

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 75]

Driver's License Examination

The Department of Transportation (Department), under the authority contained in 75 Pa.C.S. §§ 1504(c), 1508.1 and 6103 (relating to classes of licenses; physical examinations; and promulgation of rules and regulations by the department) proposes to amend §§ 75.2 and 75.6 (relating to definitions; and physical examination) to read as set forth in Annex A.

Purpose of the Chapter

Chapter 75 defines more fully the requirements of 75 Pa.C.S. §§ 1504(c), 1508, 1514(b) and 1607 by listing the specific requirements with regard to each step in the examination process.

Purpose of the Proposed Rulemaking

Currently, Chapter 75 requires that an applicant for a driver's license who has never been licensed in this Commonwealth or another state submit to a physical examination by a licensed physician, a certified registered nurse practitioner or a physician's assistant. The purpose of this proposed rulemaking is to include chiropractors among the listed healthcare providers who can administer a physical examination for these new driver applicants.

Chiropractors are recognized in the healthcare and health insurance industries as portal of care practitioners, that is, primary care providers, permitted to furnish necessary patient care for health maintenance. Chiropractors are permitted under Federal regulations to conduct the biennial medical examinations for commercial drivers required by Federal Highway Administration Motor Carrier Safety regulations. The addition of chiropractors as provided in this proposed rulemaking makes Department regulations consistent with current health care practices and Federal regulations.

Persons and Entities Affected

This proposed rulemaking affects chiropractors as well as individuals desiring to obtain a driver's license whose primary care provider is a chiropractor, or who otherwise desire to have the physical examination required to obtain a driver's license conducted by a chiropractor.

Fiscal Impact

Implementation of this proposed rulemaking will not require the expenditure of additional funds by the Commonwealth or local municipalities. The proposed rulemaking will not impose any additional costs on the medical community and may reduce costs to individuals by allowing applicants for a driver's license to have the required physical examination performed by their primary care provider.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 17, 2004, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting this proposed

rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. 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 shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final-form publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections.

Sunset Date

The Department is not establishing a sunset date for these regulations, since the regulations are needed to administer 75 Pa.C.S. (relating to Vehicle Code). The Department will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Rebecca L. Bickley, Director, Bureau of Driver Licensing, 4th Floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, PA 17104, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this proposed rulemaking is Anne P. Titler, Acting Manager, Driver Safety Division, Bureau of Driver Licensing, 4th Floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, PA 17104, (717) 783-4737.

ALLEN D. BIEHLER, P. E.

Secretary

Fiscal Note: 18-398. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 75. DRIVER'S LICENSE EXAMINATION

§ 75.2. Definitions.

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

* * * * *

Chiropractor—A practitioner of chiropractic licensed in this Commonwealth under the Chiropractic Practice Act (63 P. S. §§ 625.101—625.1106) and 49 Pa. Code Chapter 5 (relating to State Board of Chiropractic).

* * * * *

§ 75.6. Physical examination.

An applicant for a driver's license, who has never been issued a driver's license in this Commonwealth or another

state, shall submit to a physical examination **performed** by a licensed physician, **[or]** a CRNP **[or]**, a physician assistant **or a chiropractor**. The licensed physician, **[or]** CRNP **[or]**, physician assistant **or chiropractor** performing the examination shall report the findings of the physical examination to the Department on a physical examination certificate or form provided by the Department. The Department may request that the report be submitted on a special certificate relating to the alleged mental or physical disability of the applicant or licensee.

[Pa.B. Doc. No. 04-2144. Filed for public inspection December 3, 2004, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 261a]

Hazardous Waste Management System; Proposed Exclusion for Identification and Listing Hazardous Waste

The Environmental Quality Board (Board) proposes to amend Chapter 261a (relating to identification and listing of hazardous waste). The proposed rulemaking would grant a delisting to MAX Environmental Technologies, Inc. (MAX) to exclude treated Electric Arc Furnace Dust (EAFD) treated at the hazardous waste treatment facility operated by MAX in Yukon, PA, from the lists of hazardous wastes.

This order was adopted by the Board at its meeting of October 19, 2004.

A. *Effective Date*

The proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information contact D. Richard Shipman, Chief, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8472, (717) 787-6239; or Kurt Klappkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us.

