

# Regulatory Analysis Form

(Completed by Promulgating Agency)

## INDEPENDENT REGULATORY REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:

Environmental Protection

(2) Agency Number:

#7-471

IRRC Number:

2946

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(3) PA Code Cite:

25 Pa. Code Chapter 126, Subchapter B and 25 Pa. Code Chapter 126, Appendix A

(4) Short Title:

Employer Trip Reduction - Repeal.

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Michele Tate, 783-8727, [mtate@pa.gov](mailto:mtate@pa.gov)

Secondary Contact: Patricia M. Allan, 783-8727, [pmallan@pa.gov](mailto:pmallan@pa.gov)

(6) Type of Rulemaking (check applicable box):

☐ Proposed Regulation

☐ Final Regulation

X Final Omitted Regulation

☐ Emergency Certification Regulation;

☐ Certification by the Governor

☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The final-omitted rulemaking rescinds the employer trip reduction (ETR) requirements in 25 Pa. Code Chapter 126, Subchapter B (relating to employer trip reduction), as set forth at §§ 126.201 – 126.208, and Chapter 126, Appendix A (relating to target areas for the Philadelphia severe ozone nonattainment area). The final-omitted rulemaking also deletes 13 supporting terms from § 121.1 (relating to definitions).

The ETR requirements were approved as final rulemaking by the Environmental Quality Board (Board) on September 21, 1993, and published at 24 Pa.B. 693 (January 29, 1994). The ETR regulation requires employers located in "severe" ozone nonattainment areas with 100 or more employees to develop and implement a program to reduce work-related vehicle trips by employees.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Statutory authority for this action comes from section 5 of the Pennsylvania Air Pollution Control Act (35 P.S. § 4005), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The ETR program is no longer mandated by Federal law. The revision to the Federal Clean Air Act (CAA) making the program voluntary occurred in 1995. (PL 104-70, December 23, 1995.) Prior to that Federal amendment, the Commonwealth submitted its final-form ETR regulation to the United States Environmental Protection Agency (EPA) as a State Implementation Plan (SIP) revision on May 2, 1994, but the EPA did not act upon it. Consequently, the Commonwealth's regulation is not Federally enforceable.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Chapter 126, Subchapter B requires an employer with 100 or more employees located in a "severe" ozone nonattainment area of the Commonwealth to implement a program to reduce work-related vehicle trips by employees, referred to as an ETR plan. At the time the final-form regulation was published, the Pennsylvania portion (Bucks, Chester, Delaware, Montgomery and Philadelphia counties) of the Philadelphia Consolidated Metropolitan Statistical Area (CMSA) was the only area of the Commonwealth classified as a "severe" ozone nonattainment area. The regulation was developed in response to the requirements of CAA section 182(d)(1)(B). (42 U.S.C.A. § 7511a(d)(1)(B)). The CAA required states with severe ozone nonattainment areas to submit a revision to the SIP requiring an employer in the severe ozone nonattainment area to implement an ETR plan.

In November 1994, the Pennsylvania General Assembly enacted 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 Pennsylvania'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.

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 of Chapter 126 from the Pennsylvania Code. The repeal of the provisions set forth in §§ 126.201 – 126.208 and Appendix A 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.

(11) If data is the basis for this regulation, please provide a description of the data; explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

NA

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

NA

(13) 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.

The ETR regulation applied only to employers of 100 or more employees in the Pennsylvania portion of the Philadelphia CMSA. The regulation was never implemented, is no longer Federally mandated and no longer required by Commonwealth law; therefore, no compliance was required.

(14) 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. Explain how the dollar estimates were derived.

There will be no costs or savings to the regulated community.

(15) 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. Explain how the dollar estimates were derived.

The final-omitted rulemaking is expected to impose no direct regulatory costs or savings on local governments.

(16) 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. Explain how the dollar estimates were derived.

The final-omitted rulemaking is expected to impose no direct regulatory costs or savings on state governments.

(17) 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.

	Current FY Year 11/12	FY +1 Year 12/13	FY +2 Year 13/14	FY +3 Year 14/15	FY +4 Year 15/16	FY +5 Year 16/17
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Savings</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>COSTS:</b>	0.00	0.00	0.00	0.00	0.00	0.00
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Costs</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>REVENUE LOSSES:</b>	0.00	0.00	0.00	0.00	0.00	0.00
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Revenue Losses</b>	0.00	0.00	0.00	0.00	0.00	0.00

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 (08/09)	FY-2 (09/10)	FY-1 (10/11)	Current FY (11/12)
Environmental Program Management (161-10382)	\$37,664,000	\$31,100,000	\$28,166,000	\$28,035,000
Clean Air Fund Major Emission Facilities (215- 20077)	\$22,660,000	\$21,877,000	\$19,164,000	\$22,748,000
Clean Air Fund Mobile and Area Facilities (233- 20084)	\$7,949,000	\$6,121,000	\$5,050,000	\$6,430,000

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

NA

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

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.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

NA

(21) 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 regulations.

The requirements of the ETR regulation are not more stringent than Federal regulations. No companion Federal regulations exist nor are the requirements codified in the Commonwealth's SIP.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Most, if not all, severe ozone nonattainment areas discontinued their ETR programs when the program became optional under the CAA. Repealing this regulation will ensure that businesses in Philadelphia are not confused with unnecessary requirements.

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

No.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional paperwork is required as a result of the final-omitted rulemaking.

(25) 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.

There are no special provisions.

