make claims on behalf of consumers or unpaid appraisers, prior to a final adjudication of a violation of the act or the Board's regulations.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should not have adverse fiscal impact on the Commonwealth or its political subdivisions. In general, the proposed rulemaking provides fees that would offset negative fiscal impact upon the Commonwealth. The regulated community will incur costs associated with registration, including application fees and costs of posting a surety bond or letter of credit. Registered AMCs will also incur costs regarding recordkeeping. The paperwork and application fees are a consequence of compliance with Federal mandates.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 28, 2015, 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 the Chairpersons of the HPLC and the SCP/PLC. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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 Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Jacqueline A. Wolfgang, Counsel, State Board of Certified Real Estate Appraisers, P. O. Box 69523, Harrisburg, PA 17106-9523, ra-stregulatorycounsel@pa.gov within 30 days following publication in the *Pennsylvania Bulletin*. Reference Regulation No. 16A-7021—Permanent General Rulemaking on comments.

D. THOMAS SMITH,
Chairperson

Fiscal Note: 16A-7021. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

Subchapter D. [APPRAISAL MANAGEMENT COMPANIES] (Reserved)

(*Editor's Note*: As part of this proposed rulemaking, the Board is proposing to rescind Chapter 36, Subchapter D which appears in 49 Pa. Code pages 36-44—36-63, serial pages (366690)—(366709).)

§§ 36.301—36.306. (Reserved).

§§ 36.311—36.315. (Reserved).

§ 36.321. (Reserved).

§ 36.322. (Reserved).

§§ 36.331—36.337. (Reserved).

§ 36.341. (Reserved).

§ 36.342. (Reserved).

§§ 36.351—36.356. (Reserved).

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

Subchapter E. APPRAISAL MANAGEMENT COMPANIES

GENERAL PROVISIONS

REGISTRATION

RENEWAL OF REGISTRATION

STANDARDS OF PRACTICE

DISCIPLINARY ACTION

SURETY BONDS AND LETTERS OF CREDIT

GENERAL PROVISIONS

§ 36.401. Definitions.

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

AMC National Registry—The registry of state-registered appraisal management companies and Federally-regulated appraisal management companies maintained by the Appraisal Subcommittee.

AMCRA—The Appraisal Management Company Registration Act (63 P. S. §§ 457.21—457.31).

AQB—The Appraiser Qualifications Board appointed by The Appraisal Foundation, which promulgates education, experience and other criteria for licensing, certification and recertification of qualified appraisers.

AVM—Automated valuation model—As defined by section 1125(d) of FIRREA (12 U.S.C.A. § 3354(d)), a computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

The Appraisal Foundation—The entity identified in section 1121(9) of FIRREA (12 U.S.C.A. § 3350(9)).

Appraiser panel—A network or panel of certified appraisers who are independent contractors to an appraisal management company.

Assignment—As defined by USPAP, an agreement between an appraiser and a client to provide a valuation service and the valuation service that is provided as a consequence of an agreement.

BPO—Broker price opinion—As defined by section 1126(b) of FIRREA (12 U.S.C.A. § 3355(b)), an estimate prepared by a real estate broker, agent or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable sales, but does not include an AVM.

Bureau—The Bureau of Professional and Occupational Affairs of the Department.

CHRIA—18 Pa.C.S. Chapter 91 (relating to Criminal History Record Information Act).

Comparative market analysis—As defined in section 201 of RELRA (63 P. S. § 455.201), a written analysis, opinion or conclusion by a contracted buyer's agent, transactional licensee, or an actual or potential seller's agent relating to the probable sale price of a specified piece of real estate in an identified real estate market at a specified time, offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer, or for the purpose of securing a listing agreement with a seller.

Compliance person—An individual who is employed, appointed or authorized by an appraisal management company to be responsible for ensuring compliance with AMCRA and this subchapter.

Conviction—

(i) An ascertainment of guilt of the accused and judgment thereon by a court, including disposition of a criminal proceeding under the laws of the Commonwealth, or any similar disposition under the laws of another jurisdiction, by a plea of guilty, guilty but mentally ill or nolo contendere, or a verdict of guilty or guilty but mentally ill.

(ii) The term does not include an adjudication of delinquency under 42 Pa.C.S. Chapter 63 (relating to Juvenile Act).

Department—The Department of State of the Commonwealth.

Evaluation—A valuation required by regulations of Federal financial institution regulatory agencies for transactions that qualify for an exemption from the appraisal requirement under any one of the following provisions:

(i) The Office of Comptroller of the Currency in 12 CFR 34.43(a)(1), (5) or (7) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).

