

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CHS. 121 AND 126 ]

#### Employer Trip Reduction

The Environmental Quality Board (Board) amends Chapters 121 and 126 (relating to general provisions; and motor vehicle and fuels programs) to read as set forth in Annex A. The purpose of this final-omitted rulemaking is to rescind the employer trip reduction (ETR) requirements in Chapter 126, Subchapter B for employers with 100 or more employees in the Commonwealth portion of the Philadelphia Consolidated Metropolitan Statistical Area (CMSA) to implement a program to reduce work-related vehicle trips.

This final-omitted rulemaking deletes from § 121.1 (relating to definitions) the terms “APO—average passenger occupancy,” “AVO—average vehicle occupancy,” “bus pool,” “commuting trips,” “employee,” “employer,” “peak travel period,” “Philadelphia CMSA,” “target area,” “telecommuter,” “transportation coordinator,” “van pool” and “worksites.” This final-omitted rulemaking rescinds §§ 126.201—126.208 and Chapter 126, Appendix A, which were approved as a final-form rulemaking by the Board on September 21, 1993, and published at 24 Pa.B. 693 (January 29, 1994).

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL). Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if the agency for good cause finds that the notice of proposed rulemaking procedure is in the circumstances impracticable, unnecessary or contrary to the public interest. Omission of notice of proposed rulemaking for the rescission of §§ 126.201—126.208, Chapter 126, Appendix A and the supporting terms in § 121.1 is appropriate because the notice of proposed rulemaking procedure in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest. As more fully explained as follows, the ETR regulations were never implemented and emission reduction credits were not claimed for it in State Implementation Plan (SIP) revisions.

This final-omitted rulemaking was adopted by order of the Board at its meeting of March 20, 2012.

#### A. Effective Date

This final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

#### B. Contact Persons and Information

For further information, contact Arleen Shulman, 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) 772-3436; or Kristen M. Furlan, 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 Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-omitted

rulemaking is available on the Department of Environmental Protection’s (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (Keyword: Public Participation).

#### C. Statutory Authority

The final-omitted rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005). Section 5(a) of the APCA grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

#### D. Background of the Amendments

The Commonwealth’s final-form rulemaking published at 24 Pa.B. 693 adopted provisions requiring employers of 100 or more employees located in “severe” ozone nonattainment areas to develop and implement a program to reduce work-related vehicle trips by employees. At the time the final-form rulemaking was published, the Commonwealth portion of the Philadelphia CMSA (Bucks, Chester, Delaware, Montgomery and Philadelphia Counties) was the only area of this Commonwealth classified as a severe ozone nonattainment area. The final-form rulemaking required employers subject to the regulations to submit employee trip reduction plans to the Department by November 15, 1994, for employers with equal to or greater than 1,000 employees and by November 15, 1995, for affected employers with at least 100 but fewer than 1,000 employees.

The Department adopted the 1994 regulations in response to section 182(d)(1)(B) of the Clean Air Act (CAA) (42 U.S.C.A. § 7511a(d)(1)(B)). In that section, Congress directed that a state with a severe ozone nonattainment area was required to submit a revision to the SIP requiring employers in the nonattainment area with 100 or more employees to develop compliance plans designed to increase the average passenger occupancy of their employees who commuted to work during the peak period by 25% above the average passenger occupancy of the nonattainment area. The Commonwealth submitted its final-form ETR regulations to the United States Environmental Protection Agency (EPA) as a SIP revision on May 2, 1994. The EPA has not acted upon the ETR SIP submittal.

The Commonwealth’s General Assembly passed the act of November 16, 1994 (P. L. 614, No. 95) (Act 95), which amended 75 Pa.C.S. § 4706 (relating to prohibition on expenditures for emission inspection program) to require the Governor to suspend implementation and enforcement of the ETR program until March 31, 1995, or until an alternative program with equivalent emission reductions was developed. Act 95 also stipulated that “the Employer Trip Reduction Program or an alternative program shall not be required if the area classified as severe ozone nonattainment is reclassified as a serious ozone nonattainment area by the Environmental Protection Agency.”