(26) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: NA
- B. The date or dates on which public meetings or hearings will be held: NA
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: June 2012
- D. The expected effective date of the final-form regulation: June 2012
- E. The date by which compliance with the final-form regulation will be required: NA
- F. The date by which required permits, licenses or other approvals must be obtained: NA

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

NA

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
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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:

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-471

DATE OF ADOPTION MARCH 20, 2012

BY \_\_\_\_\_

TITLE **MICHAEL KRANCER  
CHAIRMAN**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY \_\_\_\_\_

*Megan L. Considine*  
Megan L. Considine  
**APR 30 2012**  
DATE OF APPROVAL

(Deputy General Counsel)  
~~(Chief Counsel - Independent Agency)~~  
(Strike inapplicable title)

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

**NOTICE OF FINAL RULEMAKING  
(with Notice of Proposed Rulemaking Omitted)**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**EMPLOYER TRIP REDUCTION; REPEAL  
25 Pa. Code, Chapters 121 and 126**





**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 “worksite” 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 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, 12<sup>th</sup> 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](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 (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 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 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



## 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:

\* \* \* \* \*

~~[*APQ—Average Passenger Occupancy*—The average passenger occupancy for employers in the Philadelphia CMSA is the number of employees reporting to the worksite during the peak travel period divided by the sum of the number of vehicles in which employees report during these peak travel periods.~~

$$\text{APQ} = \frac{\begin{array}{l} \# \text{ of employees reporting to worksite} \\ \text{6 a.m. to 10 a.m.} \\ \text{from Monday through Friday} \end{array}}{\begin{array}{l} \# \text{ of vehicles in which employees report} \\ \text{6 a.m. to 10 a.m.} \\ \text{from Monday through Friday} \end{array}} \quad \text{[delete equation]}$$

~~[*AVO—Average Vehicle Occupancy*—An estimated average number of passengers in vehicles reporting to worksites during the peak travel period. AVO is estimated by dividing the number of employees who report to worksites or other related activity centers in the severe ozone nonattainment area during the peak travel period by the number of vehicles in which these employees report over that 5-day period. All employees, including those who work for employers with less than 100 employees are included in this calculation. The AVO for the severe nonattainment area which includes the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia is 1.37 passengers per vehicle.]~~

\* \* \* \* \*

~~[*Bus pool*—An employer-administered bus transportation service having advance ticket purchase, guaranteed seats and limited pickup at defined locations.]~~

\* \* \* \* \*

~~[*Commuting trips*—Trips from the employee's residence to the employee's worksite including stops en route to work during the peak travel period.]~~

\* \* \* \* \*

**[Employee]**—For purposes of the employer trip reduction requirements of Chapter 126, Subchapter B (relating to employer trip reduction), a person working for a firm, person, educational institution, nonprofit agency or corporation, Federal, state or local government department or agency or other entity, in a full or part time position who either reports to work or is assigned primarily to a worksite 80 or more hours per 28-day period in either a permanent or temporary capacity, on either a contract or employed basis, excluding volunteers.

**Employer**—For purposes of the employer trip reduction requirements of Chapter 126, Subchapter B, a person, firm, business, educational institution, government department or agency, nonprofit agency or corporation or another entity which employs 100 or more employees at a single worksite within the Philadelphia CMSA and which has 33 or more employees reporting to the worksite during the peak travel period. Several subsidiaries or units that occupy the same worksite and report to one common governing body or governing entity are considered to be one employer.]

\* \* \* \* \*

**[Peak travel period]**—The time between 6 a.m. and 10 a.m., inclusive, Monday through Friday.]

\* \* \* \* \*

**[Philadelphia CMSA]**—The counties of Bucks, Chester, Delaware, Montgomery and Philadelphia.]

\* \* \* \* \*

**[Target area]**—An area within the severe nonattainment area in which employers shall achieve specific increases in APO. The four target areas for the severe nonattainment area are described in Appendix A—Target Areas for the Philadelphia Severe Ozone Nonattainment Area.

**Telecommuter**—A term used to describe an employee who works at the employee's own residence using electronic or other means to communicate with the employer.]

\* \* \* \* \*

**[Transportation coordinator]**—An hourly or salaried employee designated by an employer with authority for and responsibility to develop and implement the employer trip reduction program. The term does not include a transportation management association or other contractor that assists an employer with the development and implementation of the employer trip reduction program.]

\* \* \* \* \*

**[Van pool]**—Seven or more persons commuting to a worksite in one vehicle on a regular basis.]



\* \* \* \* \*

~~[Worksite—A building or a portion of a building which is owned or operated by the same employer or by employers under common control as provided in the employer definition or a grouping of buildings located within the same target area of the severe ozone nonattainment area which are in actual physical contact or separated only by a private or public roadway or other private or public right of way and which are owned or operated by the same employer or by employers under common control as provided in the employer definition.]~~

\* \* \* \* \*

## CHAPTER 126. MOTOR VEHICLE AND FUELS PROGRAMS

### SUBCHAPTER B. EMPLOYER TRIP REDUCTION

- 126.201. ~~[Scope.]~~ [Reserved].  
126.202. ~~[General.]~~ [Reserved].  
126.203. ~~[Calculating APO.]~~ [Reserved].  
126.204. ~~[Developing the employer trip reduction plan.]~~ [Reserved].  
126.205. ~~[Single Employer Averaging Program.]~~ [Reserved].  
126.206. ~~[Multiemployer programs.]~~ [Reserved].  
126.207. ~~[Compliance monitoring and reporting.]~~ [Reserved].  
126.208. ~~[New employers.]~~ [Reserved].

§ 126.201. ~~[Scope.]~~ [Reserved].

~~[This subchapter is limited to employers in the Philadelphia CMSA.]~~

§ 126.202. ~~[General.]~~ [Reserved].

~~[(a) Employers shall develop and implement a plan to increase APO for their worksite to:~~

- ~~—(1) 3.00 passengers per vehicle for target area 1.~~
- ~~—(2) 1.75 passengers per vehicle for target area 2.~~
- ~~—(3) 1.58 passengers per vehicle for target area 3.~~
- ~~—(4) 1.50 passengers per vehicle for target area 4.~~

~~[(b) Each employer shall designate and identify a transportation coordinator at each worksite.~~

~~(c) Section 126.203 (relating to calculating APO) describes the process to be followed by employers for the calculation of the APO and identifies the APO information that shall be provided to the Department on an annual basis.~~

~~(d) Section 126.204 (relating to developing the employer trip reduction plan) describes the process to be followed by employers for developing the employer trip reduction plan and the time frames for submission of the plan to the Department, and identifies the time frames for implementation of the plan.~~

~~(e) Section 126.205 (relating to Single Employer Averaging Program) establishes a process by which an employer with more than one worksite in the severe ozone nonattainment area can develop an employer trip reduction program for multiple worksites.~~

~~(f) Section 126.206 (relating to multiemployer programs) establishes a process by which multiple employers with worksites in close proximity within the same target area can develop an employer trip reduction program which allows trading between employers.~~

~~(g) Section 126.207 (relating to compliance monitoring and reporting) describes the requirements for reporting on the progress made by employers in implementing their employer trip reduction plan and, when the employer has failed to achieve the required APO, the corrective measures that will be taken to achieve the APO.~~

