

Regulatory Analysis Form		This space for use by IRRC RECEIVED 2004 AUG 30 AM 11:06 REVIEW COMMISSION IRRC Number: 2372	
(1) Agency Pennsylvania State Police			
(2) I.D. Number (Governor's Office Use) 17-64			
(3) Short Title Liquor Control Enforcement Age Compliance Checks Administration of the Age Compliance Program			
(4) PA Code Cite Title 37. Law Part I. State Police Chapter 23. Administration of the Bureau of Liquor Control Enforcement Age Compliance Check Program		(5) Agency Contacts & Telephone Numbers Primary Contact: Syndi L. Guido, Policy Director 717-772-0905 Secondary Contact: Major Leonard McDonald 717-540-7410	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulation prescribes the manner in which the Pennsylvania State Police, Bureau of Liquor Control Enforcement will conduct undercover investigations of establishments licensed to sell alcoholic beverages through the use of underage buyers between the ages of 18 and 20 who purchase or attempt to purchase alcohol under the supervision of a Pennsylvania State Police Trooper assigned to the Bureau, or a Liquor Enforcement Officer. The underage buyers must undergo approved training. After a compliance check is conducted, the Bureau will notify the licensee of the outcome. If the licensee is not in compliance, he will be given immediate verbal notice with written notice being sent within 10 working days. The licensee will also be cited for furnishing alcoholic beverages to a minor under § 493(1) of the Liquor Code. If the licensee is in compliance, he will receive written notice only.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The regulation is authorized by 18 Pa.C.S. § 6308(e)(3). There are no relevant court decisions.			

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The Act of 1972, Dec. 6, P.L. 1482, No. 334, as amended by the Act of 2002, Dec. 3, P.L. 1144, No. 141, § 1 (18 Pa.C.S. § 6308(e)(3)), requires the State Police to promulgate regulations prescribing the manner in which age compliance checks are performed.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Act of 1972, Dec. 6, P.L. 1482, No. 334, as amended by the Act of 2002, Dec. 3, P.L. 1144, No. 141, § 1 (18 Pa.C.S. § 6308(e)(3)), allows individuals under the age of 21 to purchase and possess alcoholic beverages under the supervision of an officer of the Bureau of Liquor Control Enforcement once the requisite regulations have been promulgated. Age compliance checks are a critical tool for law enforcement to ensure that those who sell alcoholic beverages do not provide them to anyone under the age of 21. The regulations provide a deterrent to those who might be tempted to sell alcohol to underage drinkers and give communities reassurance that licensed establishments act responsibly.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

The Pennsylvania State Police believe that age compliance checks will reduce the sale of alcohol to underage drinkers.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All citizens in Pennsylvania will benefit from implementation of a program that will allow the State Police to detect, deter, and prevent underage drinking.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Pennsylvania State Police do not believe anyone will be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

There are no groups, entities, or persons other than the Pennsylvania State Police Bureau of Liquor Control Enforcement who must comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Pennsylvania State Police solicited input from the Malt Beverage Distributors Association of Pennsylvania, the Pennsylvania Beer Wholesalers Association, the Pennsylvania Tavern Association, the Pennsylvania Chiefs of Police Association, the Pennsylvania District Attorneys Association, Pennsylvanians Against Underage Drinking, and the Pennsylvania Chapter of Students Against Drunk Driving. The State Police received input from the Pennsylvania Tavern Association and Pennsylvanians Against Underage Drinking.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation does not place any new burdens upon the regulated community. The law has always required liquor licensees to ensure that minors do not obtain alcoholic beverages in their establishments. Some licensees may incur additional costs associated with more careful screening of youthful patrons, but these costs may be offset by corresponding reductions in insurance rates and/or legal costs from reduced liability awards. There is no objective method of calculating the interplay between these factors.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

N/A (see No. 19)