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of sections 105, 402 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.402 and 6018.501) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20). Under sections 105, 402 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety welfare and property, and the air, water and other natural resources of this Commonwealth. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background and Purpose*

A delisting petition is a request to exclude waste from the list of hazardous wastes under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C.A. §§ 6901–6986) and SWMA regulations. Under 40 CFR 260.20 and 260.22 (relating to general; and petitions to amend part 261 to exclude a waste produced at a particular facility), which are incorporated by reference in § 260a.1 (relating to incorporated by reference; purpose, scope and applicability) and modified by § 260a.20 (relating to rulemaking petitions) a person may petition the United States Environmental Protection Agency (EPA) or a state administering an EPA-approved hazardous waste management program to remove waste or the residuals resulting from effective treatment of a waste from a particular generating facility from hazardous waste control by excluding the waste from the lists of hazardous wastes in 40 CFR 261.31 and 261.32 (relating to hazardous wastes from non-specific sources; and hazardous wastes from specific sources). Specifically, 40 CFR 260.20 allows a person to petition to modify or revoke any provision of 40 CFR Parts 260–266, 268 and 273. Section 260.22 of 40 CFR provides a person the opportunity to petition to exclude a waste on a “generator specific” basis from the hazardous waste lists. Under the Commonwealth's hazardous waste regulations in § 260a.20 (relating to rulemaking petitions), these petitions are to be submitted to the Board in accordance with the procedures established in Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy) instead of the procedures in 40 CFR 260.20(b)–(e).

Effective November 27, 2000, the Department received approval from the EPA, under the RCRA, to administer the Commonwealth's hazardous waste management program instead of RCRA. As part of that program approval and delegation, the Department and the Board are authorized to review and approve petitions for delisting of hazardous waste.

In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which the EPA listed the waste in 40 CFR 261.11 (relating to criteria for listing hazardous waste) and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity and toxicity) and must present sufficient information for the agency to decide whether factors other than those for which the waste was originally listed warrant retaining it as a hazardous waste.

On November 3, 2003, MAX submitted a delisting petition under § 260a.20 and 40 CFR 260.20 and 260.22 (which are incorporated by reference in the hazardous waste regulations). The petition seeks to exclude from the lists of hazardous waste in 40 CFR 261.32 the residues resulting from effective treatment EAFD conducted at the MAX Yukon facility. EAFD is listed as a hazardous waste in 40 CFR Part 261 (relating to identification and listing of hazardous waste) and bears waste code K061. EAFD/K061 is defined in 40 CFR 261.32 in the iron and steel industry group as “emission control dust/sludge from the primary production of steel in electric arc furnaces.”

The petition submitted by MAX provides: (1) descriptions and schematic diagrams of the proposed EAFD treatment system; (2) detailed chemical and physical analyses of the residuals resulting from treatment of samples of EAFD at MAX's Yukon facility; and (3) the results of modeling to evaluate the risk posed to human

health and the environment if the proposed delisted material was to be placed in a Subtitle D residual waste landfill. MAX conducted the modeling using the EPA's Delisting Risk Assessment System (DRAS) modeling software and included the assumption that the liner system of the Subtitle D landfill failed to contain the material.

The Department has carefully and independently reviewed the information contained in the petition submitted by MAX. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA), as reflected in section 222 of the HSWA (42 U.S.C.A. § 6921(f) and 40 CFR 260.22(d)(2)–(4).

The Department believes that this information demonstrates that the residues resulting from treatment of EAFD meeting the acceptance criteria identified in the petition and which are treated at the MAX Yukon facility in accordance with the treatment protocols described in the petition, satisfy the delisting criteria in 40 CFR 260.22. The data reviewed by the Department shows that residues resulting from treatment of EAFD at the MAX Yukon facility no longer meet the criteria for which it was originally listed as hazardous waste K061. The data further demonstrate that the treated EAFD residuals do not possess hazard characteristics of ignitability, corrosivity, reactivity or toxicity as defined by the RCRA. Finally, the data submitted in the petition, coupled with modeling using the EPA's DRAS model, show that treated EAFD residuals do not pose a threat to human health or the environment when disposed of in a RCRA Subtitle D/Pennsylvania Class I residual waste landfill.

Accordingly, the proposed rulemaking would provide for a conditional delisting of the EAFD that has been treated at the MAX Yukon facility. Under the conditions of the proposed delisting, MAX must dispose of the treated EAFD residuals in a RCRA Subtitle D/Pennsylvania Class I residual waste landfill which has groundwater monitoring and which is permitted to manage residual waste. The proposed exclusion would be valid for a maximum annual rate of 300,000 cubic yards per year. Any amount exceeding this volume would not be delisted under this proposed exclusion. The conditional exclusion will require that MAX maintain operational controls and protocols to assure that the treated waste continuously meets the applicable treatment standards.

In January and March 2004, the Department briefed the Solid Waste Advisory Committee (SWAC) on the hazardous waste delisting petition submitted by MAX. On September 16, 2004, the Department presented the draft proposed rulemaking to the SWAC for their input. The SWAC recommended that the draft regulations be forwarded to the Board for consideration as a proposed rulemaking.

