

# PROPOSED RULEMAKING

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CHS. 121, 129 AND 145]

### Small Sources of NO<sub>x</sub>, Cement Kilns and Large Internal Combustion Engines

The Department of Environmental Protection (Department) is soliciting comments on changes it recommends to be made to the small sources of nitrogen oxide (NO<sub>x</sub>), cement kilns and large internal combustion (IC) engines proposed rulemaking published at 32 Pa.B. 5178 (October 19, 2002).

The draft final rulemaking establishes in 25 Pa. Code Chapter 129 (relating to standards for sources) additional ozone season NO<sub>x</sub> requirements for certain boilers, turbines and stationary IC units that are small sources of NO<sub>x</sub> in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties to achieve an estimated 3-ton per day reduction that the United States Environmental Protection Agency (EPA) determined is necessary to support the ozone attainment demonstration for Philadelphia. The proposed rulemaking also establishes in 25 Pa. Code Chapter 145 (relating to interstate pollution transport reduction) ozone season NO<sub>x</sub> emission limits for large stationary IC engines and Portland cement kilns in this Commonwealth to satisfy the Federal NO<sub>x</sub> State Implementation Plan (SIP) call. The NO<sub>x</sub> SIP call was issued in 1998, requiring 22 states that contribute to ozone nonattainment in the northeast to regulate NO<sub>x</sub> sources to meet NO<sub>x</sub> budgets set by the EPA. The large IC engine and cement kiln portion of the proposed rulemaking was initially proposed March 19, 1999, and never finalized. The current proposal was adopted by the Environmental Quality Board on September 17, 2002.

#### A. Summary of the Advance Notice of Final Rulemaking Changes

In response to comments received during the official public comment period on the proposed rulemaking and following the Department's review of other related information, the Department has prepared a draft final rulemaking for public comment. The draft final rulemaking contains significant changes in several areas. These changes include:

- The proposed rulemaking provided the opportunity for affected unit operators to meet the emission limits by averaging with other units; however, commentators requested that specific methodologies be provided along with the option to utilize NO<sub>x</sub> allowances. The draft final rulemaking provides a simplified and specific compliance mechanism that incorporates both averaging and allowance surrender as compliance options.

- The new provisions set a baseline of allowable emissions for each type of unit. An operator is accountable for any emissions from the units above these baselines. An operator may average NO<sub>x</sub> emissions among the owner's affected units, install controls for one or more units or not control at all, in which case the operator may purchase or utilize NO<sub>x</sub> allowances to cover any excess emissions.

- Because the provisions expand the opportunity to average across different types of units and among facilities, the optional emission rate limits have been eliminated. The same overall level of emission reductions is expected.

- The emergency unit exemptions have been eliminated. Emissions from the routine maintenance testing of standby units generally do not exceed the threshold amount and will remain unaffected.

- Emission limits in 25 Pa. Code Chapter 145 for lean burn and spark ignited engines are increased from 1.5 to 3.0 grams per Bhp/hr to reflect anticipated changes to the Federal SIP call rules that were remanded and are due for publication by the EPA. For similar technical reasons, the limits in 25 Pa. Code Chapter 129 for these types of engines were also revised. The baseline for cement kilns was set at a level that, in conjunction with the current individual facility emission limits contained in the SIP, achieves the level of emission control required by the SIP call.

- A new compliance option has been added to 25 Pa. Code Chapter 129 to encourage energy production from zero emission renewable energy sources. Owners and operators of affected units may install and operate renewable energy sources to generate NO<sub>x</sub> credits or may acquire and use credits generated by other sources. Renewable energy production reduces some NO<sub>x</sub> emitting power generation. However, under the Department's existing NO<sub>x</sub> Budget Trading Program (program), renewable energy production will not result in actual, surplus and creditable emission reductions unless NO<sub>x</sub> allowances are also retired. Therefore, the draft final rulemaking provides for the retirement of a matching quantity of NO<sub>x</sub> allowances allocated in the new source set aside provision (in 25 Pa. Code § 145.42(d) (relating to NO<sub>x</sub> allowance allocations)) of the existing program.

- Additional emission measurement options were added to 25 Pa. Code Chapters 129 and 145 to provide additional cost-effective alternatives.

While there is no legal requirement to provide an opportunity to comment upon the Department's recommendations for final rulemaking, the Department believes further discussion would serve the public interest in this instance.

#### B. Contact Persons

For further information or to request a copy of the draft final rulemaking, contact J. Wick Havens, Chief, Division of Air Resource Management, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-9495, [jhavens@state.pa.us](mailto:jhavens@state.pa.us); or Kristen M. Campfield, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). The draft final rulemaking is available on the Department's website ([www.dep.state.pa.us](http://www.dep.state.pa.us)).