(ii) The Board of Governors of the Federal Reserve System in 12 CFR 225.63(a)(1), (5) or (7) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).

(iii) The Federal Deposit Insurance Corporation in 12 CFR 323.3(a)(1), (5) or (7) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).

(iv) The Office of Thrift Supervision in 12 CFR 564.3(a)(1), (5) or (7) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).

(v) The National Credit Union Administration in 12 CFR 722.3(a)(1) or (5) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).

Exempt company—

(i) A person that is exempt from registering under AMCRA as set forth in section 1124(c) of FIRREA (12 U.S.C.A. § 3353(c)).

(ii) This term is synonymous with "Federally regulated AMC" as defined in 34 CFR 34.211(j) (regarding definitions).

FIRREA—

(i) The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. No. 101-73, 103 Stat. 183).

(ii) Unless expressly stated or clearly implicit from the context, a reference to FIRREA in this subchapter includes only those provisions that relate to appraisal standards or appraisal management services.

Federally-related transaction—A real estate-related financial transaction which a Federal financial institution regulatory agency or the Resolution Trust Corporation engages in, contracts for or regulates which requires the services of an appraiser.

In good standing—

(i) When referring to an individual certified or licensed by the Board to perform appraisals, and for the purpose of interpreting good standing in REACA, an individual who is authorized under REACA to perform appraisals, or to act as a licensed appraiser trainee.

(ii) The term includes an individual who has an active unrestricted certificate or license, or a certificate or license that is on probation or subject to a restriction ordered by the Board.

(iii) The term does not include an individual who holds a certificate or license that is inactive or expired, or that is suspended or revoked.

Key person—A person other than a compliance person who is a director, officer, supervisor, manager or other person performing a similar function in an appraisal management company.

NRSRO—A designated Nationally-recognized statistical rating organization of the United States Securities and Exchange Commission or its successor.

Non-Federally related transaction—A real estate-related transaction that is not a Federally-related transaction.

Order—When used in the context of the contractual relationship between an appraiser and an appraisal management company, an agreement between an appraiser and an appraisal management company that pertains to a specified valuation assignment, including a disclosure of the amount of the appraisal fee, the terms and time frame for payment, and the appraisal management company registration number.

Order solicitation—An offer to contract with an appraiser to perform an appraisal resulting in an order.

Owner—A person that owns 10% or more of an appraisal management company.

Panel solicitation—An offer to add an appraiser to the appraiser panel used by an appraisal management company.

REACA—The Real Estate Appraisers Certification Act (63 P. S. §§ 457.1—457.19).

REARA—Real Estate Appraisal Reform Amendments—

(i) Title XI of FIRREA (12 U.S.C.A. §§ 3331—3355).

(ii) Unless expressly stated or clearly implicit from the context, a reference to REARA in this subchapter includes only those provisions that relate to appraisal standards or appraisal management services.

RELRA—The Real Estate Licensing and Registration Act (63 P. S. §§ 455.101—455.902).

Real estate-related financial transaction—A transaction involving one or more of the following:

(i) Sale, lease, purchase, investment in or exchange of real property, including interests in property or the financing thereof.

(ii) Refinancing of real property or interests in real property.

(iii) Use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

Solicit or *solicitation*—An offer to contract with an appraiser to perform an appraisal or an offer to an appraiser to be included in an appraisal management company's appraiser panel.

Supervisor—An individual who is an agent of an appraisal management company and who has the authority to do one or more of the following:

(i) Enter into a contract with clients for the performance of appraisal services.

(ii) Solicit or enter into an agreement for an assignment with independent appraisers.

(iii) Direct or cause the direction of the management or policies of the appraisal management company.

TILA—

(i) The Truth in Lending Act (15 U.S.C.A. §§ 1601—1667f).

(ii) Unless expressly stated or clearly implicit from the context, a reference to TILA in this subchapter includes only those provisions that relate to appraisal standards or appraisal management services.

§ 36.402. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) is applicable to the activities of and proceedings before the Board.

§ 36.403. Application procedures.

(a) *Application form.* An applicant for registration as an appraisal management company shall complete and file with the Board an application in a form prescribed by the Board. The form is available on the Board's web site at www.dos.state.pa.us/real and by contacting the Board at Post Office Box 2649, Harrisburg, PA 17105-2649, (717) 783-4866, ST-APPRAISE@pa.gov.