~~(h) Section 126.208 (relating to new employers) describes the time frames for development, submission and implementation of an employer trip reduction plan for employers who, because of relocation or expansion, come under the requirements of this chapter.]~~

#### **§ 126.203. [Calculating APO.] [Reserved].**

~~[(a) Each employer shall conduct an annual evaluation of its employee population to identify each employee who reports to work during the peak travel period.~~

~~(b) Each employer shall conduct an annual survey of the employees identified in subsection (a) as follows:~~

~~— (1) Employers with equal to or greater than 1,000 employees at the worksite shall either conduct a survey following the requirements of paragraph (2) or a statistically based probability survey that provides a 95% confidence level that the information gathered is an accurate representation of the affected employee population. If the number of employees responding to the survey is insufficient to establish a 95% confidence level, employees who do not respond to the survey shall be counted as arriving to work as a single occupant of a vehicle during the peak travel period.~~

~~— (2) Employers with fewer than 1,000 employees at the worksite shall survey all employees identified in subsection (a). Employees who do not respond to the survey shall be counted as arriving to work as a single occupant of a vehicle during the peak travel period.~~

~~—(3) The annual employer survey shall be conducted during the months of April—September. The survey shall cover 5 consecutive days, Monday—Friday inclusive, representing a typical week for the employer's business. The survey may not include public holidays during or bordering the weekend on either side of the selected week nor include special ride share promotions.~~

~~—(c) Each employer shall use the results of the annual survey to calculate the employer's APO for that year. In calculating the APO:~~

~~—(1) Except as provided in paragraph (2), vehicles driven by the only occupant and vehicles with eight or fewer adult seating positions shall be counted proportionately. For example, an employee who drives to work alone is counted as an employee reporting to work that day in one vehicle. Another employee who shares a ride with two employees would be counted as having reported to work that day in 1/3 of a vehicle. A third employee who arrives by a bus would be counted as having reported to work in zero vehicles for that day.~~

~~—(2) A vehicle carrying employees of different companies is allocated in the vehicle counts of those companies proportionately. If, for example, a vehicle carries one employee from employer A and three employees from employer B, each employee would arrive in 1/4 of a vehicle.~~

~~—(3) Children that are dropped off at a day care facility are counted as occupants in a vehicle. Therefore, a parent that drops off two children at a child care facility en route to the worksite will be counted as having reported to work in 1/3 of a vehicle.~~

~~—(4) If an employee is dropped off at the worksite by a vehicle that is not continuing to another worksite, that employee is counted as having driven alone in a single vehicle.~~

~~—(5) An employee who telecommutes and spends the entire day at home is included in the employee count for that day and assigned a zero vehicle count for that day.~~

~~—(6) A full-time employee on a compressed work week schedule is to be included in the employee count for the compressed week days off and assigned a zero vehicle count on those days.~~

~~—(7) An employee who walks, rides a bicycle or uses other human-powered transportation for the employee's entire trip to the worksite is assigned a zero vehicle count for that day.~~

~~—(8) A vehicle is included in the employer's vehicle count if it is parked at the worksite, or drops the employee off at the worksite, or if the vehicle is parked at a location from which the employee walks to the worksite.~~

~~—(9) Vehicles left at transit terminals, bus stops or car pool formation points more than 2 miles from the worksite are not counted in the employer's vehicle count.~~

~~—(10) A transitional low emission vehicle shall be counted as 9/10 of a vehicle for purposes of calculating APO.~~

~~—(11) A low emission vehicle shall be counted as 1/2 of a vehicle for purposes of calculating APO.~~

~~—(12) An ultra low emission vehicle shall be counted as 4/10 of a vehicle for purposes of calculating APO.~~

~~—(13) Bus transportation serving as a bus pool may not be counted as a vehicle for purposes of calculating APO.~~

~~—(d) The results of the annual employer survey shall be recorded on a form provided by or approved by the Department. The survey form will include:~~

~~—(1) Employer information:~~

~~—(i) The name, location, address and telephone number of the worksite.~~

~~—(ii) The mailing address of the employer.~~

~~—(iii) Applicable Standard Industrial Classification codes for the worksite.~~

~~—(iv) The APO for the worksite.~~

~~—(v) The name of the transportation coordinator and other persons who assist the employer in the development and implementation of the employer trip reduction plan at the worksite.~~

~~—(vi) The name of the owner, chief executive officer or highest ranking responsible official at the worksite and an address and telephone number for that individual.~~

~~—(vii) The location at which records described in § 126.204(d) (relating to developing the employer trip reduction plan) are kept.~~

~~—(2) Employee information:~~

~~—(i) The total number of employees reporting to the worksite.~~

~~—(ii) The total number of employees reporting to the worksite during the peak travel period.~~

~~—(iii) The number of full-time and part-time employees reporting to work during the peak travel period who:~~

~~—(A) Drive alone in a vehicle, including a taxi with one passenger or a motorcycle or moped.~~

~~—(B) Are dropped off by another person not going to work.~~

~~—(C) Car pool.~~

~~—(D) Van pool.~~

~~—(E) Use public transportation.~~

~~—(F) Ride a bicycle or use other human powered transportation.~~

~~—(G) Walk.~~

~~—(H) Work at home.~~

~~—(I) Use other methods of reporting to work.~~

~~—(iv) For employees who come to work in a vehicle, the number of employees who stop to drop off a child at a day care facility and the number of children dropped off at those facilities.~~

~~—(v) For employees who report to work in a car pool or van pool, the number of other people normally in the car pool or van pool.]~~

**§ 126.204. [~~Developing the employer trip reduction plan.~~] [Reserved].**

~~[(a) Each employer shall develop and submit to the Department a plan for increasing APO at each worksite to the amount specified in § 126.202(a) (relating to general) for the target area where the worksite is located on the following schedule:~~

~~—(1) By November 15, 1994, for employers with equal to or greater than 1,000 employees at a worksite.~~

~~—(2) By November 15, 1995, for employers with fewer than 1,000 employees at a worksite.~~

~~[(b) Each plan shall include the following elements:~~

~~—(1) The annual APO survey form as required by § 126.203 (relating to calculating APO).~~

~~—(2) A narrative description of the available commuting options for employees at or near the worksite including a description of available public transportation and parking.~~

~~—(3) A narrative description of the trip reduction measures and incentives to be implemented at each worksite, which may include, but are not limited to, measures and incentives to:~~