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Implementation of the regulation should result in a decrease of underage consumption of alcoholic beverages with all of the corresponding benefits to society. The ripple effect of implementing these regulations impacts upon health care, law enforcement, education, and the economy. There is no objective method of calculating these savings.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

N/A	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

See No. 19

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

N/A

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

See No. 17 & 19. There are minimal costs associated with this program. The benefits of reducing underage consumption of alcoholic beverages are incalculable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no viable nonregulatory alternatives to the regulations. The regulations are mandated by statute – see No. 10.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no viable regulatory alternatives to the regulations, which are mandated by statute.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A – There are no federal standards for age compliance checks.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Several states have similar programs. The regulations will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Input has already been sought from the groups listed in No. 16. No public hearings or informational meetings have been scheduled, but information regarding the regulations is available on the Pennsylvania State Police website and comments are welcome.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No; a standard administrative investigation report will be employed by the Compliance Officers.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Unknown. The Pennsylvania State Police Bureau of Liquor Control Enforcement will be prepared to implement the Age Compliance Program as soon as the regulations are approved.

(31) Provide the schedule for continual review of the regulation.

Absent additional legislation, the provisions of 18 Pa.C.S.A. § 6308(e), which authorize the age compliance check program, will expire December 31, 2007. In the meantime, the regulations will be continuously reviewed for clarity, effectiveness, and whether they are serving the greater interests of citizens of this Commonwealth.

**FACE SHEETS
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

2372

RECEIVED
2004 AUG 30 AM 11:06

REVIEW DIVISION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and
legality. Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of
a document issued, prescribed or promulgated by:

Pennsylvania State Police

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 17-64

DATE OF ADOPTION _____

By: Col. Jeffrey B. Miller

Colonel Jeffrey B. Miller

TITLE Commissioner

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and
legality Executive or Independent Agencies

By: Tanya C. [Signature]

DATE OF APPROVAL

5/18/04

Deputy General Counsel

~~Chief Counsel - Independent Agency~~

Strike inapplicable title

Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

FINAL-FORM RULEMAKING

TITLE 37. LAW

PART I. STATE POLICE

CHAPTER 23. ADMINISTRATION OF THE BUREAU OF LIQUOR

CONTROL ENFORCEMENT AGE COMPLIANCE CHECK PROGRAM

RULES AND REGULATIONS

PENNSYLVANIA STATE POLICE

[37 PA. CODE CH. 23]

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

The Pennsylvania State Police publishes this final-form rulemaking amending 37 Pa Code, Part I to add Chapter 23 (relating to administration of the Bureau of Liquor Control Enforcement Age Compliance Check program) as set forth in Annex A.

As a requirement of Act 141 of 2002, P.L. 1144, No. 141, § 1 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages), these final-form regulations are necessary for the general administration of the age compliance program. The effective date of the act was February 1, 2003. As set forth, the final-form regulations prescribe the manner in which compliance checks are to be performed and require officers, employees, and interns of the Bureau of Liquor Control Enforcement to undergo approved training prior to participation in a compliance check.

Statutory Authority

The rulemaking is authorized by Act 141 of 2002, P.L. 1144, No. 141, § 1 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages).

Effect

The regulations will affect the Pennsylvania State Police Bureau of Liquor Control Enforcement and establishments licensed to serve alcoholic beverages

Effective Date/Sunset Date

The final-form rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*. The regulations will sunset when Act 141 of 2002 sunsets on December 31, 2007.

Comments and Responses

The Pennsylvania State Police did not receive any comments from the Senate Committee on Law and Justice. The State Police received the following comments from the House Judiciary Committee.

1. The Committee suggested that the training curriculum for underage buyers include a segment on alcohol abuse. The State Police accepted this suggestion and included § 23.21(b)(1)(v) to require that training.

