

Regulatory Analysis Form

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

The public interest that justifies these regulations is ensuring that all vehicles registered in the Commonwealth are properly equipped with emission control systems required by state and federal law.

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

The public health, safety, and general welfare risks associated with non-regulation relate primarily to the risk associated with vehicles being operated with required equipment removed or rendered inoperative.

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

These regulations will benefit all citizens in the Commonwealth through safer vehicles with all equipment required to be installed at the time of manufacture present and operative. Vehicle owners subject to this visual check of equipment will specifically benefit through the identification of missing or inoperative equipment on their vehicle(s).

(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.)

These regulations will not adversely affect any specific group, except to the extent that they add an additional component to the safety inspection procedures not heretofore required in those counties where there is not currently an I/M emissions inspection program.

(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.)

Owners of approximately 1.9 million vehicles registered in the counties in which vehicles are not subject to I/M emissions inspections will be required to comply with these regulations. Station owners who offer safety inspections must also bring their procedures into compliance with these regulations.

(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.

These amendments have been reviewed by the Commonwealth Department of Environmental Protection.

(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.

Costs or savings to the general motoring public are not readily measurable. Costs of vehicle inspection is market driven and not regulated by the Department. Station owners vary in the fee charged for inspections and vehicle owners have the opportunity to choose a station with a fee acceptable to them. The Department cannot measure with any precision what costs or savings may result in the marketplace.

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

These regulations will not occasion any measurable costs or savings to local government.

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

These regulations will not occasion any measurable costs or savings to state government.

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

There are no measurable costs associated with implementation of these regulations upon the general motoring public, local governments or state government. As noted in (17) above, costs of inspection is market driven and not regulated by the Department.

	Current FY Year	FY + 1 Year	FY + 2 Year	FY + 3 Year	FY + 4 Year	FY + 5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Not Readily measurable					
Local Government	Not Readily measurable					
State Government	Not Readily Measurable					
Total Savings						
COSTS:						
Regulated Community	Not Readily measurable					
Local Government	Not Readily measurable					
State Government	Not Readily measurable					
Total Costs						

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REVENUE LOSSES:						
Regulated Community	None					
Local Government	None					
State Government	None					
Total Revenue Losses						

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

There are no cost estimates derived.

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

Appropriation	FY-3	FY-2	FY-1	CurrentFY
183 Safety Administration	\$ 99,930,000	\$ 106,182,000	\$ 119,141,000	\$ 120,492,000

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

A measurable cost/benefit analysis cannot be computed for these regulations.

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

There were no nonregulatory alternatives considered.

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

There were no alternative regulatory schemes considered. Compliance with state and federal equipment requirements can best be accomplished through regulation.

(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.

No, these regulations are not more stringent than Federal Standards.

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

These regulations will not put Pennsylvania at a competitive disadvantage with other states.

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

These regulations will not affect other existing or proposed regulations of the promulgating agency or other state agencies.

Regulatory Analysis Form

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

These regulations will be included as a proposed change to the State Implementation Plan under the Federal Clean Air Act. Public hearings will be scheduled as part of the Federal review process. These regulations will also be forwarded to the House and Senate Transportation Committees and will be considered at a public meeting of the Independent Regulatory Review Commission.

(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.

These regulations will change the existing reporting requirement by eliminating the need to send the original official inspection reports to the Department.

(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 business, and farmers.

There are no special provisions in these regulations developed to meet the needs of any particular group.

(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?

These regulations will become effective when published as a Final Rulemaking in the Pennsylvania Bulletin.

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

The inspection process will be monitored by the Department for its effectiveness and changes incorporated when necessary.

RECEIVED

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<p>Copy below is hereby approved as to form and legality. Attorney General.</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy of below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p style="text-align: center;"><u>Department</u> <u>of</u> <u>Transportation</u> (Agency)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>18-385</u></p> <p>DATE OF ADOPTION _____</p> <p>BY <u>Allen D. Bender</u> Secretary of Transportation (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY _____</p> <p style="text-align: center;"><u>10/30/03</u> (Date of Approval)</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike Inapplicable Title)</p> <p><input type="checkbox"/> Check if applicable. No attorney General Approval or Objection within 30 days after submission.</p>
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NOTICE OF FINAL RULEMAKING