E. Summary of Regulatory Requirements

Chapter 261a contains the provisions for the identification and listing of hazardous waste. Section 261a.32 (relating to hazardous wastes from specific sources) is being added to refer to a new Appendix IXa (relating to wastes excluded under 25 Pa. Code § 260a.20 and 40 CFR 260.20 and 260.22). New Appendix IXa contains Table 2a (relating to wastes excluded from specific sources), providing a conditional delisting of the treated EAFD residuals produced through the treatment of EAFD wastes at the MAX Yukon facility. This numbering scheme is being used to parallel the Federal regulations for clarity and consistency with the incorporation by reference of the Commonwealth's hazardous waste regulations.

The delisting levels in Appendix IXa were established by using health-based values calculated by the DRAS. The treated waste must meet the Land Disposal Restriction (LDR), as defined in 40 CFR Part 268 (relating to land disposal restrictions), before the waste can be placed in a landfill. As a result, the LDR treatment standards were substituted as the delisting levels for specific constituents where they were more stringent than the health-based DRAS levels. The delisting levels for antimony, arsenic, beryllium, selenium, thallium and vanadium were calculated by the DRAS, whereas the levels for barium, cadmium, chromium, lead, mercury, nickel, silver and zinc are LDR treatment standards.

Because MAX's petition was based on bench scale treatability studies and not a full-scale treatment process, the Department will require verification data submission for each batch that is initially treated. The data submittal frequency may be reduced upon demonstration that a full-scale treatment process is effective.

F. Benefits, Costs and Compliance

Benefits

The proposed rulemaking will provide for treatment and disposition of EAFD, providing services to the steel making operations that produce EAFD. The steel industry in this Commonwealth and across the United States is changing to remain competitive, and one of the major changes has been the increased use of the electric arc furnaces and associated air pollution control equipment to capture EAFD generated in the steel-making process. One important feature of the electric arc furnaces is the recycling of a significant percentage of scrap steel. This method produces steel at reduced costs and provides greater environmental protection than other steel making processes. In the last decade, the use of electric arc furnaces has increased in the United States to become the major method of steel production. As a result, EAFD is now the largest single hazardous waste produced in the United States. This is not a sign of environmental detriment, but rather the result of efforts across the industry to capture and sequester the metallic compound by-products resulting from steel making through more efficient pollution control devices. New electric arc furnaces are expected to be built in this Commonwealth. The proposed delisting of the residuals resulting from effective treatment of EAFD will assist steel-making operations by providing a cost-effective alternative for management of their wastes—converting it from a hazardous waste to a nonhazardous residual waste that can be managed in an environmentally responsible manner in permitted residual waste facilities.

Compliance Cost

MAX will be required to comply with the conditions set forth in the delisting regulation, including testing and recordkeeping requirements. However, the delisting of the residuals resulting from treatment of EAFD should result in an overall reduced waste management cost to the steel-making industry that would utilize the treatment services being offered by MAX.

Compliance Assistance Plan

The proposed rulemaking should not require any educational, technical or compliance assistance efforts. The Department has and will continue to provide manuals, instructions, forms and website information consistent with the proposed rulemaking. In the event that assistance is required, the Department's central office will provide it.

Paperwork Requirements

The proposed rulemaking creates some new paperwork requirements to be satisfied by MAX to demonstrate ongoing compliance with the conditions of the delisting regulation. The paperwork requirements are consistent with the protocols suggested by MAX as part of its delisting petition.

G. Pollution Prevention

For this proposed rulemaking, the Department would require no additional pollution prevention efforts. The Department already provides pollution prevention educational material as part of its hazardous waste program.

H. Sunset Review

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

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 22, 2004, 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

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301).

Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by January 5, 2005. 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 January 5, 2005. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form rulemaking will be considered.

Electronic Comments—Comments may be submitted by e-mail to the Board at RegComments@state.pa.us and must also be received by the Board by January 5, 2005. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-393. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter D. LISTS OF HAZARDOUS WASTES

(Editor's Note: The following section and appendix are new. They have been printed in regular type to enhance readability.)

§ 261a.32. Hazardous wastes from specific sources.

In addition to the requirements for lists of hazardous wastes incorporated by reference in 40 CFR 261.32 (relating to hazardous waste from specific sources), the solid wastes listed in Appendix IXa (relating to wastes excluded under 25 Pa. Code § 260a.20 and 40 CFR 260.20 and 260.22) are excluded under §§ 260a.1 and 260a.20 (relating to incorporation by reference, purpose, scope and applicability; and rulemaking petitions).