In 1995, the Department developed a policy document (Doc. No. 271-5000-001, published February 1996) explaining the actions the Department took in response to Act 95. In addition, the policy document stated that the Department would rescind the ETR regulations if the CAA was amended to make the program voluntary.

In 1995, Congress amended the CAA to make the program voluntary. See Pub. L. No. 104-70 (December 23, 1995.) Additionally, the Philadelphia CMSA is now classified as a “moderate” nonattainment area, which is a

lesser classification than “severe” or “serious” under the CAA’s classification system that includes “extreme,” “severe,” “serious,” “moderate” and “marginal” areas, in that order.

The rescission of Chapter 126, Subchapter B and Appendix A and the deletion of the related definitions in § 121.1 does not negatively affect the environmental air quality in this Commonwealth. The ETR regulations were never implemented and the Commonwealth did not claim emission reduction credits for them in SIP revisions.

The final-omitted rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC) on June 23, 2011. The AQTAC voted 11-2-2 to concur with the Department’s recommendation to forward the final-omitted rulemaking to the Board. The final-omitted rulemaking was discussed with the Citizens Advisory Council (CAC) Air Committee on October 19, 2011. The CAC Air Committee did not have concerns. On the recommendation of the Air Committee, on November 15, 2011, the CAC voted to concur with proceeding to the Board.

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

##### *Benefits*

Rescission of the Department’s ETR regulations will limit confusion for employers of 100 or more employees in the Commonwealth portion of the Philadelphia CMSA by reserving Chapter 126, Subchapter B and Appendix A.

##### *Compliance Costs*

This final-omitted rulemaking does not require additional costs for compliance since the ETR final-form rulemaking was not implemented.

##### *Compliance Assistance Plan*

This final-omitted rulemaking does not require a compliance assistance plan.

##### *Paperwork Requirements*

Additional paperwork is not required as a result of this final-omitted rulemaking.

#### F. *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on May 21, 2012, the Department submitted a copy of the final-omitted 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. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on June 20, 2012, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 21, 2012, and approved the final-omitted rulemaking.

#### G. *Findings*

The Board finds that:

(1) The amendments as set forth in Annex A are appropriate to rescind the ETR regulations.

(2) Use of the final-omitted rulemaking procedure is appropriate because the notice of proposed rulemaking procedure in sections 201 and 202 of the CDL is, in this instance, impracticable, unnecessary and contrary to the public interest. Commonwealth legislation suspended

implementation of the ETR program in Chapter 126, Subchapter B and Appendix A and nullified it once the nonattainment area was reclassified to “moderate” nonattainment. Further, Congress amended the CAA to make the program optional. The ETR regulations were never implemented and are not part of the Commonwealth’s approved SIP.

(3) This final-omitted rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble and in the public interest.

#### H. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 126, are amended by amending § 121.1 and by deleting §§ 126.201—126.208 and Chapter 126, Appendix A to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

MICHAEL L. KRANCER,  
Chairperson

*(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 4297 (July 7, 2012).)*

**Fiscal Note:** 7-471. No fiscal impact; (8) recommends adoption.

### Annex A

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

### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE III. AIR RESOURCES

#### CHAPTER 121. GENERAL PROVISIONS

##### § 121.1. Definitions.

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

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

*Ablative coating*—A coating that chars when exposed to open flame or extreme temperatures, as would occur during the failure of an engine casing or during aerody-

namic heating. The ablative char surface serves as an insulating barrier, protecting adjacent components from the heat or open flame.

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*Bulk gasoline terminal*—A gasoline storage and distribution facility which has a daily throughput of 20,000 gallons (76,000 liters) or more of gasoline.

*CARB—California Air Resources Board*—The board established and empowered to regulate sources of air pollution in California, including motor vehicles, under California Health & Safety Code Section 39003.

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*Commercial interior adhesive*—Materials used in the bonding of passenger cabin interior components which meet the Federal Aviation Administration (FAA) fireworthiness requirements.

*Compatible epoxy primer*—An aerospace vehicle or component primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings.