~~—(i) Provide a full or partial subsidy for employees' use of public transit.~~

~~—(ii) Provide a full or partial subsidy for car pool and van pool riders.~~

~~—(iii) Allow employees to work flexible hours to promote employee ride sharing.~~

~~—(iv) Permit employees to telecommute or work at home, or both.~~

~~—(v) Set up a guaranteed ride home program at the worksite.~~

~~—(vi) Establish ride share matching services for employees living in the same areas.~~

~~—(vii) Provide employer-owned fleet vehicles for ride sharing.~~

~~—(viii) Subsidize midday shuttles to eating and shopping areas.~~

~~—(ix) Charge differential parking fees for employees based upon the number of employees in the vehicle.~~

~~—(x) Provide preferential parking to car pools and van pools.~~

~~—(xi) Charge those who drive alone for parking.~~

~~—(4) A mechanism for ongoing monitoring and evaluation of the plan and compliance with the plan. This shall include evaluation of the annual APO survey.~~

~~—(5) A process requiring management level employees to be responsible for development and implementation of the employer trip reduction plan.~~

~~—(6) A process to advertise and encourage implementation of the employer trip reduction plan by employees.~~

~~—(7) An internally enforceable process for implementing the plan according to the schedule contained in this section.~~

~~—(c) The employer shall achieve:~~

~~—(1) For employers with equal to or greater than 1,000 employees at a worksite:~~

~~—(i) At least 50% of the APO increases required by § 126.202(a) during the 1995 survey period.~~

~~—(ii) At least 80% of the APO increases required by § 126.202(a) during the 1996 survey period.~~

~~—(iii) One hundred percent of the APO increases required by § 126.202(a) during the 1997 survey period and for each calendar year after 1997.~~

~~—(2) For employers with fewer than 1,000 employees at a worksite:~~

~~—(i) At least 50% of the APO increases during the 1996 survey period.~~

~~—(ii) One hundred percent of the APO increases during the 1997 survey period and for each calendar year after 1997.~~

~~—(d) Each employer shall keep detailed records of all documents which verify the figures used to calculate APO, as well as the documents to verify the implementation measures and reductions received through implementing the plans. Records shall be maintained for a minimum of 3 years.]~~

**§ 126.205. [Single Employer Averaging Program.] [Reserved].**

~~[(a) An employer with more than one worksite in a single target area may average its APO among those worksites in the target area. The average APO is calculated by dividing the number of all of the employees at all of the worksites by the number of all of the vehicles in which these employees report to the worksites.~~

~~—(b) An employer may average between target areas only if the employer develops and implements a plan that achieves APO increases equal to the APO increases that would be required if the employer implemented separate plans for each worksite.~~

~~—(c) The averaging program shall be implemented through a single plan which shall establish APO requirements for each site.~~

~~—(d) There shall be a separate transportation coordinator at each worksite.~~

~~—(e) The worksite manager and transportation coordinator shall be responsible for implementing the plan at each worksite.]~~

**§ 126.206. [Multiemployer programs.] [Reserved].**

~~[(a) Employers with worksites which are part of a single building or a grouping of buildings located within the same target area of the severe ozone nonattainment area which are in actual physical contact or separated only by a private or public roadway or other private or public right-of-way may develop and submit a multiemployer plan to meet the requirements of this subchapter.~~

~~(b) Employers participating in the development of a multiemployer plan shall accumulate the employer data for establishing the APO for the multiemployer plan. The employers participating in the multiemployer plan shall, within the plan, describe and implement an internally enforceable process so that the multiemployer plan achieves increases required in the target area where the worksites are located. The plan shall describe each employer's required APO.~~

~~(c) Each employer shall be responsible for implementing the multiemployer plan.~~

~~(d) Each employer included in the plan shall designate a separate transportation coordinator.]~~

**§ 126.207. [Compliance monitoring and reporting.] [Reserved].**

~~[(a) Each employer in the Philadelphia CMSA shall submit the plan required by §§ 126.204–126.206 (relating to developing the employer trip reduction plan; single employer averaging program; and multiemployer programs) along with a verification signed by the company president or a worksite manager that the information contained in the plans is accurate. Multiemployer plans shall contain a verification signed by the company president or a worksite manager for each employer participating in the multiemployer plan, that the information contained in the plan is accurate.~~

~~(b) Each year prior to 1997, each employer shall submit a report to the Department, on a form supplied by or approved by the Department, concerning the implementation of the employer trip reduction plan. The employer shall attach the current year's annual APO survey form. The report shall be submitted to the Department within 45 days following the deadline for achieving the required APO increase specified in § 126.204(c)(1)(i) and (ii) or (2)(i). If the report indicates that the employer has failed to meet the minimum required APO rate for the reporting period, the employer shall advise the Department of the corrective measures which will be taken to assure that the employer will meet the APO required by § 126.204(c)(1)(i) and (ii) or (2)(i) by the next reporting period. The corrective measures shall be implemented as expeditiously as possible. The report shall contain a verification signed by the company president or the worksite manager that the information contained in the report is accurate. Multiemployer reports shall contain a verification signed by the company president or the worksite manager for each employer participating in the multiemployer plan that the information contained in the report is accurate.~~

~~(c) On or before December 31, 1997, and annually thereafter, except as provided in subsection (d), each employer shall submit a report to the Department, on a form supplied by or approved by the Department, concerning the implementation of the employer trip reduction program. The employer shall attach the current year's annual APO survey form. The report shall contain a verification signed by the company president or a worksite manager that the information contained in the report is accurate. Multiemployer reports shall contain a verification signed by the company president or the worksite manager for each employer participating in the multiemployer plan that the information contained in the report is accurate.~~



~~(d) For the years following 1997, if the report required by subsection (c) demonstrates that the employer has met the requirements of this chapter, the employer shall submit the next report within 2 years, covering a 2-year period, unless the annual employer APO survey for the first year of the 2-year period indicates that the requirements of this subchapter have not been met, in which case the report required by subsection (c) shall be submitted annually.~~

~~(e) If the report required by this section or the annual APO survey indicates that the employer has failed to meet the required APO, the employer shall advise the Department of the corrective measures which will be taken to assure that the employer will meet the APO required by § 126.204 by the next reporting period. The corrective measures shall be implemented as expeditiously as possible.~~

~~(f) Employers participating in a multiemployer plan shall comply with this section by submitting a single report for each of the reports required by this section.]~~

§ 126.208. [New employers.] [Reserved].