APPENDIX IXa. WASTES EXCLUDED UNDER 25 Pa. Code § 260a.20 AND 40 CFR 260.20 AND 260.22

Table 2a. Wastes Excluded from Specific Sources

<i>Facility</i>	<i>Address</i>	<i>Waste Description</i>
Max Environmental Technologies, Inc.	233 Max Lane Yukon, PA 15698	Electric arc furnace dust (EAFD) that has been treated on site by MAX Environmental Technologies, Inc. (MAX) at a maximum annual rate of 300,000 cubic yards per year and disposed of in a Permitted Resource Conservation and Recovery Act Subtitle D/ Pennsylvania Class 1 residual waste landfill that has groundwater monitoring. (1) <i>Delisting Levels:</i> (i) The constituent concentrations measured in either of the extracts specified in Paragraph (2) may not exceed the following levels (mg/L): Antimony-0.206; Arsenic-0.0094; Barium-21; Beryllium-0.416; Cadmium-0.11; Chromium-0.60; Lead-0.75; Mercury-0.025; Nickel-11.0; Selenium-0.58; Silver-0.14; Thallium-0.088; Vanadium-21.1; Zinc-4.3. (ii) Total mercury may not exceed 1 mg/kg. (2) <i>Verification Testing:</i>

PROPOSED RULEMAKING

Facility	Address	Waste Description
		<p>(i) On a batch basis, MAX must analyze a representative sample of the waste using the following:</p> <p>(A) the Toxicity Characteristic Leaching Procedure (TCLP), test Method 1311 in "Test Methods for Evaluating Solid Waste. Physical/Chemical Methods." EPA publication SW-846, as incorporated by reference in 40 CFR 260.11.</p> <p>(B) the TCLP as referenced above with an extraction fluid of pH 12 ±0.05 standard units.</p> <p>(C) SW-846 Method 7470 for mercury.</p> <p>(ii) The constituent concentrations measured must be less than the delisting levels established in Paragraph (1).</p> <p>(3) <i>Changes in Operating Conditions:</i></p> <p>(i) If any of the approved EAFD generators significantly changes the manufacturing process or chemicals used in the manufacturing process or MAX significantly changes the treatment process or the type of chemicals used in the treatment process, MAX must notify the Department of the changes in writing.</p> <p>(ii) MAX must handle wastes generated after the process change as hazardous until MAX has demonstrated that the wastes continue to meet the delisting levels set forth in paragraph (1) and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced and MAX has received written approval from the Department.</p> <p>(4) <i>Data Submittals:</i></p> <p>(i) MAX must submit the data obtained through routine batch verification testing, as required by other conditions of this rule or conditions of the permit, to the Pennsylvania Department of Environmental Protection Southwest Region, 400 Waterfront Drive, Pittsburgh, Pennsylvania 15222.</p> <p>(ii) The data from the initial full scale batch treatments following permit modification, and construction of the treatment unit shall be submitted to the Department as it becomes available and prior to disposal of those batches.</p> <p>(iii) The data submission frequency may be modified by the Department upon demonstration that the treatment method is effective.</p> <p>(iv) All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).</p> <p>(v) MAX must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. MAX must make these records available for inspection.</p> <p>(5) <i>Reopener Language:</i></p> <p>(i) If, at any time after disposal of the delisted waste, MAX possesses or is otherwise made aware of any data for any of the approved disposal facilities (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent identified in paragraph (1) is at a level in the leachate higher than the Toxicity Characteristic (40 CFR 261.24), or is at a level in the groundwater higher than the specific facility action levels, then MAX or the disposal facility must report such data, in writing, to the Regional Director of the Pennsylvania Department of Environmental Protection Southwest Region within 10 days of first possessing or being made aware of that data.</p> <p>(ii) Based on the information described in subparagraph (i) and any other information received from any source, the Regional Director will make a preliminary determination as to whether the reported information requires Department action to protect human health or the environment. Further action may include suspending or revoking the exclusion or other appropriate response necessary to protect human health and the environment.</p>

Facility	Address	Waste Description
		<p>(iii) If the Regional Director determines that the reported information does require Department action, the Regional Director will notify MAX in writing of the actions the Regional Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing MAX and/or the approved disposal facility with an opportunity to present information as to why the proposed Department action is not necessary or to suggest an alternative action. MAX and/or the approved disposal facility shall have 30 days from the date of the Regional Director's notice to present the information.</p> <p>(iv) If after 30 days MAX and/or the approved disposal facility presents no further information, the Regional Director will issue a final written determination describing the Department actions that are necessary to protect human health or the environment. Any required action described in the Regional Director's determination shall become effective immediately, unless the Regional Director provides otherwise.</p>