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*Emissions unit*—For purposes of Chapter 127, Subchapter E, a part of a facility that emits or has the potential to emit a regulated NSR pollutant including an electric utility steam generating unit as defined in this section. For the purposes of NSR requirements, there are two types of emissions units:

(i) A new emissions unit, which is or will be newly constructed and which has existed for less than 2 years from the date the emissions unit first operated.

(ii) An existing emissions unit is an emissions unit that does not meet the requirements in subparagraph (i). A replacement unit, as defined in this section, is an existing emissions unit.

*Enamel*—A coat of colored material, usually opaque, that is applied as a protective topcoat over a basecoat, primer or previously applied enamel coat. Another coating may be applied as a topcoat over the enamel.

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*Paving operation*—The process of covering an area with stone, concrete, asphalt or other material in order to make a firm, level surface for travel. The term does not include compounds used exclusively as residential driveway sealing compounds are excluded.

*Performance standard*—For purposes of the regulation of hazardous air pollutants under section 112 of the Clean Air Act, the term includes design, equipment, work practice or operational standards or a combination thereof.

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

*Permitted production capacity*—The maximum pull rate as stated in the plan approval, operating permit or Title V permit.

*Petroleum refinery*—A facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt or other products through

distillation of petroleum or through redistillation, cracking, rearrangement or reforming of unfinished petroleum derivatives.

*Phase 2 outdoor wood-fired boiler*—An outdoor wood-fired boiler that has been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.32 pounds per million Btu output or lower and is labeled accordingly.

*Pittsburgh-Beaver Valley Area*—The seven-county area comprised of the following Pennsylvania counties: Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland.

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*Tank car*—A rail car which is used for transporting liquids in bulk in an unpackaged form.

*Temporary protective coating*—A coating applied to provide scratch or corrosion protection during manufacturing, storage or transportation of aerospace vehicles or components.

(i) The term includes peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions.

(ii) The term does not include coatings that provide protection from acid or alkaline chemical processing.

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*Transitional low emission vehicle*—A vehicle certified as a transitional low emission vehicle under the Clean Air Act.

*Tread end cement*—The application of a solvent-based cement to the tire tread ends.

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*Valves not externally regulated*—Valves that have no external controls, such as in-line check valves.

*Vapor balance system*—A vapor transport system which directs the vapors from the vessel being loaded into either a vessel being unloaded or a vapor control system or vapor holding tank.

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*Working mode cover*—A cover or solvent cleaning machine design that allows the cover to shield the cleaning machine openings from outside air disturbances while parts are being cleaned in the cleaning machine. A cover that is used during the working mode is opened only during parts entry and removal.

*York air basin*—The political subdivisions in York County of Manchester Township, North York Borough, Spring Garden Township, Springettsbury Township, West Manchester Township, West York Borough and City of York.

**CHAPTER 126. MOTOR VEHICLE AND FUELS PROGRAMS**

**Subchapter B. (Reserved)**

Sec. 126.201—126.208. (Reserved).

**Appendix A. (Reserved)**

[Pa.B. Doc. No. 12-1297. Filed for public inspection July 13, 2012, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

## [ 25 PA. CODE CH. 128 ]

**Alternative Emission Reduction Limitations; St. Joe Resources Company**

The Environmental Quality Board (Board) amends Chapter 128 (relating to alternative emission reduction limitations) to read as set forth in Annex A. The purpose of this final-omitted rulemaking is to rescind § 128.21 and the "State-specific" requirements to reduce sulfur dioxide (SO<sub>2</sub>) emissions.

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL). Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if the agency for good cause finds that the notice of proposed rulemaking procedure is in the circumstances impracticable, unnecessary or contrary to the public interest. Omission of notice of proposed rulemaking for the rescission of § 128.21 is appropriate because the notice of proposed rulemaking procedure in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest. As more fully explained as follows, on December 16, 1988, the owners of the St. Joe Resources Company requested a revision to Operating Permit No. 04-325-001A removing the alternative emission reduction limitations and adding the applicable requirements of § 123.22(d) (relating to combustion units).

This final-omitted rulemaking was adopted by order of the Board at its meeting of March 20, 2012.