2. The Committee noted its concern with language found in subsection § 23.22(a) which stated that age compliance checks would be conducted with no less than one Bureau officer and one underage buyer. The Committee suggested that the language be amended to read "no less than one Bureau officer for each underage buyer." The State Police adopted that suggestion and revised § 23.22(a) accordingly.

3. The Committee was concerned with the language found in proposed § 23.22(e) which stated that the Bureau officer "will endeavor to maintain visual contact with the underage buyer." The Committee felt the phrase "will endeavor" did not set a sufficiently clear standard and suggested the subsection be amended to provide that the Bureau officer "shall maintain" visual contact with the underage buyer. The State Police did not make the suggested revision because the crowded bar environment and the necessity of effective undercover operations make it impractical for a Bureau officer to maintain a "visual lock" on the underage buyer at all times. In a crowded bar, it would not be uncommon for the Bureau officer to lose temporary visual contact as the underage buyer moves through the bar or the officer occasionally scans the crowd pursuant to normal undercover procedure. In response to the Committee's comment, the State Police has eliminated the requirement that Bureau officers endeavor to maintain contact. Instead, the State Police will enact undercover operating procedures to address this situation.

4. The Committee expressed some concerns about proposed § 23.22(j), which related to notifying the licensed premises of the compliance check results. First, the Committee recommended that the actual licensee be notified; second, that the Bureau officer who supervised the underage buyer be responsible for providing the notification; third, that written notification of compliance be made within ten working days of the age compliance check program. With respect to the Committee's first point, the State Police believe there would be innumerable problems associated with notifying the actual licensee of the compliance check results. A liquor license can be held by an individual, a partnership, or a corporation. Moreover, a management corporation can be placed under contract by the "licensee" to operate the premises; this is common practice with franchises and bars located in major hotels. In response to the Committee's concern, the State Police has provided in § 23.23, that the notification will be made to the Board approved manager or person in charge of the licensed premises. This is consistent with Liquor Control Board regulations that require a bar to have a full-time manager. See 40 Pa. Code §§ 5.16, 5.17, and 5.23. With respect to the Committee's second point, the regulation has been amended to provide that a bureau officer will make the required notification; however, that notification does not need to be made by the same officer who supervised the underage buyer during the compliance check. The Enforcement Bureau may want to use the same undercover officer to conduct additional compliance checks in that bar or to supervise the underage buyer in more than one establishment on any given day. For that reason, the State Police has chosen to retain the flexibility of using another Bureau officer to make the required notification. The State Police has accepted the Committee's recommendation that written notification of compliance be provided within ten working days; that requirement is now contained in § 23.23(b).

The State Police received the following comments from IRRC:

1. IRRC incorporated comments and concerns raised by the House Judiciary Committee. The State Police has responded to those comments as outlined above.
2. IRRC commented that the definition of "compliance" should include references to the statutes with which the licensee needs to comply. The final regulation has been amended to include a reference to 47 P.S. § 4-493(1). IRRC also questioned whether the regulation needs to include a definition of the terms "sale or sell." The State Police decided to retain the definition of "sale or sell" to be consistent with the Liquor Code, which contains such a definition.
3. IRRC recommended including a provision specifying how the State Police will determine if required training has been completed. The State Police does not believe such a provision is necessary with respect to Bureau officers who cannot become Bureau officers until they have successfully completed a 13-15 week resident training course at the State Police Academy. With respect to the training required of underage buyers, § 23.21(b)(2) of the final regulation requires underage buyers to pass an examination administered by the Enforcement Bureau.
4. Section 23.22(a) of the proposed regulation required an age compliance check to be performed with "at least one bureau officer and one underage buyer." IRRC asked in what situations there would not be a one-to-one ratio. Based on comments received from the House Judiciary Committee, the final regulation provides that the age compliance check shall be conducted with at least one bureau officer for each underage buyer.
5. IRRC expressed three concerns regarding the notice procedures and requirements contained in proposed § 23.22(j). First, IRRC noted that subsections (a) through (i) of § 23.22 addressed how compliance checks would be implemented and that subsection (j) addressed notification requirements after the compliance check was completed. IRRC recommended that subsection (j) be separated from § 23.22 and assigned its own section. The State Police has adopted IRRC's suggestion and moved the notification procedures to § 23.23. Second, IRRC noted that the proposed regulation states that notification of the results of the age compliance check would be given to the licensed premises. IRRC suggested that the final-form regulation should direct the Bureau officer to give written notice of the results of the compliance check to an individual such as a manager or person in charge of the premises. The State Police agrees. Section 23.23 of the final-form regulation states that notification will be made to the Board approved manager or person in charge of the licensed premises. The final regulation also includes a definition of the term "Board approved manager." Finally, IRRC suggested that the final-form regulation should specify the date, time, and any other information, if available, that would assist the licensee and its employees in complying with the law. In response to this suggestion, PSP has added § 23.23(c), which requires the verbal and written notification to include the date and time of the compliance check as well as the name of the server if known.
6. IRRC suggested amending the preamble to include an expiration date of December 31, 2007, to be consistent with the authorizing statute, Act 141 of 2002, which will sunset on that date. The State Police made the suggested revision to the preamble.