[Pa.B. Doc. No. 04-2145. Filed for public inspection December 3, 2004, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 91]

Boating

The Fish and Boat Commission (Commission) proposes to amend Chapter 91 (relating to general provisions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). This proposed rulemaking relates to the age of operation for personal watercraft (PWC) and boats propelled by motors in excess of 25 horsepower. The Commission previously published a notice of proposed rulemaking regarding this subject at 34 Pa.B. 4151 (August 7, 2004). The Commission is republishing a notice of proposed rulemaking to seek public input on an alternative proposal as more fully described in this preamble.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect upon publication of an order in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposal is available electronically through the Commission's website: www.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to § 91.4 (relating to age of operator) are published under the statutory authority of section 5123 of the code (relating to general boating regulations). A person violating this section commits a summary offense of the third degree for which a \$50 fine is imposed.

D. Purpose and Background

The Commission previously adopted limitations on the age of operation to address concerns for the safety of young operators of larger boats and PWC and those that boat around them. At the time the regulation was adopted, 10 horsepower was considered to be a satisfac-

tory horsepower limitation. Youthful operators could operate larger boats (that is, boats with motors in excess of 10 horsepower) after obtaining a Boating Safety Education Certificate (certificate) or if they had an older operator onboard. A recent amendment to section 5103 of the code (relating to boating education) that provides for mandatory boating education increased the minimum horsepower to 25. Specifically, this section provides that any person born on or after January 1, 1982, may not operate a motorboat greater than 25 horsepower without first obtaining a certificate.

To be consistent with the code and to eliminate some complexity in the regulations, the Commission proposed to amend § 91.4. Specifically, the Commission proposed to simplify the existing regulation and make it consistent with provisions of the mandatory education law. The Commission also proposed to eliminate the distinction between PWC and other motorboat operation by applying the same standards to both. The Commission further proposed to increase the minimum age of operation of a PWC to 16 years of age, effective January 1, 2008. A notice of proposed rulemaking was published at 34 Pa.B. 4151.

At the time the Commission approved the publication of the notice of proposed rulemaking, it also directed staff to solicit the input of the Governor's Youth Council for Hunting, Fishing and Conservation (Council). The Council was surveyed informally, and the Council generally supported the proposed changes. The Commission's Boating Advisory Board (BAB) considered the proposal and recommended that the Commission adopt the changes as set forth in the notice of proposed rulemaking.

Subsequently, the Council held its quarterly meeting and discussed the proposal in detail. The Council voted unanimously in favor of the age of operation being 16 years of age or older for any boat propelled by a motor greater than 25 horsepower and all PWC. The Council also voted unanimously in favor of "phasing in" this requirement over a number of years. The Council indicated that it feels strongly that these changes must be simply worded and well publicized.

In addition, the Commission received one public comment from the Personal Watercraft Industry Association (PWIA) that supports increasing the age of operation of PWC to 16 years of age. However, the PWIA indicated that based on its experience, it believes that a phase-in of

the minimum age increase for PWC operators is the best approach for implementation by authorities and compliance by the boating public. For that reason, the PWIA encourages the Commission to opt for a regulation that allows those individuals of legal operating age under 16 years of age to be grandfathered by the new statutory requirements.

In advance of the Commission meeting, staff informally polled the BAB, and the BAB is generally in agreement with the phased approach and believes that it is appropriate to solicit additional public comments. The Commission, upon further consideration of this matter, believes that a phased approach may find the most acceptance among the boating public. The Commission therefore approved the republication of a notice of proposed rulemaking seeking public comments on a phased approach as more fully described in the summary of proposed rulemaking. The Commission also intends to hold at least one public meeting.

E. Summary of Proposed Rulemaking

Under the proposal, the minimum age of operation would be 13 years of age, effective immediately upon publication of an order adopting the change. The minimum age of operation would increase to 14 years of age effective January 1, 2006, 15 years of age effective January 1, 2007, and 16 years of age effective January 1, 2008. The proposal also provides that a person 15 years of age or younger may not operate a personal watercraft if there are any passengers onboard 17 years of age or younger. The Commission proposes to amend § 91.4 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted. Comments also may be submitted electronically by completing the form at www.state.pa.us/fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-162. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 91. GENERAL PROVISIONS

§ 91.4. Age of operator.

(a) A person 11 years of age or younger may not operate a [personal watercraft or a] boat propelled by a motor greater than [10] 25 horsepower.

(b) [A person 12 through 15 years of age may not operate a boat propelled by a motor greater than 10 horsepower unless the person has obtained and has in his possession a Boating Safety Education Certificate or at least one person 16 years of age or older is present onboard.