~~[(a) An employer who, because of increases in the number of employees at a worksite or relocation of a worksite to the Philadelphia CMSA during a calendar year, is required to meet the requirements of this subchapter shall develop and implement the employer trip reduction requirements of this chapter following the schedule in this section.~~

~~(b) Within 1 year from the date when the number of employees at a worksite or relocation of a worksite to the Philadelphia CMSA makes the employer subject to this subchapter, the employer shall conduct an employee survey and develop and submit to the Department an employer trip reduction plan following this subchapter for increasing the APO to the amount required for the target area where the employer is located.~~

~~(c) The plan shall be implemented to achieve:~~

~~—(1) Fifty percent of the APO increases within 2 years from the date established in subsection (b).~~

~~—(2) One hundred percent of the APO increases within 3 years from the date established in subsection (b).]~~

## CHAPTER 126. STANDARDS FOR MOTOR FUELS

### APPENDIX A [Reserved].

#### [Target Areas for the Philadelphia Severe Ozone Nonattainment Area

~~The Philadelphia Severe Ozone Nonattainment Area comprises four target areas. Target Area 1 is the Central Business District of the City of Philadelphia. Target Area 2, also~~

~~wholly within the City of Philadelphia, is comprised of the urban ring surrounding Target Area 1. Target Area 3 includes outlying portions of the City of Philadelphia and densely populated suburban areas of Bucks, Chester, Delaware and Montgomery Counties. Target Area 4 includes the outlying portion of the ozone nonattainment area in Bucks, Chester and Montgomery Counties.~~

~~Target area boundaries for the City of Philadelphia were derived from the boundaries of the 1990 census tracts; Target area boundaries for Bucks, Chester, Delaware and Montgomery Counties follow political subdivision boundaries.~~

~~The following description of boundaries for the Philadelphia Severe Ozone Nonattainment Area is defined in § 121.1 and referenced in § 126.202.~~

~~Maps are provided to assist persons affected by this regulation in identifying the following target area boundaries:~~

~~A. Target Area One (I) — Philadelphia (Center City)~~

~~Philadelphia County~~

~~(See Maps 2 and 3).~~

~~Target Area 1 is bound by a line which starts at the intersection of South and Front Streets, and moves counterclockwise as follows:~~

~~—\* North on Front Street to Vine Street;~~

~~—\* West (left turn) on Vine Street to Broad Street;~~

~~—\* North (right turn) on Broad Street to Spring Garden Street;~~

~~—\* West (left turn) on Spring Garden Street to 36th Street;~~

~~—\* South (left) on 36th Street to Market Street;~~

~~—\* West (right turn) on Market Street to 37th Street;~~

~~—\* South (left turn) on 37th Street to Campus Walk (Univ. of Pa.);~~

~~—\* South (straight) on Campus Walk to Spruce Street;~~

~~—\* West (right turn) on Spruce Street to 38th Street;~~

~~—\* South (left turn) on 38th Street to Woodland Avenue;~~

~~—\* Southwest (right turn) on Woodland Avenue to 42nd Street;~~

~~—\* Southeast (left turn) on 42nd Street to the end and extending 42nd Street to the Amtrak Rail Line;~~

- ~~—\* South (right turn) on the Amtrak Rail Line to Grays Ferry Avenue;~~
- ~~—\* East (left turn) on Grays Ferry Avenue to the middle of the Schuylkill River;~~

~~—\* Upstream on the Schuylkill River to South Street;~~

~~—\* East (right turn) on South Street to intersection with Front Street.~~

**B. Target Area Two (2) — Portions of Philadelphia County (Center City Excluded) (See Map 2).**

~~Target Area 2 is composed of the area of Philadelphia County which is between the outer boundary of Target Area 1 and a boundary line beginning at a point described by extending Van Kirk Street southeast to midstream of the Delaware River. Target Area 2 is bound by moving counterclockwise:~~

~~—\* Northwest from point established in the middle of the Delaware River along Van Kirk Street to Tacony Street;~~

~~—\* Southwest (left turn) on Tacony Street to Van Kirk Street;~~

~~—\* Northwest (right turn) on Van Kirk Street to the Amtrak/SEPTA Line;~~

~~—\* Southwest (left turn) on Amtrak/SEPTA Line to Cheltenham Avenue;~~

~~—\* Northwest (right turn) on Cheltenham Avenue to Roosevelt Boulevard;~~

~~—\* Southwest (left turn) on Roosevelt Boulevard to Adams Avenue;~~

~~—\* Northwest (right turn) on Adams Avenue to Whitaker Avenue;~~

~~—\* Northeast (right turn) on Whitaker Avenue to Godfrey Avenue;~~

~~—\* Northwest (left turn) on Godfrey Avenue to Godfrey Avenue extension (created by extending Avenue beyond its end point);~~

~~—\* Straight on the Godfrey Street extension (created by extending Godfrey Avenue beyond its end point) to Godfrey Avenue;~~

~~—\* Straight on Godfrey Avenue to Broad Street;~~

~~—\* North (right turn) on Broad Street to Cheltenham Avenue;~~

~~—\* West (left turn) on Cheltenham Avenue to Stenton Avenue;~~

~~—\* Northwest (right turn) on Stenton Avenue to Haines Street;~~

- ~~— \* Southwest (left turn) on Haines Street to Chew Avenue;~~
- ~~— \* Northwest (right turn) on Chew Avenue to SEPTA (Chestnut Hill) Line;~~
- ~~— \* South (left turn) on SEPTA Line to High Street;~~
- ~~— \* Southwest (right turn) on High Street to Germantown Avenue;~~
- ~~— \* Southeast (left turn) on Germantown Avenue to Rittenhouse Street;~~
- ~~— \* Southwest (right turn) on Rittenhouse Street to Fairmount Park boundary;~~
- ~~— \* Follow Fairmount Park boundary southwest to Ridge Avenue;~~
- ~~— \* Northwest (right turn) on Ridge Avenue to Wissahickon Creek;~~
- ~~— \* South, downstream along Wissahickon Creek to the Schuylkill River;~~
- ~~— \* Southeast, downstream on the Schuylkill River to City Avenue;~~
- ~~— \* Southwest (right turn) on City Avenue to Overbrook Avenue;~~
- ~~— \* Southeast (left turn) on Overbrook Avenue to Upland Way;~~
- ~~— \* East (right turn) on Upland Way to 59th Street;~~
- ~~— \* South (right turn) on 59th Street to Girard Avenue;~~
- ~~— \* West (right turn) on Girard Avenue to 60th Street;~~
- ~~— \* South (left turn) on 60th Street to Callowhill Street;~~
- ~~— \* West (right turn) on Callowhill Street to Gross Street;~~
- ~~— \* South (left turn) on Gross Street to Race Street;~~
- ~~— \* West (right turn) on Race Street to Daggett Street extension (created by extending Daggett Street beyond its end point);~~
- ~~— \* South on the Daggett Street extension (created by extending Daggett beyond its end point) to Philadelphia County Line (Cobbs Creek);~~
- ~~— \* South on Philadelphia County Line to Woodland Avenue;~~
- ~~— \* Northeast on Woodland Avenue to Island Avenue;~~