**DEPARTMENT OF TRANSPORTATION
BUREAU OF MOTOR VEHICLES**

Title 67 Transportation

Part I. Department of Transportation

Subpart A. Vehicle Code Provisions

Article VII. Vehicle Characteristics

Chapter 175. Vehicle Equipment and Inspection

**DEPARTMENT OF TRANSPORTATION
BUREAU OF MOTOR VEHICLES**

TITLE 67 TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE VII. VEHICLE CHARACTERISTICS

CHAPTER 175, VEHICLE EQUIPMENT AND INSPECTION

NOTICE OF FINAL RULEMAKING

Preamble

The Department of Transportation, Bureau of Motor Vehicles, pursuant to the authority contained in Sections 4103, 4107, 4702 and 6103 of the Vehicle Code, Act of June 17, 1996, P.L. 162 No. 81, *as amended* (75 Pa. C.S. §§ 4103, 4107, 4702 and 6103), hereby adopts amendments to Chapter 175 (relating to vehicle equipment and inspection), to read as set forth in Annex A.

Purpose of this Chapter

The purpose of this Chapter is to implement the provisions of 75 Pa. C.S. §§ 4101–4982 (relating to vehicle characteristics) which establish minimum standards for vehicle equipment and performance and make unlawful the sale and use of items which do not comply with these standards.

Purpose of these Amendments

The purpose of the amendments is to ensure that all vehicles registered in the Commonwealth are equipped with appropriate exhaust emission control systems as required by state and federal law. Section 4107 of the Vehicle Code makes it unlawful for any person to willfully and intentionally remove or render inoperative any item of

vehicle equipment which was required to be installed at the time of the vehicle's manufacture, 75 Pa. C.S. § 4107(b). The Clean Air Act (42 U.S.C. §§ 7401–7671q) and the regulations promulgated thereunder, 40 CFR Part 51 (relating to regulations for preparation, adoption and submittal of implementation plans), and Part 85 (control of air pollution from mobile sources) require vehicle manufacturers to install the emission control equipment which is the subject of this regulation. As applied in Pennsylvania, other provisions of the Clean Air Act provide for the testing of this required vehicle emissions equipment in 25 counties in the Commonwealth. However, there is currently no provision in Department regulations requiring inspection for even the presence of this required equipment in the remaining 42 counties under which to ensure that vehicle owners are in compliance with the provisions of 75 Pa C.S. § 4107(b), and that this equipment has not been removed or rendered inoperative. These amendments provide for an inclusion in the safety inspection regimen of a visual inspection for the presence of the required equipment in vehicles registered in the counties not subject to emissions testing.

The amendments also eliminate the requirement that inspection stations forward original official inspection report sheets to the Department and retain duplicate copies in station files; the amendment requires only retention of the original official inspection report sheets in the station files.

Summary of Comments and Changes in Final Adopted Regulation

Comments were received from the Independent Regulatory Review Commission (IRRC), from the House and Senate Transportation Committees, from the Specialty Equipment Market Association (SEMA) and from members of the public. Concern was raised that, while some classes of vehicles are exempt from inspection of the vehicle's

emission control components in the counties in the Commonwealth in which an I/M program is conducted under 67 Pa. Code Chapter 177, this regulation did not exempt any of the classes of vehicles subject to safety inspection from the inspection of the vehicle's emission control components under the amendments to § 175.80. In response the Department has included an exemption for classic and collectible vehicles in the final form rulemaking. Concern was also raised that the regulation required that the emission equipment on the vehicle be original parts. The regulation as drafted, however, provides that emission control components may be original vehicle equipment or an equivalent aftermarket replacement component meeting the same standards. Finally, IRRC noted that the amendments to § 175.80 provide that the components "appear to be" the correct components for the vehicle configuration, while the standard in Chapter 177 (relating to the I/M program) requires that the component "is" the correct component for the vehicle configuration. The apparent inconsistency between the regulations has been corrected in the final form rulemaking.

More complete discussion of the comments and the Department's response thereto is contained in the "Comments to Proposed Regulation and Responses" document which can be obtained from the Department.