(c) A person 12 through 15 years of age may not operate a personal watercraft if there are any passengers onboard 15 years of age or younger.]

A person 12 years of age or younger may not operate a personal watercraft. Effective January 1, 2006, a person 13 years of age or younger may not operate a personal watercraft. Effective January 1, 2007, a person 14 years of age or younger may not operate a personal watercraft. Effective January 1, 2008, a person 15 years of age or younger may not operate a personal watercraft.

(c) A person 15 years of age or younger may not operate a personal watercraft if there are any passengers onboard 17 years of age or younger.

[Pa.B. Doc. No. 04-2146. Filed for public inspection December 3, 2004, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Advance Notice of Proposed Rulemaking

Public Meeting held
November 18, 2004

Commissioners present: Wendell F. Holland, Chairperson;
Robert K. Bloom, Vice Chairperson; Glen R. Thomas;
Kim Pizzigrilli

*Advance Notice of Proposed Rulemaking Regarding Small
Generation Interconnection Standards and Procedures;
Doc. No. L00040168*

Advance Notice of Proposed Rulemaking Order

By the Commission:

Today, the Commission is initiating an Advance Notice of Proposed Rulemaking (ANOPR) concerning small generation interconnection standards and procedures in order to standardize the way in which small generation connects to the distribution grid. As discussed below, the Commission is requesting comments on these standards and procedures. After receiving and considering comments, the Commission will then issue a Notice of Proposed Rulemaking (NOPR).

The Commission will achieve several goals with this rulemaking, including the following: (1) eliminate unnecessary barriers to entry in the distributed generation market; (2) promote distributed generation in order to provide peak demand responsiveness; (3) enhance grid reliability; (4) increase transparency in the interconnection process; (5) create uniformity and thereby ease the difficulty presented by a patchwork of different procedures; and (6) lower the overall cost of locating and placing distributed generation across the Commonwealth.

The Commission began examining small generation interconnection standards and procedures on January 24, 2001, under Docket No. M-00011450, when the Commis-

sion established an internal Interconnection Working Group (IWG). The IWG focused on studying the models of other jurisdictions and organizations, as well as identifying the possible benefits of mandating a uniform set of interconnection procedures. The Commission also charged the IWG with considering whether unnecessary barriers impede distributed generation from interconnecting to the grid, and to the extent that such barriers exist, to recommend methods for eliminating them.

The IWG met several times, but temporarily and voluntarily suspended its work in the Spring of 2001 because the Federal Energy Regulatory Commission (FERC) issued an ANOPR on the standardization of generation interconnection agreements and procedures. FERC subsequently released a NOPR on Small Generation Interconnection Standards in July 2003. Thereafter, the Commission reactivated the IWG in the Fall of 2003.

The IWG identified the lack of standardized interconnection procedures and requirements as one of the primary regulatory barriers for distributed generation. Historically, each utility implements its own interconnection procedures and standards in order to address concerns unique to its own system. These concerns focus primarily on safety and reliability, in other words, the protection of utility personal, equipment, and system coordination. However, the utilities may have a conflict of interest with regard to facilitating distributed generation to the extent that distributed generation competes with services offered by the utility and imposes additional risks and costs.

While the Commission recognizes that the utilities' concerns are important and reasonable, the Commission must also consider the impact varied and disparate interconnection procedures have on distributed generation. The lack of standardization causes distributed generation developers to contend with different rate structures, customer electric and thermal loads, and other utility specific factors that make economic decision making and planning difficult. Uniform standards in Pennsylvania, and likewise the region, would facilitate entry into the market because it would ensure that manufacturers and developers are looking at consistent interconnection requirements and procedures.

Because of the IWG's work in identifying the issues described above, the Commission is ready to move forward by formally obtaining input from interested parties as the Commission begins to develop our own interconnection procedures.

The Commission is aware of efforts recently completed or currently underway in multiple forums, including, among others, New York, New Jersey, Texas, FERC, the National Association of Regulatory Utility Commissioners (NARUC), and PJM Interconnection L.L.C. (PJM). The Commission notes that New York Public Service Commission (NY PSC) has already established interconnection procedures for distributed generation. The NY PSC's requirements provide for a twelve step process split between three sizes of generation: 15 kilowatts (kW) or less, 15 kW to 300 kW, and 300 kW to 2 MW. For project 15 kW or less, the NY PSC's framework provides for simplified technical requirements, including streamlined procedures for generating equipment that meets Underwriters Laboratories (UL) Standard 1741.¹ The NY PSC's procedures also provide for simplified verification testing requirements for single-phase inverter-based systems and a waiver of \$350 application fee.