7. IRRC pointed out that the proposed regulation as published in the *Pennsylvania Bulletin* incorrectly refers to the Liquor Code as 43 P.S. IRRC also suggested that the regulation refer to specific sections of the Liquor Code and the Crimes Code that will be addressed in training for underage buyers. As a result of IRRC's comments, § 23.21(b) has been revised to provide that underage buyers will receive training on §§ 493(1) and 493(14) of the Liquor Code, Title 47 P.S., and §§ 6307-6310.3 of the Crimes Code, Title 18 Pa.C.S.

The Pennsylvania Tavern Association provided the House Judiciary Committee with the following comments which were subsequently forwarded to the State Police:

1. The Association suggested altering the definition of an "underage buyer" to provide that the underage buyer must be "an individual who a reasonable person standing in the shoes of the server would believe to be underage at the time of purchase or attempt to purchase and would require the underage buyer to produce valid proof of age." The State Police made no change to the regulation in response to this comment. The purpose of the age compliance check is to ensure that licensed premises comply with the law, and it is illegal to serve alcohol, malted, or brewed beverages to persons under the age of 21 regardless of their physical appearance.

2. The Association suggested that no more than one underage buyer should be supervised by a single Bureau officer. In response to this comment, the State Police revised § 23.22(a) to provide that a compliance check will be conducted with one Bureau officer for each underage buyer.

3. Like the House Judiciary Committee, the Association suggested that Bureau officers be required to maintain constant visual contact with the underage buyer. The State Police thoughtfully considered this suggestion but rejected it as impractical. The final regulation has been amended to omit any requirement as to maintaining eye contact; instead, that issue will be addressed in internal standard operating procedures.

4. The Association suggested that licensed establishments be given immediate notice of noncompliance. The State Police made no change in response to this comment because § 23.22(j)(2) already provided that immediate verbal notification would be made when a licensed premises is not in compliance. At IRRC's suggestion, in the final regulation, the notification provisions were moved to a new subsection, § 23.23. The requirement of immediate notification of noncompliance has been retained and can now be found in § 23.23(a).

5. The Association also suggested that the notice of compliance or noncompliance should include the date, time and location of the compliance check as well as the name of the server. The final regulation has been amended to provide, in subsection § 23.23(c), that verbal and written notification will include the date and time of the compliance check as well of the name of the server if it is known.

Finally, the Pennsylvania Liquor Control Board provided the following comments to the Senate Committee on Law and Justice, which shared them with the State Police:

1. The Board opined that the regulation's definition of the term "purchase" is used in a manner inconsistent with the definition. The State Police disagree and no change has been made to the regulation in response to this comment.