Statutory Authority

These regulations are amended under the authority contained in Sections 4103, 4107, 4702 and 6103 of the Vehicle Code, Act of June 17, 1996, P.L. 162 No. 81, *as amended* (75 Pa. C.S. §§ 4103, 4107, 4702 and 6103)

Persons and Entities Affected

The amendment to § 175.80 will affect the owners of vehicles registered in the counties in the Commonwealth where there is not an emission inspection program. The amendment will also affect certified safety inspection stations in those counties. Some inspection stations in counties having a current emission inspection program may also be affected to the extent that vehicles registered in neighboring counties where there is not an emission inspection program may seek to have a safety inspection performed at that station.

The amendment to § 175.42 will provide paper work relief to all safety inspection stations.

Fiscal Impact

These amendments may result in additional cost to consumers with vehicles registered in counties where there is not an emission inspection program if a vehicle fails to pass the safety inspection because of these new components of the inspection. Additional market-driven marginal increases in the cost of inspection could also result because of the addition of the new visual inspection procedures. The amendment to § 175.42 will marginally reduce the cost for inspection stations in eliminating postage and duplicating costs associated with sending the original inspection report sheets to the Department and retaining duplicate copies. The fiscal impact of these amendments cannot, however, be measured with any precision.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. 745.5(a)), on August 12, 2003, the Department submitted a copy of the notice of proposed rulemaking, published at 33 Pa. B. 4175, to the Independent Regulatory Review Commission (IRRC)

and to the Chairpersons of the House and Senate Transportation Committees for review and comment.

In preparing this final form rulemaking, the Department has considered all comments received from the public, IRRC and the Committees.

Under section 5.1(j.2) of the Regulatory Review Act, on _____, this final-form regulation was deemed approved by the House and Senate Transportation Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-form regulation.

Effective Date

This rulemaking will be effective on the date of publication in the *Pennsylvania Bulletin*.

Sunset Provisions

The Department is not establishing a sunset date for this regulation since these amendments are needed to administer provisions required under the Vehicle Code (75 Pa. C.S. §101 et seq.). The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for technical questions about the proposed amendments to the regulations is Kristen Singer, Vehicle Inspection Division, 3rd Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104, krsinger@state.pa.us.

Order

The Department of Transportation orders that:

- (A) The regulations of the Department of Transportation, 67 Pa. Code, Chapter 175 are amended as set forth in Annex A.
- (B) The Secretary of the Department of Transportation shall submit this Order and Annex A hereto to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.
- (C) The Secretary shall certify this Order and Annex A and deposit the same with the Legislative Reference Bureau, as required by law.
- (D) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

Allen D. Biehler, P.E.

Secretary of Transportation

**DEPARTMENT OF TRANSPORTATION
BUREAU OF MOTOR VEHICLES**

TITLE 67 TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE VII. VEHICLE CHARACTERISTICS

CHAPTER 175, VEHICLE EQUIPMENT AND INSPECTION

COMMENTS TO PROPOSED REGULATION AND RESPONSES

I. List of Commenters:

**Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, Pennsylvania 17101**

**Jay Snavelly
560 N. 6th Street
Harrisburg, Pennsylvania 17111**

**Stephen B. McDonald
Senior Director, Government Affairs
Specialty Equipment Market Association
P.O. Box 4910
Diamond Bar, California 91765-0910**

**David J. English
1000 Brentwater Road
Camp Hill, Pennsylvania 17011-1507**

**Mike Kramer
323 Lindbergh Ave
Blandon, PA. 19510**

**Senator Roger A. Madigan, Majority Chairman
Senator J. Barry Stoudt, Minority Chairman
Senate Transportation Committee
Senate of Pennsylvania
The State Capitol
Harrisburg, Pennsylvania 17120**

II. Comments of the Independent Regulatory Review Commission (IRRC)

Comment 1 —

Vehicles exempted from emissions inspections – Reasonableness; Consistency with other regulations; Need; Economic impact.

The proposed regulation incorporates a visual inspection of emission control equipment into the annual safety vehicle equipment inspection for passenger cars and light trucks covered by Subchapter E of Chapter 175. The proposed regulation will apply only to the counties that are not subject to the emission inspection program under Chapter 177. Although both Chapters 175 and 177 contain the same provisions for visual inspections, the exemptions from these requirements are not the same.