¹ The Commission notes that the NY PSC did not adopt UL 1741 verbatim, it requires certain other standards to be met, including IEEE C37.90.1 and other requirements.

For facilities over 15 kW and up to 300 kW, the NY PSC's requirements provide: (1) specific requirements for interconnection studies (to determine what impact the distributed generating facility will have on the utility network), including a potential exemption from study requirements for systems under 50 kW on a single-phase line or 150 kW on a three-phase feeder; (2) potential requirements for dedicated transformers at the utility's discretion, but only after the utility provides the customer with specific written justification for the request; and (3) streamlined procedures for equipment that has been type tested or certified. For projects over 300 kW and under 2 MW, the NY PSC's procedures provide for extended periods of time to move from one step to the next, such as 15 business days to conduct a Preliminary Review of the project instead of 5 business days for other projects. The NY PSC's procedures also require more detailed technical information to be provided to the utility. Other features of the NY PSC's model common to all three sizes include a standardized contract for interconnection and certain operating requirements such as providing a 24 hour phone contact for the generator. Case 02-E-1282, *Order Modifying Standardized Interconnection Agreements for Class I Renewable Energy Systems*, Docket No. EX 03100795 (Filed September 13, 2004) (amending Case 94-E-0952, *Competitive Opportunities Regarding Electric Service*, Opinion No. 99-13 (issued December 31, 1999)).

The New Jersey Board of Public Utilities (NJ BPU) updated its own set of interconnection procedures on September 13, 2004. *Adopted Amendments: N.J.A.C. 14:4-9 (Net Metering and Interconnection Standards for Class I Renewable Energy Systems)*, Docket No. EX 03100795 (Filed September 13, 2004). The NJ BPU's model sets forth net metering and interconnection rules designed to standardize the interconnection process. For distributed generation under 2 megawatts (MW), the NJ BPU's procedures require Electric Distribution Companies (EDCs) to offer net metering to residential and small commercial customers, on the customer's side of the meter. The NJ BPU's procedures also require EDCs to develop and file tariffs for net metering and requires customers to use bi-directional meters. Regarding interconnection procedures, New Jersey splits the process into three categories, Level 1 (simplified), Level 2 (expedited), and Level 3 (standard). The Level 1 process is used to connect inverter based customer generator facilities that have a power rating of 10 kW or less, and that meet certain certification requirements. The Level 2 process is used for generation of 2 MW or less and which further meets Institute of Electric and Electronic Engineers Standard 1547 (IEEE 1547) and/or UL 1741. The Level 3 process is used for generation that does not meet the criteria for either Level 1 or Level 2. New Jersey also requires EDCs to designate a single point of contact for distributed generation customers. New Jersey believes that its procedures will increase the reliability of the grid, enhance security, promote economic development and diversify the resources used to produce electricity.

The Texas Public Utility Commission (TX PUC) likewise adopted an interconnection model in 1999. The interconnection process evolved over time in Texas, with the following goals in mind:

[T]he commission's objectives are to clearly state the terms and conditions that govern the connection and operation of small power generation and to establish technical requirements to promote the safe and reliable operation of distributed generation resources. . . . Implementation of these rules (1) promotes the use of distributed resources in order to provide electric system benefits during periods of capacity con-

straints; (2) enhances both the reliability of electric service and economic efficiency in the production and consumption of electricity; and (3) provides customers greater opportunities to control the price and quality of electricity within their facilities.”

Rules for Interconnection of Distributed Generation, Project No. 21220 (Order Entered November 23, 1999), amended by *P.U.C. Rulemaking to Amend Existing Rules 25.211 and 25.212, Review and Develop a Standard Interconnection Agreement and Terms and Conditions of the Tariff*, Project No. 22540 (Order entered September 22, 2000). Some of the features of the TX PUC’s model include the following: (1) a “uniform agreement” that covers, among other things, a scope agreement, the parties’ responsibilities, and the utility’s right to inspect equipment; (2) an interconnection process calibrated to the technical requirements of each project; (3) pre-certification of distributed generation equipment; and (4) the utility retains the right to disconnect under certain circumstances. Id.

Among non-state entities, in July of 2003, the FERC issued a NOPR on Small Generation Interconnection Standards. *Standardization of Small Generator Interconnection Agreements and Procedures; Notice of Proposed Rulemaking*, 104 FERC ¶61,104 (July 24, 2003). The FERC has been clear about the purpose of its proposed interconnection rule for small generators:

- to facilitate the interconnection of small generators with a rule designed to accommodate their needs,
- to lower wholesale prices for customers by increasing the number and variety of new generation resources that compete in the wholesale electricity market,
- to reduce interconnection time and costs for both small generators and transmission providers,
- to prevent undue discrimination whereby a transmission provider may show favoritism to its own generation or that of an affiliate,
- to preserve the reliability of the transmission system,
- to increase electric energy infrastructure, and
- to facilitate the development of non-polluting alternative energy sources such as distributed generation.