*A. Effective Date*

This final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

*B. Contact Persons and Information*

For further information, contact Arleen Shulman, 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) 772-3436; or Robert "Bo" Reiley, 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 Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-omitted rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (Keyword: Public Participation).

*C. Statutory Authority*

The final-omitted rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005). Section 5(a) of the APCA grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

*D. Background of the Amendments*

This final-omitted rulemaking rescinds § 128.21 which was published as a final-form rulemaking at 16 Pa.B. 521 (February 22, 1986). The regulation provided an alternative compliance option to the applicable SO<sub>2</sub> standards in § 123.22(d) for the St. Joe Resources Company (now doing business as Horsehead Industries, Inc.) facility located in Beaver County. The owner of the facility requested the alternative emission reduction limitations

in a 1982 Plan Approval application, which proposed emissions of SO<sub>2</sub> from the coal-fired boilers in excess of the emission limitation in § 123.22(d) and, in exchange, reduced SO<sub>2</sub> emissions from two other sources at the facility (the sinter machines and the roaster plant).

On October 5, 1987, the Department received notice of a change of ownership from St. Joe Resources Company to The New Jersey Zinc Company, a division of Horsehead Industries, Inc. The New Jersey Zinc Company is also known as Zinc Corporation of America and Horsehead Corporation. On December 16, 1988, Zinc Corporation of America requested a revision to Operating Permit No. 04-325-001A removing the alternative emission reduction limitations and adding the applicable requirements of § 123.22(d).

Horsehead Corporation's current Title V Operating Permit No. 04-00044 contains the requirements of § 123.22(d) for the coal-fired boilers and retains the reduced SO<sub>2</sub> emission limits for the sinter machines as required under § 127.441 (relating to operating permit terms and conditions). The roaster plant regulated under § 128.21 is no longer in operation. Continuous emissions monitoring system data indicate the boilers now meet the standards in § 123.22(d) due to a change to low sulfur fuel with lime injection and natural gas.

The alternative emission reduction limitations in § 128.21 are no longer necessary and the owners of the Horsehead facility also agree that the alternative SO<sub>2</sub> limits in § 128.21 should be rescinded. As a result, the omission of notice of proposed rulemaking procedure under section 204 of the CDL is appropriate because the notice of proposed rulemaking procedures under sections 201 and 202 of the CDL are unnecessary since the emission limits established under § 128.21 are no longer applicable to a source in the facility.

The final-omitted rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC) on June 23, 2011. The AQTAC voted 15-0-0 to concur with the Department's recommendation to forward the final-omitted rulemaking to the Board. The final-omitted rulemaking was discussed with the Citizens Advisory Council (CAC) Air Committee on October 19, 2011. The CAC Air Committee did not have concerns. On the recommendation of the Air Committee, on November 15, 2011, the CAC voted to concur with proceeding to the Board.

*E. Benefits, Costs and Compliance**Benefits*

The rescission of § 128.21 will reduce the regulatory burden on Horsehead Corporation, the current owners of the St. Joe Resources Company facility. The rescission of § 128.21 does not negatively affect the environmental air quality in this Commonwealth. The facility will continue to be subject to the applicable SO<sub>2</sub> standards in § 123.22(d).

*Compliance Costs*

This final-omitted rulemaking will not require additional costs for compliance since it does not change the current applicable standards for the affected facility.

*Compliance Assistance Plan*

Personnel at the Horsehead facility were contacted on June 8, 2011, to verify that the rescission of the alternative emission reduction limitations in § 128.21 is warranted. Horsehead personnel support the rescission of § 128.21. Therefore, this final-omitted rulemaking will not require a compliance assistance plan.

*Paperwork Requirements*

Additional paperwork will not be required as a result of this final-omitted rulemaking.

*F. Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on May 21, 2012, the Department submitted a copy of the final-omitted 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. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on June 20, 2012, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 21, 2012, and approved the final-omitted rulemaking.

*G. Findings*

The Board finds that:

(1) The amendment in Annex A is appropriate to rescind the alternative emission reduction limitations for the St. Joe Resources Company.