Chapter 177 is the comprehensive emission inspection program for nonattainment areas as required by the Clean Air Act. Chapter 177 contains various types of exemptions from emission inspections. For example, the exemptions in Sections 177.101(c)(4) and (12) include “classic, antique or collectible motor vehicles,” and “vehicles driven less than 5,000 miles in the previous 12 months.” Vehicles that meet any of the exemptions under Section 177.101(c) are not required to have any visual inspection or emission test. On the other hand, the exemptions for owners of passenger cars in Chapter 175 are limited essentially to “antique” and “specially constructed” vehicles.

In addition to this proposed regulation, the Department is promulgating amendments to Chapter 177 via a final regulation with notice of proposed rulemaking omitted (final-omitted regulation) (#18-384). Section 177.51(c) of that final-omitted regulation contains new provisions for “pre-MY (model year) 1996 vehicles.” These provisions reduce or eliminate the emission inspection requirements for pre-MY 1996 vehicles if certain conditions apply. For example, these cars will not be subject to the emission program if they represent less than 20 percent of the total subject vehicles in a county provided that emissions in the county are at or below levels that are in compliance with the State Implementation Plan.

The exemptions that apply to the proposed regulation are limited compared to Chapter 177. The result will be an inconsistent application of the rules. Some vehicles in attainment areas will be required to undergo visual inspections and make repairs while similar vehicles in nonattainment areas (or areas with greater pollution) will be exempt. We question why the exemptions in Chapter 177 are not being allowed for the visual inspection of emission control equipment in Chapter 175. If the exemptions will not be the same, the Department should explain the need for this more stringent implementation of the rules in less polluted areas. Additionally, the Department should provide an estimate of the compliance costs for affected vehicle owners.

Response: Chapter 177 (the vehicle emissions and inspection program regulations, otherwise referred to as the emissions or I/M program) and Chapter 175 (vehicle equipment inspection regulations, otherwise referred to as the safety inspection program) both contain provisions for a

visual inspection of emission control components. The visual inspection is to be included in the safety inspection program for the 42 non I/M counties as the result of a settlement of litigation with two parties, Citizen for Pennsylvania's Future (PennFuture) and the Clean Air Council.

The safety regulation as originally proposed required all passenger cars and light duty trucks subject to safety inspection in the 42 counties where there is no I/M program to undergo a visual inspection of the vehicle's emission control components. As a result, there are certain vehicles that will be subject to a visual inspection in the safety program that are not subject to the visual inspection of the I/M program. In the original proposal for Chapter 175, this related generally to three classes of vehicles: classics, collectibles, and those cars driven less than 5,000 miles per year.

The Department, in response to comments received, and with the necessary concurrence of Penn Future and the Clean Air Council, will include an exemption for classic and collectible vehicles in the final form regulation. A "classic motor vehicle" is a "motor vehicle, but not a reproduction thereof, manufactured at least 15 years prior to the current year which has been maintained in or restored to a condition which is substantially in conformity with manufacturers specifications and appearance." 75 Pa. C.S. § 102. A "collectible motor vehicle" is defined as a "reconstructed motor vehicle, but not a reproduction thereof, substantially modified from the manufacturer's original specifications and appearance and maintained in a collectible condition as determined by the Department of Transportation." 75 Pa. C.S. § 102. Once a vehicle is registered as a classic or a collectible vehicle, "it is unlawful for any person to operate. . . [that vehicle] for general daily transportation. Permitted uses are limited to participation in club activities, exhibits, tours, parades, occasional transportation and similar uses. Occasional transportation means no more than one day per week." 75 Pa. C.S. § 1340(b).

There are approximately 14,113 vehicles registered as classics in the 42 non-I/M counties, and approximately 110 vehicles registered as collectibles out of a total population of 1.9 millions vehicles subject to the safety inspection program. Modeling the impact of removing these vehicles from the visual inspection protocol in the safety inspection revealed that the emission impacts would be negligible.

The Department can not include an exemption for vehicles driven less than 5,000 miles per year from the visual inspection portion of the safety inspection, even though those same vehicles are exempt from the I/M program in the 25 counties. Extrapolating from the percentage of vehicles exempted from the I/M program because they meet the 5,000-mile criteria, the Department estimates that 279,000 vehicles could potentially qualify for such an exemption from the visual inspection of the emission components in the safety inspection program. Removing this many vehicles from the program could prevent the Commonwealth from satisfying the air quality performance standard under the Clean Air Act, which would likely result in disapproval of amendments to Pennsylvania's Clean Air Act State Implementation Plan by the federal Environmental Protection Agency (EPA). Exempting this many vehicles is also unacceptable to Penn Future and the Clean Air Council. Moreover, in the I/M program, the Department has the ability to electronically verify and audit the issuance of the 5,000-mile exemptions. The safety inspection record keeping procedures, however, are all manual, and this would make it difficult to verify the proper issuance of such an exemption. This too would therefore potentially jeopardize EPA approval.