(b) *Application fee.* The initial application fee for registration as an appraisal management company is nonrefundable and must be in the amount in § 36.405 (relating to fees).

(c) *Filing of application.* An application is filed with the Board on the date that it is received in the office of the Board.

(d) *Approved applications.* If the Board finds that the application is complete, does not have a basis to believe that the information in the application is not true and correct, and that the information in the application qualifies the applicant for registration as an appraisal management company, the Board will issue a registration certificate by mail to the address of record in the application.

(e) *Disapproved applications.* If the Board finds that the application is incomplete, that there is reason to believe that the information is not true and correct, or that the applicant is not otherwise qualified for registration, the Board will notify the applicant, in writing, of the following:

(1) The application has been provisionally denied.

(2) The reason for provisional denial.

(3) The applicant's right to appeal the provisional denial in writing and to request a hearing before the Board.

(4) The applicant's rights under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(5) The failure to appeal the provisional denial to the Board or to request a hearing within 30 days of the date of the notice of provisional denial will result in the provisional denial of the application being deemed final.

(f) *Compliance with new requirements.* An applicant shall comply with the requirements for registration that take effect between the applicant's filing of an initial application and the issuance of registration.

§ 36.404. Content of application.

(a) An application for registration as an appraisal management company must include:

(1) Primary information of the appraisal management company, including:

(i) Legal name.

(ii) Mailing address, which will be the address of record.

(iii) Street address, if different from the mailing address.

(iv) Primary telephone number.

(2) Secondary information of the appraisal management company, including:

(i) State or place of incorporation or organization.

(ii) Documentation that the applicant is authorized to transact business in this Commonwealth if the applicant is not an individual and is incorporated or otherwise formed under the laws of a jurisdiction other than the Commonwealth.

(iii) Each fictitious name under which the applicant trades or does business in this Commonwealth.

(iv) Web site address.

(v) Primary e-mail address.

(vi) Fax number.

(vii) Each state or jurisdiction in which applicant is registered as an appraisal management company.

(viii) If the applicant began offering appraisal management services before June 8, 2013, the month and year on which the applicant began offering appraisal management services in this Commonwealth.

(ix) Owner information, including for each owner:

(A) Legal name.

(B) Street address.

(C) Telephone number.

(D) E-mail address.

(3) Key person information, including for each key person:

(i) Legal name.

(ii) Mailing address.

(iii) Street address, if different from the mailing address.

(iv) Telephone number.

(v) Title and each status that qualifies the person as a key person, including one or more of the following:

(A) Officer.

(B) Director.

(C) Manager, supervisor, or similar function or title.

(vi) E-mail address.

(vii) Whether the key person is an owner.

(4) Compliance person information, including:

(i) Legal name.

(ii) Mailing address, if different from the applicant's mailing address.

(iii) Residential address.

(iv) Telephone number.

(v) E-mail address.

(vi) Title.

(vii) Each certificate or license held for the practice of real estate appraising, if any, including the state or jurisdiction of issuance.

(viii) Whether the compliance person is an owner.

(5) The disciplinary history of the applicant, each owner, key person and the compliance person, including:

(i) Any discipline imposed in this Commonwealth or any other jurisdiction under any law regulating appraisers, appraisal management companies, or real estate brokers or salespersons.

(ii) Any discipline imposed in this Commonwealth or any other jurisdiction under any law regulating mortgage brokers or salespersons, the sale of securities, the practice of law or the practice of accounting.

(iii) A verification by each owner or key person subject to penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the disciplinary history is true and correct.

(6) An official criminal history record information report from the Pennsylvania State Police or other state agency for each state in which the applicant, owner, key person or compliance person has resided for the 10-year period immediately preceding the date of application.

(7) A surety bond or letter of credit in the form and the amount required under §§ 36.451—36.456 (relating to surety bonds and letters of credit).

(b) The individual designated by the applicant as compliance person shall certify that the applicant has:

(1) A system in place to verify that a person being added to an appraiser panel of the applicant or who will otherwise perform appraisals for the applicant of property in this Commonwealth is a certified residential appraiser or certified general appraiser and in good standing in this Commonwealth under REACA.

(2) A system in place for the performance of appraisal reviews with respect to the work of appraisers who are performing appraisals for the applicant of property in this Commonwealth to determine if the appraisals are being conducted in conformance with the minimum standards under REACA, both on a periodic basis and upon request of a client, unless otherwise limited by the terms of a contract between the client and the appraisal management company.

(3) A system in place to comply with § 36.435 (relating to recordkeeping).