(2) Use of the final-omitted rulemaking procedure is appropriate because the notice of proposed rulemaking procedures in sections 201 and 202 of the CDL are, in this instance, impracticable, unnecessary and contrary to the public interest. Horsehead Corporation’s current Title V Operating Permit No. 04-00044 contains the requirements of § 123.22(d) for the coal-fired boilers and retains the reduced SO<sub>2</sub> emission limits for the sinter machines as required under § 127.441. The roaster plant regulated under § 128.21 is no longer in operation. Therefore, a public comment period is not recommended for the rescission of the alternative SO<sub>2</sub> emission reduction limitations for the St. Joe Resources Company.

(3) This final-omitted rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble and in the public interest.

*H. Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 128, are amended by deleting § 128.21 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

MICHAEL L. KRANCER,  
*Chairperson*

*(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 4297 (July 7, 2012).)*

**Fiscal Note:** 7-473. No fiscal impact; (8) recommends adoption.

**Annex A**

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

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE III. AIR RESOURCES**

**CHAPTER 128. ALTERNATIVE EMISSION REDUCTION LIMITATIONS**

**SPECIFIC LIMITATIONS**

**§ 128.21. (Reserved).**

[Pa.B. Doc. No. 12-1298. Filed for public inspection July 13, 2012, 9:00 a.m.]

**ENVIRONMENTAL QUALITY BOARD**

**[ 25 PA. CODE CH. 130 ]**

**Portable Fuel Containers**

The Environmental Quality Board (Board) amends Chapter 130 (relating to standards for products) to read as set forth in Annex A. The purpose of this final-omitted rulemaking is to rescind the portable fuel container requirements in Chapter 130, Subchapter A for the sale, supply, offer for sale and manufacture of portable fuel containers and spouts for sale and for use in this Commonwealth on or after January 1, 2003.

This final-omitted rulemaking rescinds §§ 130.101—130.108, which were approved as a final-form rulemaking by the Board on July 16, 2002, and published at 32 Pa.B. 4819 (October 5, 2002).

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL). Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if the agency for good cause finds that the notice of proposed rulemaking procedure is in the circumstances impracticable, unnecessary or contrary to the public interest. Omission of notice of proposed rulemaking for the rescission of §§ 130.101—130.108 is appropriate because the notice of proposed rulemaking procedure in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest. As more fully explained as follows, the portable fuel containers regulations are superseded by more stringent Federal regulations, applicable Nationwide, that were promulgated at 72 FR 8428 (February 26, 2007). Sections 59.600—59.699 of 40 CFR (relating to control of evaporative emissions from new and in-use portable fuel containers) apply to portable fuel, diesel and kerosene containers and spouts manufactured in or imported into the United States beginning January 1, 2009.

This final-omitted rulemaking was adopted by order of the Board at its meeting of March 20, 2012.

#### A. *Effective Date*

This final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

#### B. *Contact Persons and Information*

For further information, contact Arleen Shulman, 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) 772-3436; or Kristen M. Furlan, 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 Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-omitted rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (Keyword: Public Participation).

#### C. *Statutory Authority*

The final-omitted rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005). Section 5(a) of the APCA grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

#### D. *Background of the Amendments*

The portable fuel containers regulations were promulgated as a measure to reduce emissions of volatile organic compounds (VOC) in this Commonwealth and were part of the Commonwealth's specific action plan to attain and maintain the National Ambient Air Quality Standard for ground-level ozone in this Commonwealth. See 32 Pa.B. 4819. VOCs are a precursor to the formation of ground-level ozone. The regulations were approved as a State Implementation Plan revision by the United States Environmental Protection Agency (EPA) at 69 FR 70893 (December 8, 2004) and are codified at 40 CFR 52.2063(c)(229) (relating to original identification of plan section).

Emissions from portable fuel containers are primarily of three types: evaporative emissions from unsealed or open containers; permeation emissions from gasoline passing through the walls of the plastic containers; and evaporative emissions from gasoline spillage during use. To reduce these types of emissions, the Department's regulations specified the use in this Commonwealth of spill-proof systems (container and spout) that meet performance-based standards including: automatic shut-off and automatically closing and sealing spouts; only one opening for both filling and pouring; fuel flow rates and fill level limits; a permeation rate that does not exceed 0.4 gram per gallon per day; and a warranty by the manufacturer for at least 1 year against defects in material and workmanship. The Department's regulations also included test procedures for determining compliance with the standards.