2. The Board commented that the proposed regulation does not detail the training Bureau officers must complete before participating in an age compliance check. The State Police do not believe Act 141 of 2002 requires Bureau officers who supervise age compliance checks to receive specific training. Given the fact that an individual must be 21 years of age to work as a Bureau officer, Bureau officers will never serve as underage buyers. Section 21.21(a) reflects the fact that to become a Bureau **officer**, one must complete a 13 to 15 week resident training program at the State Police Academy, which will include training related to age compliance checks. The State Police has chosen not to include more specific information about the resident training program's curriculum in the final regulation in order to retain the requisite flexibility to make changes to the training based on experience with the age compliance check program.

3. The Board questioned whether the Bureau's failure to comply with the regulations could expose the Bureau officer or the underage buyer to criminal liability or have consequences in a subsequent administrative action against the licensee. Internal checks and balances within the State Police will ensure that age compliance checks are conducted properly and no changes were made to the regulation based on the Board's comment.

4. The Board noted that a previous draft of the House Bill 850, which ultimately became Act 141 of 2002, had prohibited the underage buyer from orally misrepresenting the buyer's age. No change has been made to the regulation based on the Board's observation. It is not uncommon for underage individuals to verbally represent that they are 21 in an effort to obtain alcohol, malt, or brewed beverages. Consequently, it is entirely appropriate to allow underage buyers to make that verbal representation during an age compliance check in which the focus is the licensee's compliance with the law.

Regulatory Review

On December 8, 2003, copies of the proposed rulemaking were delivered to the Independent Regulatory Review Commission and the Majority and Minority Chairmen of the House Judiciary Committee and Senate Law and Justice Committee. Notice of proposed rulemaking was published at 33 Pa. B. 6227 (December 20, 2003) and provided for a 30-day public comment period. In compliance with section 5(c) of the Regulatory Review Act, the Pennsylvania State Police provided IRRC and the Committees with copies of all comments received during the public comment period, as well as other documents if requested. In preparing the final-form rulemaking, the Pennsylvania State Police has considered all comments received from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, these final form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC approved the final-form rulemaking on _____.

Contact Person

For further information on the final-form rulemaking, contact Syndi L. Guido, Policy Director, Pennsylvania State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. If you are a person with a disability and require an alternative format of this document (i.e. large print, audio tape, Braille) please contact Ms. Guido so that she may make the necessary arrangements.

Fiscal Impact

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

Paperwork Requirements

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

Findings

The Pennsylvania State Police finds that:

(1) Public notice of intention to adopt these amendments has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.2003

(2) A public comment period was provided as required by law and all comments were considered and forwarded to IRRC, the Senate Committee on Law and Justice, and the House Judiciary Committee.

(3) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

The Pennsylvania State Police, acting under the authorizing statutes, orders that:

(a) The regulations of the Pennsylvania State Police, 37 Pa. Code, Part I are amended to add Chapter 23, Administration of the Bureau of Liquor Control Enforcement Age Compliance Check Program as set forth in Annex A.

(b) The Pennsylvania State Police will submit this order and Annex A to the Office of General Counsel and Office of Attorney General as required by law for approval as to form and legality.

(c) The Pennsylvania State Police shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

COLONEL JEFFREY B. MILLER
Chairperson

Annex A

TITLE 37. LAW

PART I. STATE POLICE

CHAPTER 23. ADMINISTRATION OF THE

BUREAU OF LIQUOR CONTROL ENFORCEMENT

AGE COMPLIANCE CHECK PROGRAM

GENERAL PROVISIONS

Sec.

23.1. Definitions.

COMPLIANCE CHECKS

23.21. Required training.

23.22. Age compliance checks.

GENERAL PROVISIONS

§ 23.1. Definitions.

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

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

BOARD APPROVED MANAGER—A PERSON APPOINTED OR DESIGNATED BY THE LICENSEE AND APPROVED BY THE LIQUOR CONTROL BOARD PURSUANT TO 40 PA. CODE §§ 5.16, 5.17, OR 5.23.