(4) Authorized the compliance person to file the application and verify the contents of the application subject to the penalties of 18 Pa.C.S. § 4904 and 18 Pa.C.S. § 4911 (relating to tampering with public records or information).

(c) The individual designated as the compliance person shall sign the application and verify that the contents of the application are true and correct and subject to the penalties of 18 Pa.C.S. §§ 4904 and 4911.

§ 36.405. Fees.

The following is the schedule of fees charged by the Board:

Application for initial registration as an appraisal management company	$2,000
Biennial registration renewal fee	$1,000
Notice of change in corporate organization	$35
Letter of good standing/verification of registration	$15
Notification of change in key person or compliance person	$35
Late fee for reinstatement per month of delinquency	$50

REGISTRATION

§ 36.411. Qualifications for registration as appraisal management company.

(a) An appraisal management company that is authorized to conduct business in this Commonwealth shall establish and maintain the requirements in this section during the period in which it offers or provides appraisal management services.

(b) An appraisal management company shall have a compliance person.

(c) An appraisal management company shall establish and maintain procedures that provide assurance of compliance with the following standards of appraisal management services:

(1) Prevention of conduct or practices that compromise appraiser independence.

(2) Verification of appraiser certification and qualifications.

(3) Review of appraisal services for compliance with USPAP.

(4) Availability of a process for resolution of consumer complaints.

(5) Availability of a process for resolution of appraiser complaints.

§ 36.412. Qualifications of owners and key persons.

(a) A person who would be disqualified from eligibility to be certified or licensed under REACA as defined in subsection (b) may not be an owner or a key person.

(b) An individual would be disqualified from eligibility to be certified or licensed under REACA, as provided in section 8(d)(1) of AMCRA (63 P. S. § 457.28(d)(1)), if the individual had a license or certificate refused, denied, cancelled, suspended or revoked, or voluntarily surrendered a license or certificate under any of the following provisions of REACA or CHRIA, or similar provision of another jurisdiction, unless the license or certificate has been subsequently granted or reinstated to the individual:

(1) Section 3 of REACA (63 P. S. § 457.3).

(2) Section 6(c)(1) of REACA (63 P. S. § 457.6(c)(1)).

(3) Section 11 of REACA (63 P. S. § 457.11).

(4) Section 9124(c)(1) or (2) of CHRIA (18 Pa.C.S. § 9124(c)(1) or (2)) (relating to use of records by licensing agencies).

(c) Nothing in AMCRA or this subchapter may be construed as a requirement that an owner or a key person shall possess the education or experience required by the AQB or REACA for certification or licensure.

(d) A person who has been suspended or revoked, or has voluntarily surrendered a license under RELRA, 7 Pa.C.S. Chapter 61 (relating to Mortgage Licensing Act) or sections 301—318 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.301—456.318) (repealed) may not be an owner or key person.

(e) The Board may consider a disqualifying violation described in subsection (b) if the individual's license or certificate has been subsequently reinstated or granted in determining whether the individual possesses good moral character as required under section 5(c)(4) of AMCRA (63 P. S. § 457.25(c)(4)).

§ 36.413. Qualifications of compliance person.

(a) In addition to the qualifications in § 36.412 (relating to qualifications of owners and key persons), a compliance person shall hold the qualifications in this section.

(b) A person designated as a compliance person by an appraisal management company possesses the authority to:

(1) Enter into an agreement with the Board to bind the appraisal management company to comply with requirements of AMCRA, this subchapter and provisions of FIRREA, REACA, REARA or TILA that relate to appraisal standards or appraisal management services.

(2) Sign a report, application, form, notice or other document required to be filed with the Board.

(3) Certify, verify or otherwise attest as required by law to the contents of documents or pleadings filed with the Board.

(c) A compliance person may not have a history of:

(1) Conviction as provided in section 10(a)(5) of AMCRA (63 P. S. § 457.30(a)(5)).

(2) Disciplinary action or disposition of an administrative or a civil proceeding as described in section 10(a)(2), (3), (4), (6) or (7) of AMCRA, or a similar provision of a law or regulation of another jurisdiction, resulting in refusal, denial, cancellation, restriction, probation, suspension, voluntary surrender or revocation of the authority or privilege to practice.

(d) An individual who acts as a compliance person will be deemed to have vacated the position upon any of the following conditions:

(1) Death.

(2) Occurrence of a disqualifying condition defined in subsection (c).

(3) Termination of employment or contractual relationship by either the compliance person or the appraisal management company.