Overall, the Federal standard is more stringent than the standards in §§ 130.101—130.108, while there are aspects of the Federal regulations that simplify compliance. Sections 59.600—59.699 of 40 CFR establish an emissions performance-based standard of 0.3 gram per gallon per day of hydrocarbons to control both evaporative and permeation losses for portable fuel containers manufactured in or imported into the United States beginning January 1, 2009, for use in the United States. This is

more stringent than the Commonwealth standard. The Federal regulations include a requirement for automatically closing containers but do not include the automatic shut-off requirements. According to the EPA, this is because the automatic shut-off spout designs frequently failed in use due to the wide variety of fill-hole designs of the receiving fuel tanks. This led to increased, rather than decreased, fuel spillage and VOC emissions. See 72 FR 8428, 8500. The Federal regulations do not require one opening for filling and pouring, fuel flow rates or fill level limits. The EPA specified an emissions performance standard rather than design standards to allow flexibility in container and spout design.

Like the Department's regulations, the Federal regulations require testing of containers for compliance with the standard, certification and labeling of compliant containers and that manufacturers provide the consumer with an emissions warranty of 1 year. While the Department's portable fuel containers regulations applied just to containers designed to hold gasoline, the Federal regulations specifically apply to gasoline, diesel and kerosene portable containers and spouts to preclude circumvention of the regulations by consumers.

The Department's regulations did not provide ozone air quality benefit for the Commonwealth since the Federal requirements are more stringent and apply to gasoline, diesel and kerosene containers and spouts manufactured, sold or distributed in this Commonwealth beginning January 1, 2009. The Commonwealth's clean air goals are benefitting from the improved containers that have been designed in response to the Federal regulations with which manufacturers and importers shall already comply.

The Department discussed the final-omitted rulemaking with the Air Quality Technical Advisory Committee (AQTAC) on June 23 and August 4, 2011. During the June meeting, members of AQTAC requested additional information regarding enforceability of the Federal regulations by Commonwealth enforcement staff. The Department provided this information at the August meeting, at which AQTAC voted 12-2-2 to concur with the Department's recommendation to move the final-omitted rulemaking forward to the Board. The AQTAC also voted 9-6-1 to recommend that the Department consider adopting the Federal regulations by reference. The Department consulted the Small Business Compliance Advisory Committee (SBCAC) on July 27, 2011. The members of the SBCAC did not have concerns. The final-omitted rulemaking was discussed with the Citizens Advisory Council (CAC) Air Committee on October 19, 2011. The CAC Air Committee did not have concerns. On the recommendation of the Air Committee, on November 15, 2011, the CAC voted to concur with proceeding to the Board.

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

##### *Benefits*

Rescission of the Department's portable fuel containers regulations will limit confusion among retailers, distributors, importers and manufacturers of portable fuel containers about which set of standards apply to containers manufactured, imported, offered for sale, sold or distributed in this Commonwealth. Rescission of the regulations, which required automatic shut-off spouts, could also benefit air and water systems in this Commonwealth. The automatic shut-off spouts have been found to lead to increased spills of fuel on the ground, which can leach into nearby groundwater aquifers and streams or evaporate.

*Compliance Costs*

This final-omitted rulemaking does not require additional costs for compliance since the regulated community is already required to comply with the Federal regulations.

*Compliance Assistance Plan*

This final-omitted rulemaking does not require a compliance assistance plan.

*Paperwork Requirements*

Additional paperwork is not required as a result of this final-omitted rulemaking.

*F. Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on May 21, 2012, the Department submitted a copy of the final-omitted 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. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on June 20, 2012, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 21, 2012, and approved the final-omitted rulemaking.

*G. Findings*

The Board finds that:

(1) The amendments as set forth in Annex A are appropriate to rescind the portable fuel containers regulations.

(2) Use of the final-omitted rulemaking procedure is appropriate because the notice of proposed rulemaking procedure in sections 201 and 202 of the CDL is, in this instance, impracticable, unnecessary and contrary to the public interest. Chapter 130, Subchapter A has been superseded by more stringent Federal regulations.