- ~~—\* Southeast on Island Avenue to the Amtrak Rail Line;~~
- ~~—\* Northeast (left turn) on Amtrak Rail Line to 70th Street;~~
- ~~—\* Southeast (right turn) on 70th Street to Airport Rail Line;~~
- ~~—\* Northeast (left turn) on Airport Rail Line to 58th Street;~~
- ~~—\* Southeast (right turn) on 58th Street to the middle of the Schuylkill River;~~
- ~~—\* Northeast, upstream, on the Schuylkill River to Moore Street extension (created by extending Moore Street to the Middle of the Schuylkill River);~~
- ~~—\* Straight on Moore Street extension (created by extending Moore Street beyond its end point) to Moore Street;~~
- ~~—\* East (right turn) on Moore Street to the Schuylkill Expressway;~~
- ~~—\* Southeast (right turn) on the Schuylkill Expressway to Oregon Avenue;~~
- ~~—\* East on Oregon Avenue to 20th Street;~~
- ~~—\* South (right turn) on 20th Street to Penrose Avenue;~~
- ~~—\* Southwest (right turn) on Penrose Avenue to Pattison Avenue;~~
- ~~—\* East (left turn) on Pattison Avenue to 10th Street;~~
- ~~—\* North (left turn) on 10th Street to I-76;~~
- ~~—\* East on I-76 to the middle of the Delaware River, north, upstream on the Delaware River to the beginning point (Van Kirk extension).~~

~~C. Target Area Three (3) — Remaining Portions of Philadelphia (See Maps 1 and 2), Portions of Bucks and Chester Counties, the entire County of Delaware and portions of Montgomery County (See Map 1).~~

~~1. Philadelphia County — Portions of Philadelphia County located in Target Area 3 are comprised of the area between the outer boundaries of Target Area 2 and the Philadelphia County Line. Target Area 3 for the remaining portions of Philadelphia County is bound by a line which:~~

- ~~—a. Follows the outer boundary of the Van Kirk Street Extension and the Delaware River counterclockwise along the Philadelphia County Line to City Avenue;~~

~~b. At the intersection of City Line Avenue and Overbrook Avenue follow the Philadelphia County Line counterclockwise to the Daggett Street extension;~~

~~c. At the intersection of Philadelphia County Line and Woodland Avenue, follow the Philadelphia County Line counterclockwise to I-76 and the Delaware River.~~

~~2. Bucks County—Target Area 3 for the County of Bucks is identified by the following boroughs (Boro) and townships (Twp.):~~

~~Bensalem Twp., Bristol Boro, Bristol Twp., Falls Twp., Lower Southampton Twp., Morrisville Boro and Tullytown Boro.~~

~~3. Chester County—Target Area 3 for the County of Chester is comprised of Easttown and Tredyffrin Townships.~~

~~4. Delaware County—Target Area 3 for the County of Delaware is comprised of every borough, city or township thereof.~~

~~5. Montgomery County—Target Area 3 for the County of Montgomery is comprised of the following boroughs (Boro) and townships (Twp.):~~

~~Abington Twp., Ambler Boro, Bridgeport Boro, Bryn Athyn Boro, Cheltenham Twp., Conshohocken Boro, East Norriton Twp., Hatboro Borough, Hatfield Boro, Hatfield Twp., Horsham Twp., Jenkintown Boro, Lansdale Boro, Lower Gwynedd Twp., Lower Merion Twp., Lower Moreland Twp., Lower Providence Twp., Montgomery Twp., Narberth Boro, Norristown Boro, North Wales Boro, Plymouth Twp., Rockledge Boro, Springfield Twp., Towamencin Twp., Upper Dublin Twp., Upper Gwynedd Twp., Upper Merion Twp., Upper Moreland Twp., West Conshohocken Boro, West Norriton Twp., Whitmarsh Twp., and Whitpain Twp.~~

~~D. Target Area Four (4)—Portions of Bucks, Chester and Montgomery Counties (See Map 1).~~

~~1. Bucks County—Target Area 4 for the County of Bucks is comprised of the following boroughs and townships:~~

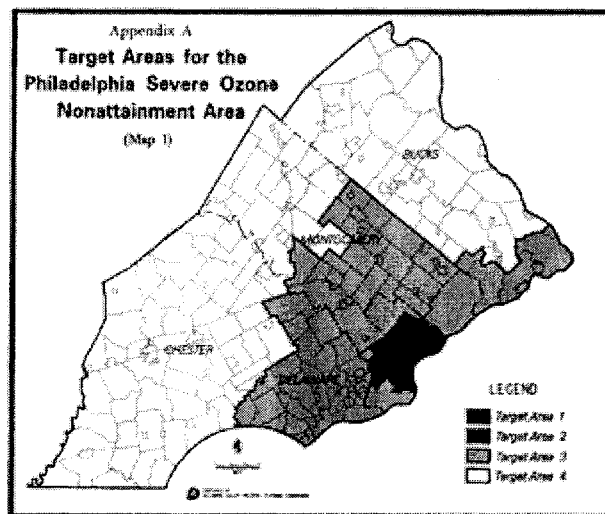
~~Bedminster Twp., Bridgeton Twp., Buckingham Twp., Chalfont Boro, Doylestown Boro, Doylestown Twp., Dublin Boro, Durham Twp., East Rockhill Twp., Haycock Twp., Hilltown Twp., Hulmeville Boro, Ivyland Boro, Langhorne Boro, Langhorne Manor Boro, Lower Makefield Twp., Middletown Twp., Milford Twp., New Britain Boro, New Britain Twp., New Hope Boro, Newtown Boro, Newtown Twp., Noekamixon Twp., Northampton Twp., Penndel Boro, Perkasio Boro, Plumstead Twp., Quakertown Boro, Richland Twp., Richlandtown Boro, Riegelville Boro, Sellersville Boro, Silverdale Boro, Solebury Twp., Springfield Twp., Telford Boro, Tinicum Twp., Trumbauersville Boro, Upper Makefield Twp., Upper Southampton Twp., Warminster Twp., Warrington Twp., Warick Twp., West Rockhill Twp., Wrightstown Twp. and Yardley Boro.~~