(e) During a period of less than 30 days for excused illness, absence or vacation of a compliance person, an appraisal management company may designate another key person to fulfill the duties of compliance person without notice to the Board.

(f) An absence or vacancy in the position of compliance person more than 30 days is cause for suspension of an appraisal management company's authority to conduct business until a compliance person has been designated and notice of the change has been filed with the Board as provided in § 36.414 (relating to reporting change of information.)

§ 36.414. Reporting change of information.

(a) A registrant shall report a vacancy or change in qualifying information as required in this section on forms prescribed by the Board.

(b) A registrant shall report a vacancy or change of compliance person within 30 days of the date that the compliance person terminates.

(c) A registrant shall report a change in the information required under § 36.404 (relating to content of application) within 30 days, including information relating to disciplinary history or criminal history required under § 36.404(a)(5) and (6).

§ 36.415. Requirements for exempt company.

(a) To the extent required by regulations jointly promulgated by the Federal financial institution regulatory agencies under Title XI of FIRREA (12 U.S.C.A. §§ 3331—3355), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203, 124 Stat. 1376), an exempt company shall comply with the requirements of AMCRA and this subchapter.

(b) An exempt company shall report on forms prescribed by the Board information required to be submitted by the Board to the AMC National Registry under the regulations jointly promulgated by the Federal financial institution regulatory agencies.

RENEWAL OF REGISTRATION

§ 36.421. Expiration of registration.

Registration expires on the last day of June of each odd-numbered year.

§ 36.422. Early termination of registration.

(a) A registrant may terminate registration prior to the expiration of the biennial registration period by filing with the Board a notice in a form prescribed by the Board.

(b) A notice of termination of registration must include:

(1) The date on which the registrant will cease to offer or provide appraisal management services in this Commonwealth.

(2) An acknowledgment that the registrant or its successor remains subject to disciplinary action for acts, errors or omissions occurring before the termination of registration.

(3) The signature of the compliance person.

(4) The mailing address of the registrant.

(5) If the registrant is terminating its existence, documentation of the dissolution, acquisition or merger of the registrant by or with another entity.

(6) If the registrant terminates registration because it has become exempt from registration under AMCRA, documentation in support of the basis for exemption.

(7) An acknowledgment that the surety bond or letter of credit will remain subject to claims in accordance with the procedures in §§ 36.451—36.456 (relating to surety bonds and letters of credit).

(c) The date on which the registrant terminates registration may not be any sooner than the date on which the notice is filed with the Board.

(d) The termination of registration by the Board upon filing of a notice will not be construed as an admission by the Board or the Commonwealth that the contents of the notice are true and correct.

(e) The Bureau may at any time after the filing of a notice of termination under this section begin a disciplinary action against a former registrant for a violation of section 3 of AMCRA (63 P. S. § 457.23), regarding registration of appraisal management companies.

(f) The surety bond or letter of credit will remain in effect after termination.

§ 36.423. Duration and validity of registration.

(a) An appraisal management company shall register each biennial period to retain the right to provide appraisal management services in this Commonwealth.

(b) Registration is valid throughout this Commonwealth, is not assignable or transferable, and is valid until the last date of the biennial registration period, unless terminated under § 36.422 (relating to early termination of registration).

§ 36.424. Renewal of registration.

(a) Application for renewal of registration shall be made on forms provided by the Board and include the fee prescribed by the Board in § 36.405 (relating to fees).

(b) An application for renewal must be received by the Board with the required biennial renewal fee before the expiration of the previous biennial registration period.

STANDARDS OF PRACTICE

§ 36.431. Compliance with USPAP.

(a) An appraisal management company shall require that appraisal assignments be completed in compliance with USPAP.

(b) An appraisal management company shall establish a system to review appraisal assignments which is reasonably calculated to assure compliance with USPAP by appraisers.

(c) An appraisal management company may not solicit, offer, accept an offer or contract for a valuation service

that it knows or has reason to know violates REACA, RELRA, FIRREA, AMCRA or this subchapter.

§ 36.432. Verification of appraiser certification.

An appraisal management company shall establish and maintain a system to verify that appraisals are completed by an appraiser who possesses a class of certification issued by the Board that authorizes appraisal of real property in this Commonwealth that is the subject of the appraisal and which is current and valid.

§ 36.433. Appraisal reviews.

(a) Appraisal reviews shall be performed in accordance with USPAP.

(b) An examination of an appraisal report for grammatical or typographical errors or for completeness is not required to comply with USPAP.

§ 36.434. Broker price opinions and evaluations.