Id. The FERC proposed interconnection rule applies to the interconnection of generators no larger than 20 MW. The rule applies to all interconnections to facilities subject to a transmission provider’s open access transmission tariff at the time an interconnection request is made. The rule includes pricing policies similar to that contained in the FERC large generation interconnection rule. To facilitate rapid interconnection, the rule includes super-expedited procedures for generators less than or equal to 2 MW connecting at low voltage, expedited procedures for generators between 2 MW and 10 MW connecting at low voltage, and accelerated

In October 2003, NARUC also adopted standardized interconnection procedures. *Model Interconnection Procedures and Agreement for Small Distributed Generation Resources* (October, 2003), http://www.naruc.org/associations?1773/files/dgiaip_oct03.pdf. The NARUC model splits distributed generation projects into two process categories. The first is a “super expedited” process for interconnection of small generation equipment that passes certain technical screens. The second is a regular process for the remaining generation that cannot be super expedited because it does not meet certain designated

screening criteria. Prominently featured in the model are a series of deadlines at regular intervals that clearly indicate whether the project is properly moving forward. On the super expedited track, the NARUC model includes a single point of contact with the utility, a standardized application, a site control requirement, and a requirement that the generator and utility meet in the event that problems are encountered and it appears the project may not be suitable for the super expedited track. For projects not meeting the requirements for the super expedited track, the model features a scoping meeting, feasibility study, impact study, and facilities study, among other provisions. Notably, the NARUC model maintains clear deadlines and establishes which party has the burden of moving forward with the next step in the process.

Finally, PJM is in the process of adopting standardized interconnection technical requirements. In January of 2004 PJM established a Small Generation Interconnection Working Group as part of an effort to develop more standardized interconnection requirements for small generators. PJM is focused on centering its technical requirements on IEEE 1547, and further on developing an equipment pre-certification process that is uniform throughout PJM’s control area.

PJM is interested in working with the states in its footprint in order to ensure that a single standard is adopted, which in its view would further strengthen the economic viability and benefits of distributed generation. Generally, the Commission is supportive of PJM’s efforts and believes there is significant value in pursuing a regional approach. Similarly, the Commission also supports the efforts of the Mid-Atlantic Distributed Resources Initiative (MADRI), an organization established to develop regional policies and market-enabling activities to support distributed generation and demand response in the Mid-Atlantic region.²

As the brief summaries of the above interconnection processes make clear, there are many important issues the Commission must consider. Therefore, the Commission is interested in soliciting comments from all interested parties. The comments should touch on both technical requirements as well as interconnection procedures, including procedures that reflect “best practices.” Comments should also indicate the appropriate generation size suitable for small generation interconnection standards and procedures. The Commission is also interested in comments that address whether there are issues specific to Pennsylvania that require the Commission’s attention.

Comments may be filed by any interested person or on behalf of an entity, and each comment should clearly indicate which of the above referenced models is preferable and whether the model requires changes because of issues that are specific to Pennsylvania.

Due to the comprehensive nature of a rulemaking and the complexity of the subject matter, interested parties will be given 60 days from the date of publication in the *Pennsylvania Bulletin* to submit comments. The Commission is committed to moving this rulemaking forward in a timely fashion. Because the comment period is lengthy, no extensions of time will be granted for filing comments. *Therefore*;

² The following entities are MADRI members: the public utility commissions of Delaware, District of Columbia, Maryland, New Jersey and Pennsylvania, PJM, the U.S. Department of Energy’s Mid-Atlantic Regional Office and Office of Electric Transmission and Distribution and the U.S. Environmental Protection Agency.

It Is Ordered That:

1. A rulemaking proceeding is hereby initiated at this docket to consider adopting standardized interconnection standards and procedures for small generation.

2. An ANOPR regarding standardized interconnection procedures for small generation be published in the *Pennsylvania Bulletin*.

3. Interested parties shall have 60 days from the date of publication in the *Pennsylvania Bulletin* of the ANOPR to file written comments.

4. Comments should focus on the issues as described in this Order, including the relative merits of existing standardized interconnection procedures for small genera-

tion such as those previously referenced, and further, whether Pennsylvania presents unique issues that require the models to be changed before being adopted.

5. Interested parties should file an original plus 15 copies of each comment to the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. The Commission's contact person is Assistant Counsel W. Blair Hopkin, (717) 783-6152.

JAMES J. MCNULTY,
Secretary

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