Written or electronic comments should be sent to J. Wick Havens at the previous address. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comment should be resubmitted to assure receipt. Comments must be received by January 19, 2004. A subject heading of the proposal and a

return name and address must be included in each letter or transmission. Comments will not be accepted by facsimile or voice mail.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 03-2392. Filed for public inspection December 19, 2003, 9:00 a.m.]

## STATE POLICE

[37 PA. CODE CH. 23]

### Administration of the Bureau of Liquor Control Enforcement; Age Compliance Check Program

Under 18 Pa.C.S. §§ 6308 and 6310 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages; and inducement of minors to buy liquor or malt or brewed beverages), this proposed rulemaking is necessary for the general administration of the age compliance program. This proposed rulemaking prescribes the manner in which compliance checks are to be performed and requires officers, employees and interns of the State Police Bureau of Liquor Control Enforcement (Bureau) to undergo approved training prior to participation in a compliance check.

#### *Effect*

The proposed rulemaking will affect the Bureau and establishments licensed to serve alcoholic beverages.

#### *Fiscal Impact*

The proposed rulemaking will impose minimal costs upon the State Police in developing and implementing the requisite training and the age compliance check program.

#### *Paperwork Requirements*

The proposed rulemaking will require the completion of additional forms, reports or other paperwork as prescribed and provided by the State Police.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 8, 2003, the State Police submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and the Senate Law and Justice Committee.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the State Police within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the State Police, the General Assembly and the Governor of objections raised.

#### *Sunset Date*

No sunset date has been assigned; however, every facet of this proposed rulemaking will be continuously reviewed for effectiveness, clarity and whether it is serving the greater interests of citizens of this Commonwealth.

#### *Public Comment*

Interested parties wishing to comment are invited to submit a written statement within 30 days of the publication of this proposed rulemaking in the *Pennsylvania*

*Bulletin*. Each written statement must include the name, address and telephone number of the interested party and a concise statement with sufficient detail on the subject. Written statements should be directed to Syndi L. Guido, Policy Director, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110.

#### *Contact Person*

The contact person is Syndi L. Guido, Policy Director, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. Individuals with a disability who require an alternative format of this document (that is, large print, audio tape or Braille), should contact Syndi Guido to may make the necessary arrangements.

COL. JEFFREY B. MILLER,  
*Commissioner*

**Fiscal Note:** 17-64. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 37. LAW

#### PART I. STATE POLICE

#### CHAPTER 23. ADMINISTRATION OF THE BUREAU OF LIQUOR CONTROL ENFORCEMENT AGE COMPLIANCE CHECK PROGRAM

##### GENERAL PROVISIONS

Sec.  
23.1. Definitions.

##### COMPLIANCE CHECKS

23.21. Required training.  
23.22. Age compliance checks.

##### GENERAL PROVISIONS

#### § 23.1. Definitions.

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

*Age compliance check*—An undercover investigation of a licensed premises during which an underage buyer purchases or attempts to purchase liquor or malt or brewed beverages under the supervision of a Bureau officer.

*Compliance*—Refusing sale or service of liquor or malt or brewed beverages to the underage buyer.

*Bureau officer*—A State Police officer or liquor enforcement officer who is assigned to an age compliance check.

*Enforcement Bureau (Bureau)*—The Bureau of Liquor Control Enforcement of the State Police.

*Licensed premises*—A business licensed by the Liquor Control Board to sell liquor or malt or brewed beverages in this Commonwealth.

*Liquor*—Includes any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks and drinkable liquids, preparations or mixtures, and reused, recovered or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than .5% of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages.

*Malt or brewed beverages*—Any beer, lager beer, ale, porter or similar fermented malt beverage containing .5%

or more of alcohol by volume, by whatever name the beverage may be called.

*Purchase*—Obtaining food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for consideration.

*Sale or sell*—The transfer of liquor, alcohol or malt or brewed beverages for consideration.

*Underage buyer*—An individual between 18 and 20 years of age who is an officer, employee or intern of the Enforcement Bureau and participates in an age compliance check.

### COMPLIANCE CHECKS

#### § 23.21. Required training.

(a) *Bureau officers.* Before participating in an age compliance check, Bureau officers shall complete training approved by the Enforcement Bureau.

(b) *Underage buyers.* Before participating in an age compliance check, an underage buyer shall complete a training course prescribed by the Enforcement Bureau, which includes instruction in at least the following areas of study:

(1) Applicable provisions of the Liquor Code (43 P. S.) and 18 Pa.C.S. (relating to the Crimes Code).