(a) An appraisal management company may not solicit or order, nor offer to solicit or order, a BPO for use in a non-Federally related transaction.

(b) An appraisal management company may not solicit or order, nor offer to solicit or order, a BPO for use in a Federally-related transaction.

(c) An appraisal management company may not solicit or order, nor offer to solicit or order, an evaluation.

(d) A comparative market analysis is not a BPO for purposes of AMCRA, REACA or this subchapter if performed for one or both of the following purposes:

(1) In pursuit of a listing.

(2) To determine probable selling price.

§ 36.435. Recordkeeping.

(a) Each appraisal management company shall maintain the following records:

(1) A record of each assignment that it has ordered for appraisal of real property located in this Commonwealth, including the following:

(i) The order between the appraisal management company and the appraiser.

(ii) Each appraisal report received from an appraiser, including the original report, revised reports, and addenda or other materials furnished subsequent to the delivery of the original report.

(iii) Written communications between the appraiser and the appraisal management company and any other entity involved in the transaction.

(iv) The order engaging another appraiser for the purpose of reviewing the appraisal.

(v) A review of the appraisal performed, including any data supporting the selection of the appraisal for review, the original review report, subsequent correspondence between the reviewer and appraisal management company, and each subsequent revised review report.

(vi) Written communications related to obligations under AMCRA or this subchapter between the appraisal management company and its client, including documents supplied to that client.

(vii) A record of fees disbursed to contracted appraisers and the fee received by the appraisal management company from the appraisal management company's client.

(2) Appraiser fee schedules, including:

(i) Fees paid for a defined service.

(ii) Documentation to support that the fee schedule is customary and reasonable and complies with provisions of TILA that relate to appraisal standards or appraisal management services.

(iii) Payment policies, including time for payment of appraisal fees.

(iv) Effective dates of the schedules.

(3) Panels of appraisers used for assignments in this Commonwealth, including:

(i) The name of each appraiser.

(ii) The appraiser's certificate number.

(iii) The date the appraiser was placed on the panel.

(iv) The region or area in which the appraiser's service may be used.

(v) The date and reason for removal, if the appraiser is removed from the panel.

(b) An appraisal management company shall maintain the records in subsection (a)(1) for 5 years beginning on the latest of the following:

(1) The date of final action of the assignment.

(2) The date of final disposition of the proceeding, if the appraisal management company is notified that the transaction is the subject of a court proceeding or an administrative proceeding by the Board.

(c) An appraisal management company shall produce for inspection and copying by the Board within 30 days any record required to be maintained by AMCRA or this subchapter.

§ 36.436. Requirements for solicitation or order of appraisals.

(a) An appraisal management company shall include in an order or order solicitation for appraisal services from a certified residential appraiser or certified general appraiser who is not an employee of the appraisal management company:

(1) The fee to be paid to the appraiser for the appraisal assignment.

(2) The terms for time of payment for appraisal services.

(3) The appraisal management company's registration number.

(b) An appraisal management company may satisfy the requirements of subsection (a) by either of the following means:

(1) A legible statement of the required information on an order or solicitation for an appraisal assignment.

(2) A legible reference to an existing written agreement between the appraisal management company and the appraiser that includes the required information.

(c) An appraisal management company shall include in an appraiser panel solicitation in this Commonwealth its appraisal management company registration number.

§ 36.437. Duties of compliance persons.

(a) An appraisal management company is subject to disciplinary action under AMCRA and this subchapter for the acts or omissions of a compliance person who fails to perform a duty in this section.

(b) A compliance person shall ensure compliance of an appraisal management company with section 8 of AMCRA (63 P. S. § 457.28).

(c) An appraisal management company, acting through its compliance person, shall report to the Bureau, directly or through another agent of the appraisal management company, a material violation as defined under section 129E(e) of TILA (15 U.S.C.A. § 1639e(e)) and corresponding regulations regarding appraisal independence requirements.

(d) A compliance person who has a reasonable basis to believe that an appraisal management company, its employee or its agent has violated appraisal independence requirements of AMCRA or this subchapter shall report the matter to the Bureau within a reasonable time after formulating the belief that a violation has occurred.

DISCIPLINARY ACTION

§ 36.441. Prohibited acts.

(a) The Board may impose one or more sanctions authorized under AMCRA if the Board finds that an appraisal management company, key person or compliance person violated AMCRA or this chapter.

(b) The following acts, errors or omissions constitute a violation of the standards of conduct of an appraisal management company:

(1) Violation of AMCRA or this subchapter.