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

Compliance--Refusing sale or service of liquor or malt or brewed beverages to the underage buyer AS REQUIRED BY 47 P.S. 4-493(1).

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

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

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

Malt or brewed beverages--Any beer, lager beer, ale, porter or similar fermented malt beverage containing .5% or more of alcohol by volume, by whatever name the beverage may be called.

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

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

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

COMPLIANCE CHECKS

§ 23.21. Required training.

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

(b) Underage buyers. Before participating in an age compliance check, an underage buyer shall:

(1) Complete a training course prescribed by the Enforcement Bureau, which includes instruction in at least the following areas of study:

(1) (i) ~~Applicable provisions of the Liquor Code (43 47 P. S.) and 18 Pa.C.S. (relating to the Crimes Code)~~— SECTIONS 493(1) and 493(14) OF THE LIQUOR CODE, TITLE 47 P.S., AND §§ 6307-6310.3 OF THE CRIMES CODE, TITLE 18 PA.C.S.

(2) (ii) Safety protocols.

(3) (iii) Undercover investigations.

(4) (iv) Testifying in court.

(v) ALCOHOL ABUSE.

(2) PASS AN EXAMINATION ADMINISTERED BY THE ENFORCEMENT BUREAU.

§ 23.22. Age compliance checks.

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

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

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

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

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

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

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

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

(1) (H) ~~Upon purchase of~~ IF AN UNDERAGE BUYER REMOVES THE liquor or malt or brewed beverages FROM THE LICENSED PREMISES, the underage buyer shall deliver the liquor or malt or brewed beverages to the Bureau officer as soon as possible, consistent with safety protocols.

(1) § 23.23. A Bureau officer shall be responsible for insuring notification is made of the results of the age compliance check to the BOARD APPROVED MANAGER OR PERSON IN CHARGE OF THE licensed premises.

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

(2) (B) If the licensed premises is found to be in compliance, written notification of compliance will be provided to the licensed premises WITHIN 10 WORKING DAYS.

(C) VERBAL AND WRITTEN NOTIFICATION WILL INCLUDE THE DATE AND TIME OF THE COMPLIANCE CHECK AS WELL AS THE NAME OF THE SERVER IF KNOWN.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110

Syndi L. Guido
Director
Policy Office

E-Mail: sguido@state.pa.us
Telephone: (717) 772-0905
FAX: (717) 705-1750

August 30, 2004

The Honorable Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Re: Proposed Rulemaking, Identification Number 17-64
Title 37. Law, Part I. State Police
Chapter 23. Administration of the Bureau of Liquor
Control Enforcement Age Compliance Check Program

Dear Mr. Nyce:

Pursuant to the Regulatory Review Act, enclosed is a copy of a final-form rulemaking amending 37 Pa. Code, Chapter 41, relating to the designation of emergency vehicles. The proposed rulemaking was delivered to the Commission on December 8, 2003, and published at 33 Pa. B. 6227 (December 20, 2003). If I can be of further assistance, please let me know.

Sincerely,


Syndi L. Guido
Policy Director

Enclosure

cc: Colonel Jeffrey B. Miller
Major Leonard McDonald
Chief Counsel Barbara Christie
Assistant Counsel Thomas Ballaron

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 17-64

SUBJECT: Administration of the Bureau of Liquor - Control Enforcement Age Compliance Check Program

AGENCY: PA STATE POLICE #2372

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

2004 AUG 30 11:11:07
 REVIEW COMMITTEE

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/30	<i>Christina George</i>	HOUSE COMMITTEE ON JUDICIARY
8/30	<i>Sue Thomas</i>	
8/30	<i>Janet B.</i>	SENATE COMMITTEE ON LAW AND JUSTICE
8/30	<i>M. Wagner</i>	
8/30/04	<i>Joseph F. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)