**2. Chester County**—Target Area 4 is comprised of the following political subdivisions:

—Atglen Boro, Avondale Boro, Birmingham Twp., Caln Twp., Charlestown Twp., Coatesville City, Downingtown Boro, East Bradford Twp., East Brandywine Twp., East Caln Twp., East Coventry Twp., East Fallowfield Twp., East Goshen Twp., East Marlborough Twp., East Nantmeal Twp., East Nottingham Twp., East Pikeland Twp., East Vincent Twp., East Whiteland Twp., Elk Twp., Elverson Boro, Franklin Twp., Highland Twp., Honeybrook Boro, Honeybrook Twp., Kennett Square Boro, Kennett Twp., London Britain Twp., Londonderry Twp., London Grove Twp., Lower Oxford Twp., Malvern Boro, Modena Boro, New Garden Twp., Newlin Twp., New London Twp., North Coventry Twp., Oxford Boro, Parkesburg Boro, Pennsbury Twp., Penn Twp., Phoenixville Twp., Pocopson Twp., Sadsbury Twp., Schuylkill Twp., South Coatesville Boro, South Coventry Twp., Spring City Boro, Thornbury Twp., Upper Oxford Twp., Upper Uwchlan Twp., Uwchlan Twp., Valley Twp., Warwick Twp., Wallace Twp., West Bradford Twp., West Brandywine Twp., West Caln Twp., West Chester Boro, West Fallowfield Twp., West Goshen Twp., West Grove Boro, West Marlborough Twp., West Nantmeal Twp., West Nottingham Twp., West Pikeland Twp., West Sadsbury Twp., Westtown Twp., West Vincent Twp., West Whiteland Twp. and Willistown Twp.

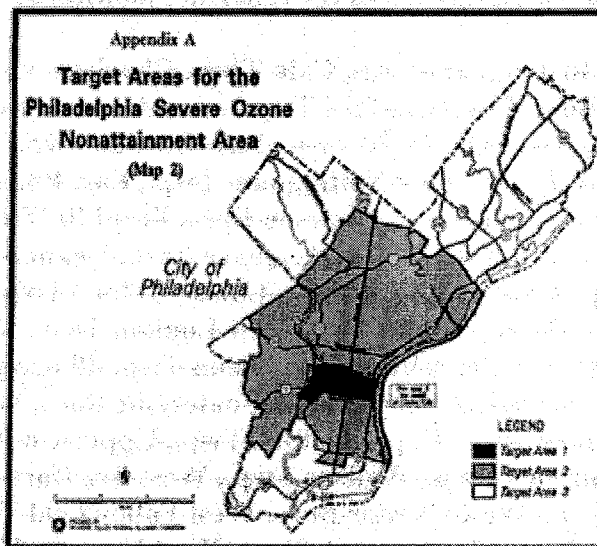
**3. Montgomery County**—Target Area 4 is comprised of the following boroughs and townships:

—Collegeville Boro, Douglas Twp., East Greenville Boro, Franconia Twp., Green Lane Boro, Limerick Twp., Lower Frederick Twp., Lower Pottsgrove Twp., Lower Salford Twp., Marlborough Twp., New Hanover Twp., Pennsburg Boro, Perkiomen Twp., Pottstown Boro, Red Hill Boro, Royersford Boro, Salford Twp., Schwenksville Boro, Skippack Twp., Souderton Boro, Telford Boro, Trappe Boro, Upper Frederick Twp., Upper Hanover Twp., Upper Pottsgrove Twp., Upper Providence Twp., Upper Salford Twp., West Pottsgrove Twp. and Worcester Twp. ]

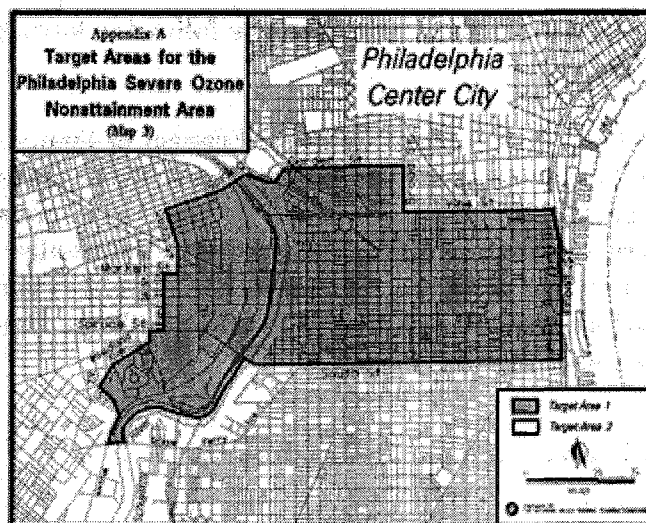


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# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
POLICY OFFICE

May 21, 2012

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
14th Floor  
333 Market Street  
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Employer Trip Reduction; Repeal (#7-471)  
Final-Form Rulemaking – Portable Fuel Containers; Repeal (#7-472)  
Final-Form Rulemaking – St. Joe's Resources SO<sub>2</sub> Emissions Reduction Limitations; Repeal (#7-473)  
Final-Form Rulemaking – Noncoal Mining Fees (#7-460)

Dear Mr. Sumner:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed copies of four final-form rulemakings for review and comment by the Independent Regulatory Review Commission (Commission). The Environmental Quality Board (EQB) approved final-form rulemakings #7-471, #7-472, and #7-473 on March 20, 2012, and final-form rulemaking #7-460 on April 17, 2012. Details pertaining to each rulemaking are elaborated below.