(2) Violation of FIRREA.

(3) Violation of TILA.

(4) Violation of a statute or regulation of another jurisdiction regulating appraisal management companies.

§ 36.442. Improper influence and other prohibited practices.

(a) The following acts constitute improper influence or a practice in violation of AMCRA and this chapter, without proof of intent of the appraisal management company or its agent:

(1) A requirement that the appraiser collect a fee from a borrower.

(2) A requirement that the appraiser provide access to the appraiser's digital signature.

(3) A prohibition on the appraiser to report the fee for the appraisal services.

(4) A prohibition on the appraiser to note or report real property appraisal assistance.

(5) Nonpayment of, or refusal to pay for, appraisal services rendered for a reason other than the breach of agreement or substandard performance by the appraiser.

(6) A clause or provision in an order requiring an appraiser to indemnify or hold harmless for acts or omissions of a person other than the appraiser.

(7) A clause or provision in an order requiring an appraiser to have a duty to defend the appraisal management company in a civil action or proceeding.

(8) Removal of an appraiser from the appraiser panel without notice and opportunity for rebuttal.

(9) A request to an appraiser to provide comparable properties for a specified property prior to completion of the appraisal report.

(b) The following acts, if committed with the intent to influence or attempt to influence the development, reporting, result or review of an appraisal, constitute improper influence or a practice in violation of AMCRA and this chapter:

(1) A pattern or course of conduct involving repeated review of appraisals that is not performed in accordance with the appraisal management company's policy for appraisal reviews or quality control functions.

(2) A limitation on the time of completion of an appraisal assignment that impairs the credibility of the report. For purposes of this paragraph, a time limitation or deadline established for the purpose of completing the assignment to complete a transaction by a date established by agreement of parties other than the appraisal management company does not constitute improper influence or practice in violation of AMCRA and this chapter.

(3) A delay in payment for appraisal services that violates the appraisal management company's policy for payment.

SURETY BONDS AND LETTERS OF CREDIT

§ 36.451. Requirements for surety bond or letter of credit.

(a) A registrant shall maintain a surety bond or letter of credit in the form and amount prescribed in this subchapter.

(b) A surety bond must be in the amount prescribed in § 36.452(a) (relating to amount of surety bond or letter of credit), in the form prescribed by § 36.453 (relating to form of surety bond) and issued by a company authorized to transact surety business in this Commonwealth by the Insurance Department, which possesses a current A. M. Best Rating of A- or better, or a Standard & Poor's insurer's financial strength rating of A or better, or a comparable rating by another NRSRO.

(c) A letter of credit must be in the amount prescribed in § 36.452(b), in the form prescribed by § 36.454 (relating to form of letter of credit) and payable at an office of a commercial bank in the United States. At the time of issuance of the letter of credit, the issuing bank or its holding company shall have a B/C or better rating or 2.5 or better credit evaluation score by Fitch Ratings, as successor to the rating services of Thomson BankWatch, or the issuing bank shall have a CD or long-term issuer credit rating of BBB or better or a short-term issuer credit rating of A-2 or better by Standard & Poor's or a comparable rating by another NRSRO.

(d) For purposes of this section and §§ 36.452—36.456, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Claimant—This Commonwealth or a person with a right to receive compensation for performance of a registrant's obligations under AMCRA.

Faithful performance of the registrant's obligations under AMCRA—The payment of a civil penalty, restitution or costs of investigation under AMCRA or the act of July 2, 1993 (P. L. 345, No. 48) (63 P. S. §§ 2201—2207), performance of a contractual obligation or satisfaction of a duty owed for conduct subject to AMCRA.

§ 36.452. Amount of surety bond or letter of credit.

(a) A registrant who maintains a surety bond to satisfy the requirements of AMCRA and § 36.451 (relating to requirements for surety bond or letter of credit) shall maintain a bond in the amount of $40,000.

(b) A registrant who maintains a letter of credit to satisfy the requirements of AMCRA and § 36.451 shall maintain a letter of credit in the amount of $40,000.

(c) The Board may require additional amount or form of security for the following reasons:

(1) As a penalty for a violation of AMCRA or this subchapter regarding the nonperformance of services or

nonpayment of fees, or a violation of a similar law or regulation of another jurisdiction.

(2) A change in the financial strength or rating of the surety or issuer of the letter of credit.

(3) A failure to maintain the bond or letter of credit in the minimum amount required by AMCRA or this subchapter, whichever is greater.

§ 36.453. Form of surety bond.