(3) This final-omitted rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble and in the public interest.

*H. Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 130, are amended by deleting §§ 130.101—130.108 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

MICHAEL L. KRANCER,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 4297 (July 7, 2012).)*

**Fiscal Note:** 7-472. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Subpart C. PROTECTION OF NATURAL RESOURCES**  
**ARTICLE III. AIR RESOURCES**  
**CHAPTER 130. STANDARDS FOR PRODUCTS**  
**Subchapter A. (Reserved)**

Sec. 130.101—130.108. (Reserved).

[Pa.B. Doc. No. 12-1299. Filed for public inspection July 13, 2012, 9:00 a.m.]

**Title 40—LIQUOR**

**LIQUOR CONTROL BOARD**  
**[ 40 PA. CODE CH. 11 ]**

**Limited Winery Container Size Restrictions**

The Liquor Control Board (Board), under the authority of section 207(g) and (i) of the Liquor Code (code) (47 P.S. § 2-207(g) and (i)), amends Chapter 11 (relating to purchases and sales).

*Summary*

This final-omitted rulemaking deletes the container size restrictions imposed upon licensed limited wineries. Section 505.2 of the code (47 P.S. § 5-505.2) defines a "limited winery" as a winery which has an annual production of less than 200,000 gallons. Prior to this final-omitted rulemaking, under § 11.111(a)(3) (relating to sale by limited winery licensees), containers of wine sold by licensed limited wineries for delivery within this Commonwealth were not less than 3/16 liter nor more than 5 liters, except that sparkling grape wine could have been sold in glass containers larger than 5 liters. These size limitations did not apply to out-of-State sales conducted by licensed limited wineries.

The Board has been approached by industry members who would like to sell draught wine from limited wineries at their premises, which is becoming a popular trend in the retail marketplace. The regulation did not permit a limited winery to sell wine in larger keg containers which could be tapped by retail licensees and sold in draught form. This final-omitted rulemaking deletes container size restrictions applicable to licensed limited wineries thereby permitting limited wineries to sell wine in kegs and other containers larger than 5 liters. The minimum container size restriction is also being deleted, consistent with the Board's desire to allow limited wineries to sell in containers of any size, as the marketplace may demand.

*Affected Parties*

The final-omitted rulemaking will affect licensed limited wineries. There are 180 active limited wineries licensed by the Board, including 172 within this Commonwealth and 8 located outside of this Commonwealth. Potentially affected limited wineries have been or will be notified of this final-omitted rulemaking either by e-mail or by United States Postal Service mail.

*Paperwork Requirements*

The Board does not anticipate that this final-omitted rulemaking will affect the amount of paperwork or administrative costs of the regulated community.

*Fiscal Impact*

This final-omitted rulemaking is not expected to have adverse fiscal impact on the regulated community. In fact, this final-omitted rulemaking is expected to have a positive fiscal impact on licensed limited wineries and retail licensees who will be able to capitalize on a growing market trend. Further, selling wine in kegs may reduce the bottling and labeling costs of limited wineries, which may, in turn, result in overall cost-savings for those retail licensees buying kegs and for consumers who purchase wine at licensed establishments.

This final-omitted rulemaking is also not expected to have adverse fiscal impact on State and local governments. It should be noted that limited wineries may sell their products to the Board, retail licensees and the public. However, under section 305(i) of the code (47 P. S. § 3-305(i)) and § 11.104 (relating to wine in kegs), the Board is not authorized to sell wine in keg containers.

*Effective Date*

This final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

*Contact Person*

Further information is available by contacting Alan Kennedy-Shaffer, Assistant Counsel, or Christopher Herrington, Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

*Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on May 16, 2012, the Board submitted a copy of the final-omitted 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 Liquor Control Committees. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on June 20, 2012, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 21, 2012, and approved the final-omitted rulemaking.

*Order*

The Board, acting under the code, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 11, are amended by amending § 11.111 to read as set forth in Annex A.

