

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 (relating to employer trip reduction), as set forth in §§ 126.201 – 126.208, 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 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” from § 121.1 (relating to definitions) and rescinds §§ 126.201 – 126.208 and Chapter 126, Appendix A (relating to target areas for the Philadelphia severe ozone nonattainment area) which were approved as final 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 regulation was never implemented and no emission reduction credits were claimed for it in State Implementation Plan (SIP) revisions.

This rescission of the regulation was adopted by order of the Board at its meeting of _____.

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 electronically through the Department of Environmental Protection's (Department) web site at 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 (Bucks, Chester, Delaware, Montgomery and Philadelphia counties) of the Philadelphia CMSA was the only area of the Commonwealth classified as a severe ozone nonattainment area. The final-form rulemaking required employers subject to the regulation 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 regulation in response to section 182(d)(1)(B) of the Federal 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 regulation 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.

In November 1994, the Commonwealth's General Assembly passed Act 95 of 1994, which amended the Commonwealth's Vehicle Code 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. See 75 Pa.C.S.A. § 4706. Act 95 of 1994 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 #271-5000-001, published February 1996) explaining the actions the Department took in response to the Commonwealth's Act 95 of

1994. In addition, the policy document stated that the Department would repeal the ETR regulation if the CAA was amended to make the program voluntary.

In 1995, Congress amended the CAA to make the program voluntary. See PL 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 repeal of the provisions in Subchapter B and Appendix A, and the related definitions, does not negatively affect the environmental air quality of the Commonwealth. The ETR regulation was never implemented and the Commonwealth did not claim emission reduction credits for it in SIP revisions.

The 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 rulemaking to the Board. The rulemaking was discussed with the Citizens Advisory Council (CAC) Air Committee on October 19, 2011. The CAC Air Committee had no 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

Repeal of the Department’s ETR regulation will limit confusion for employers of 100 or more employees in the Commonwealth portion of the Philadelphia CMSA by removing Subchapter B and Appendix A from the *Pennsylvania Code*.

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

No additional paperwork is 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 _____, 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 final-omitted rulemaking was 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 _____, 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 _____, 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 regulation.
- (2) Use of the omission of notice of proposed 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 §§ 126.201—126.208 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 regulation was never implemented and is 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 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 KRANCER
Chairman