A surety bond held by a registrant to satisfy the requirements of AMCRA and this subchapter must include:

(1) The name and mailing address of the registrant.

(2) The name and title of the compliance person.

(3) The name, mailing address, telephone number and National Association of Insurance Commissioners company code of the surety.

(4) The policy number for the surety bond.

(5) Indemnification for claims that arise or occur during the biennial licensure period during which the bond is issued for the benefit of:

(i) The Commonwealth or the public for nonperformance of obligations under AMCRA or this subchapter that occur during the period of the surety bond.

(ii) An appraiser who has performed an appraisal of real property located in this Commonwealth for the registrant during the period of the surety bond for which the appraiser has not been paid.

(6) An agreement by the surety to notify the Bureau if the surety bond is cancelled or terminated.

§ 36.454. Form of letter of credit.

A letter of credit held by a registrant to satisfy the requirements of AMCRA and this subchapter must include:

(1) A provision that the letter of credit is irrevocable for a term of not less than 1 year and that the letter of credit automatically renews annually unless the letter of credit is specifically nonrenewed by the issuing bank 90 days or more prior to the anniversary date of its issuance and the issuing bank gives at least 90 days prior written notice to the Bureau and the registrant of its intent to terminate the letter of credit at the end of the current term.

(2) A provision that the Department has the right to draw upon the credit before the end of its term and to convert it into a cash collateral bond if the registrant fails to replace the letter of credit with other acceptable bond within 30 days of the bank's notice to terminate the letter of credit.

(3) The letter of credit must name the Department as the beneficiary and be payable to the Department under § 36.456 (relating to claims against surety or obligor).

(4) A letter of credit is subject to the most recent edition of the *Uniform Customs and Practices for Documentary Credits*, published by the International Chamber of Commerce, and the laws of the Commonwealth, including 13 Pa.C.S. (relating to Uniform Commercial Code).

(5) The Board will not accept letters of credit from a bank that has failed to make or delayed in making payment on a defaulted letter of credit.

§ 36.455. Maintenance of surety bond or letter of credit.

(a) If the rating of a surety or bank that has issued a bond or letter of credit falls below the minimum ratings required under § 36.451(b) and (c) (relating to requirements for surety bond or letter of credit), a registrant shall replace the bond or letter of credit within 45 days from the date of the substandard rating decline with a new bond or letter of credit that satisfies the requirements of § 36.451.

(b) If a bond or letter of credit is not replaced within 45 days of the substandard rating decline, the Department has the discretion to draw on the surety bond or letter of credit and deposit the proceeds with the State Treasurer to secure the registrant's liability and to begin proceedings under AMCRA, this subchapter and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to suspend or revoke the registrant's authority to perform appraisal management services in this Commonwealth.

(c) If a surety or bank makes a payment upon a bond or a letter of credit issued to fulfill the requirements of AMCRA or this subchapter, the registrant shall obtain additional security within 45 days of the date of payment in the form of an additional surety bond or letter of credit in an amount sufficient to maintain the minimum amount required under AMCRA or this subchapter, whichever is greater.

§ 36.456. Claims against surety or obligor.

(a) The Department may make a claim to a surety or obligor to:

(1) Recover unpaid fees for appraisal services.

(2) Obtain payment for civil penalties, costs of investigation or fees payable to the Commonwealth.

(3) Obtain payment for debts arising out of the performance of appraisal management services in this Commonwealth.

(4) Obtain security as provided in § 36.455(b) (relating to maintenance of surety bond or letter of credit).

(b) The Department, in its discretion, will make a claim to a surety or obligor for a purpose in subsection (a) upon one of the following conditions:

(1) The expiration of the period of appeal from the entry of a final order issued by the Board in a proceeding under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and a determination by the Department based upon a review of its records that all or part of a civil penalty or costs of investigation levied by that order remain unpaid.

(2) The failure of a registrant to satisfy a written agreement with the Board or the Bureau to pay an amount described in subsection (a).

(3) A determination by the Prosecution Division of the Bureau upon a complaint filed with the Bureau that there is probable cause to believe that a registrant owes a sum certain for unpaid fees, civil penalties, costs of investigation, fees payable to this Commonwealth or debts arising out of the performance of appraisal management services in this Commonwealth.

(4) Violation of § 36.455.

(c) The Department will only make a claim to a surety on behalf of third parties to recover unpaid fees for appraisal services or obtain payments for debts arising out of the performance of appraisal management services in this Commonwealth if the activities involved the valuation of real estate located in this Commonwealth.

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