(b) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

JOSEPH E. BRION,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 4297 (July 7, 2012).)*

**Fiscal Note:** 54-71. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 40. LIQUOR****PART I. LIQUOR CONTROL BOARD****CHAPTER 11. PURCHASES AND SALES****Subchapter C. WINES****LIMITED WINERIES****§ 11.111. Sale by limited winery licensees.**

(a) A limited winery licensee, licensed under § 3.62 (relating to creation), may sell wines produced on the licensed premises in accordance with the Liquor Code and this part, under the conditions in this subsection.

(1) There may be no sales for consumption on the licensed premises.

(2) Wine sold under a limited winery license may be shipped by transporter-for-hire or in a vehicle properly registered with the Board, as provided in Chapter 9, Subchapter A (relating to transportation of liquor, malt or brewed beverages or alcohol).

(3) Wine sold and destined to points within this Commonwealth shall be in sealed original containers.

(4) Sales may be made generally only between the hours of 9 a.m. and 9 p.m. Monday to Saturday, inclusive, and 10 a.m. to 6 p.m. on Sunday. During the period from the Thanksgiving Day holiday through New Year's Day, limited winery sales locations may remain open until 10 p.m. of sales day to conform with the closing times of neighboring mall or shopping district businesses. Additionally, a limited winery may request approval from the Board to extend sales hours in individual locations at other times during the year, or beyond the limits set in this section. The request shall be in writing, to the Board's Office of the Chief Counsel, and shall detail the exact locations where sales hours are proposed to be extended. The licensee shall also set forth the proposed hours and dates of extended operation, as well as the reason for, and justification of, the proposed extended sales hours.

(5) While there may be no sales on credit, a limited winery may accept:

(i) From licensees and retail customers, checks drawn on their account.

(ii) From retail customers, credit cards issued by banking or financial institutions subject to State or Federal regulations.

(6) Visitors on the licensed premises may be provided without charge with samples of wine produced by the limited winery for tasting and with crackers, nuts, cheese, bread sticks and bread cubes to be used in conjunction with tastings.



(7) Limited winery licensees engaged in the retail and wholesale sales of wine are responsible to conform to the Liquor Code and this title.

(8) In addition to the sale of wines, the following items are permitted to be offered for sale on the licensed premises:

(i) Pennsylvania-grown fruits and the following products produced from the fruits:

- (A) Juices.
- (B) Juice concentrates.
- (C) Jellies, jams and preserves.

(ii) Pennsylvania-grown mushrooms.

(iii) Home winemaking equipment and supplies.

(iv) Wine serving and storage accessories as follows:

- (A) Cork removers.
- (B) Wine glasses and decanters.
- (C) Wine racks.
- (D) Serving baskets and buckets.
- (E) Bottle stoppers.

(v) Publications dealing with wine and winemaking.

(vi) Cheese, crackers, breads, nuts and preserved meats for consumption off the premises.

(vii) Gift packages consisting of any combination of the items listed in subparagraphs (i)—(vi).

(viii) Promotional items advertising the limited winery such as tee shirts, glassware, caps and the like.

(9) Sales on the licensed premises of merchandise not listed in paragraph (8) is subject to Board approval. The approval shall be requested by letter addressed to the Board. A limited winery licensee will be advised of approved items through an appropriate means of dissemination.

(10) A specific code of wine which is listed for sale as a stock item by the Board in State Liquor Stores may not be offered for sale at a licensed winery location at a price which is lower than that charged by the Board.

(11) Mail or telephone orders may be accepted. Delivery of products shall be accomplished through the use of vehicles properly registered by the limited winery licensees or through properly licensed transporters. It is the responsibility of the limited winery licensee to insure that wine is not delivered to minors and that proper invoices are maintained under § 5.103 (relating to limited wineries).

(b) The employment of an agent by a limited winery is governed by § 3.63 (relating to agents).

(c) Records, sales invoices and reports shall be kept as prescribed in § 5.103.

(d) The use of additional Board-approved locations by limited winery licensees is governed by § 3.64 (relating to additional Board-approved locations).

[Pa.B. Doc. No. 12-1300. Filed for public inspection July 13, 2012, 9:00 a.m.]