(2) Safety protocols.

(3) Undercover investigations.

(4) Testifying in court.

#### § 23.22. Age compliance checks.

(a) The age compliance check shall be conducted with at least one bureau officer and one underage buyer.

(b) A Bureau officer shall be in charge of the age compliance check.

(c) A Bureau officer shall enter and remain inside the licensed premises during the age compliance check.

(d) The age compliance check shall be conducted at the licensed premises during regular business hours.

(e) While inside the licensed establishment, the Bureau officer will endeavor to maintain visual contact with the underage buyer.

(f) The Bureau officer shall observe the activity inside the licensed premises and determine if it is safe and appropriate to conduct the age compliance check.

(g) Underage buyers may purchase or attempt to purchase liquor or malt or brewed beverages only during an age compliance check and only while under the direct supervision of a Bureau officer.

(h) Underage buyers may not consume liquor or malt or brewed beverages.

(i) Upon purchase of liquor or malt or brewed beverages, the underage buyer shall deliver the liquor or malt or brewed beverages to the Bureau officer as soon as possible, consistent with safety protocols.

(j) A Bureau officer shall be responsible for insuring notification is made of the results of the age compliance check to the licensed premises.

(1) If the licensed premises is not in compliance, immediate verbal notification will be provided followed by written notification within 10 working days.

(2) If the licensed premises is found to be in compliance, written notification of compliance will be provided to the licensed premises.

[Pa.B. Doc. No. 03-2393. Filed for public inspection December 19, 2003, 9:00 a.m.]

### [37 PA. CODE CH. 41]

#### Designation of Emergency Vehicles

Under 75 Pa.C.S. § 6106 (relating to designation of emergency vehicles by Pennsylvania State Police), the State Police may designate any vehicle or group of vehicles as emergency vehicles upon a finding that the designation is necessary to the preservation of life or property or to the execution of emergency governmental functions. Under existing regulations, the only vehicles eligible for emergency designation are those belonging to the Pennsylvania Emergency Management Agency, a local emergency management agency or a bona fide rescue organization. This proposed rulemaking amends § 41.5 (relating to eligibility) to allow the Department of Corrections (Department) to apply for emergency vehicle designation of Department vehicles used by its Hostage Rescue Teams, Hostage Negotiation Teams, Corrections Emergency Response Teams, Corrections Rifle Specialist Teams and Central Office Special Teams Coordinator.

#### *Effect*

The proposed rulemaking will affect the Department.

#### *Fiscal Impact*

The proposed rulemaking will have a minimal fiscal impact.

#### *Paperwork Requirements*

The proposed rulemaking will not require the completion of additional forms, reports or other paperwork.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 8, 2003, the State Police submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and the Senate Law and Justice Committee.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the State Police within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the State Police, the General Assembly and the Governor of objections raised.

#### *Sunset Date*

No sunset date has been assigned; however, every facet of this proposed rulemaking will be continuously reviewed for effectiveness, clarity and whether it is serving the greater interests of citizens of this Commonwealth.

#### *Public Comment*

Interested parties wishing to comment are invited to submit a written statement within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party and a concise statement with sufficient detail on the

subject. Written statements should be directed to Syndi L. Guido, Policy Director, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110.

*Contact Person*

The contact person is Syndi L. Guido, Policy Director, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. Individuals with a disability who require an alternative format of this document (such as, large print, audio tape or Braille), should contact Syndi Guido to make the necessary arrangements.

COL. JEFFREY B. MILLER,  
*Commissioner*

**Fiscal Note:** 17-66. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 37. LAW**  
**PART I. STATE POLICE**  
**CHAPTER 41. DESIGNATION OF**  
**EMERGENCY VEHICLES**

**§ 41.5. Eligibility.**

(a) *Considerations.* The following vehicles may qualify for an emergency vehicle designation:

\* \* \* \* \*

**(3) Department of Corrections vehicles used by members of the Department's Hostage Rescue Teams, Hostage Negotiation Teams, Corrections Emergency Response Teams, Corrections Rifle Specialist Teams and Central Office Special Teams Coordinator.**

(b) *Exclusions.* Private vehicles of the following persons will not be considered for an emergency vehicle designation:

\* \* \* \* \*

**(6) Department of Corrections, its personnel, and members of its Hostage Rescue Teams, Hostage Negotiation Teams, Corrections Emergency Response Teams, Corrections Rifle Specialist Teams and Central Office Special Teams Coordinator.**

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[Pa.B. Doc. No. 03-2394. Filed for public inspection December 19, 2003, 9:00 a.m.]