Employer Trip Reduction; Repeal (25 Pa Code Chapters 121 and 126): This final rulemaking, processed with notice of proposed rulemaking omitted, rescinds the employer trip reduction (ETR) requirements in 25 Pa. Code §§ 126.201 – 126.208, Appendix A and the related definitions in § 121.1. Pennsylvania's ETR regulations were promulgated in January 1994 in response to section 182(d)(1)(B) of the Federal Clean Air Act, which required states with a severe ozone nonattainment area to submit a revision to the State Implementation Plan (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. At the time Pennsylvania's regulation was published, the Commonwealth portion (Bucks, Chester, Delaware, Montgomery and Philadelphia counties) of the Philadelphia Consolidated Metropolitan Statistical Area (CMSA) was the only area of the Commonwealth classified as a severe ozone nonattainment area.

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. 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 EPA." In 1995, Congress amended the Clean Air Act to make the ETR program voluntary.



Additionally, the Philadelphia CMSA is now classified as a “moderate” nonattainment area, which is a lesser classification than “severe” or “serious” under the Clean Air Act’s classification system. The repeal of the Commonwealth’s regulations will not negatively affect the environmental air quality of the Commonwealth. Furthermore, the ETR regulation was never implemented in Pennsylvania 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 EQB. 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 the Department’s recommendation to proceed with the rulemaking to the EQB.

Portable Fuel Containers; Repeal (25 Pa Code Chapter 130, Subchapter A): This final rulemaking, processed with notice of proposed rulemaking omitted, rescinds the portable fuel container requirements in 25 Pa. Code Chapter 130, Subchapter A, as set forth in §§ 130.101 – 130.108 and published at 32 Pa.B. 4819 (October 5, 2002). The Department’s regulations, which limit emissions of volatile organic compounds (VOC) into the atmosphere from the use of portable fuel containers designed to hold gasoline, are superseded by a more stringent Federal regulation, which is applicable nationwide and was promulgated at 72 FR 8428 on February 26, 2007. The Federal requirement, codified at 40 CFR §§ 59.600-59.699, applies to all portable fuel containers, including gasoline, diesel, and kerosene containers and spouts manufactured in or imported into the United States beginning January 1, 2009.

The Department discussed the final-omitted rulemaking with AQTAC on June 23, 2011 and August 4, 2011. During the June meeting, members of AQTAC requested additional information regarding enforceability of the Federal regulation 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 EQB. The AQTAC also voted 9-6-1 to recommend that the Department consider adopting the Federal regulation by reference. The Department consulted the Small Business Compliance Advisory Committee (SBCAC) on July 27, 2011. The members of the SBCAC had no concerns. The rulemaking was discussed with the 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 the Department’s recommendation to proceed with the rulemaking to the EQB.

St. Joe Resources Company; SO<sub>2</sub> Emissions Reduction Limitations; Repeal (25 Pa Code Chapter 128): This final rulemaking, processed with notice of proposed rulemaking omitted, rescinds the requirements in 25 Pa. Code § 128.21, published as final rulemaking at 16 Pa.B. 521 (February 22, 1986). The regulation provided an alternative compliance option to the applicable sulfur dioxide (SO<sub>2</sub>) standards in 25 Pa. Code § 123.22(d) for the St. Joe Resources Company (now doing business as Horsehead Industries, Inc.) facility located in Beaver County.



As background, the owner of the Beaver County 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, including the sinter machines and the roaster plant. On October 5, 1987, DEP 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 their Operating Permit # 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 #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 by 25 *Pa. Code* § 127.441. 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 agree that the alternative SO<sub>2</sub> limits in § 128.21 should be repealed.

The rulemaking was discussed with AQTAC on June 23, 2011. The AQTAC voted 15-0 to concur with the Department's recommendation to forward the rulemaking to the Board. The rulemaking was discussed with the 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 the Department's recommendation to proceed with the rulemaking to the EQB.

Noncoal Mining Fees (25 Pa Code Chapter 77): This final rulemaking includes amendments to 25 *Pa Code* Chapter 77 in order to modify and establish permit fees to fund the noncoal mining program. The existing fees are nominal and have not been adjusted in the history of the program. The proposed fees are calculated to provide full funding for the program, which costs about \$2,500,000 per year. The rulemaking includes two types of fees, including the permit application fee and the administration fee. The permit application fee is intended to cover the Department's cost to review noncoal mining permit applications. The permit fees have been set according to the type of permit application submitted, with the amount of the fees based on the number of hours typically required by the Department to review a specific type of permit application. The annual administration fee is intended to cover the Department's costs to administer the permit. These include, among other things, the cost of performing inspections of noncoal mining operations, compliance assistance, and other compliance related activities, as well as tracking of required reporting and monitoring by permittees. As with the permit fees, the annual administration fees have been set based on workload analyses conducted by the Department.

The proposed regulation was approved by the Board on June 15, 2010, and published in the *Pa Bulletin* for comment on August 28, 2010, at 40 *Pa.B.* 4963. Twenty commentators, predominantly representing noncoal mine operators and industry groups, provided comments to the Board on the rulemaking. On January 28, 2012, DEP solicited additional comment on the rulemaking through a notice in the *Pa Bulletin* at 42 *Pa.B.* 553. As a result, comments were



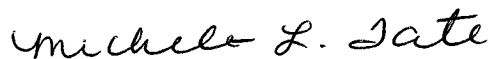
submitted from twenty commentators. While there was some support for the proposal, the majority of comments were in opposition to the imposition, and the amounts, of the increased fees. Many of the comments focused on the negative financial impacts the increased fees will have on small businesses that operate bluestone operations and sand and gravel pits. The large aggregate producers, commenting through PACA, recognized the reason for the increased fees but requested increased program efficiencies and questioned DEP's fee calculation method.

There is no advisory board to the Department for the Noncoal Mining Program. However, the Department has initiated significant outreach with the regulated community on the rulemaking.

The Department will provide assistance as necessary to facilitate the Commission's review of the enclosed final-form rulemakings under Section 5.1(e) of the Regulatory Review Act.

Please contact me at the number above if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate  
Regulatory Coordinator

Enclosures







COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF POLICY

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT

I.D. NUMBER: 7-471

SUBJECT: Employer Trip Reduction; repeal

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

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FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

5-21 Jessica R. Geyer Majority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Rep. Scott Hutchinson

5-21-12 D. N. Put Minority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

5-24-2012 Debbie Pastore Majority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Senator Mary Jo White

5/21 Yaimela Alcide Minority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

5/21/12 K. Cooper INDEPENDENT REGULATORY REVIEW COMMISSION

5/21 Julie Hrst ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