Amendments to Chapter 177 include provisions that eliminate the requirements for a tailpipe test for pre-1996 model year vehicles; the amendments do not eliminate the requirements of I/M completely. If the regulatory requirements in that chapter are met, those vehicles will still be subject to a gas cap test as well as a visual inspection. Also, the visual inspection only applies to parts or components that the make and model year of the vehicle would have originally been equipped with; the Department is not requiring components not originally required to be installed.

Affected vehicle owners, that is, owners of vehicles required to undergo a safety inspection and not exempt from the visual inspection of the emission control components, will have to pay for the cost of the safety inspection and the cost of any replacement parts. The Department does not have an estimate of the compliance costs for the affected vehicle owners, but anticipates that any increase in the cost of the safety inspection will be negligible. The Department does not have an estimate for what replacement parts would cost.

Comment 2 —

Section 175.80. Inspection Procedure. - Reasonableness; Economic impact; Consistency with other regulations; Clarity.

- *Equivalent aftermarket replacement component meeting the same standards*

The language added under Subsection (d) allows use of original vehicle equipment or “an equivalent aftermarket replacement component meeting the same standards.” A commentator has suggested revisions to allow aftermarket parts that meet equivalency standards of the U.S. Environmental Protection Agency (EPA) or California Air Resources Board (CARB). If these parts achieve equivalent pollution reductions as prescribed by EPA or CARB, they should be explicitly permitted by the regulation.

Response: The regulation as proposed provides that the emission control components may be original vehicle equipment or an equivalent aftermarket replacement component meeting the same standards. The Department does not believe it necessary or advisable to explicitly permit parts that meet equivalency standards of the U.S. Environmental Protection Agency (EPA) or the California Air Resources Board (CARB). The regulatory language as currently drafted allows for such components as well as allows for components that may be approved by the entities in the future.

As background, a motor vehicle must be maintained in a proper certified engine chassis configuration. Routine maintenance and repair of vehicles and engines may require the use of replacement parts which may be non-original or “aftermarket” parts or systems. The general rule is that a motor vehicle emission control system, which includes the exhaust configuration, may not be changed from an EPA certified configuration without subjecting a repair shop or vehicle owner to liability for violating the federal tampering provision.

A “certified configuration” is an engine or engine chassis design which has been approved by EPA prior to the production of vehicles with that design. The application includes design requirements

for all emission related parts, engine calibration and other design parameters for each different type of engine or engine chassis combination. EPA then “certifies” each acceptable design for use in vehicles of the upcoming model year. If EPA has certified or approved an aftermarket device or part, then that aftermarket device or part, when used in a vehicle, would be an “equivalent aftermarket replacement component meeting the same standards.” The proposed regulation specifically provides that the emission control components can be “equivalent aftermarket replacement components meeting the same standards” as the original emission control components.

The federal tampering provision is contained in Section 203(a)(3) of the Clean Air Act, 42 U.S.C. § 7522(a)(3). Section 203(a)(3)(A) of the Clean Air Act prohibits any person from removing or rendering inoperative any emission control device or element of design installed on or in a motor vehicle or motor vehicle engine prior to its sale and delivery to the ultimate purchaser and prohibits any person from knowingly removing or rendering inoperative any such device or element of design after such sale and delivery. Section 203(a)(3)(B) of the Clean Air Act prohibits any person from manufacturing, or selling, or offering to sell, or installing, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine, and where the person knows or should have known that such part or component is being offered for sale or is being installed for such use. There are penalties involved for violations of both provisions. If an aftermarket manufacturer does not know whether the part or component being offered for sale or being installed violates the federal tampering provision, its recourse is to ask EPA.

Chapter 177 has never included the type of language proposed by the Specialty Equipment Market Association (SEMA) (see SEMA comment below) and the lack of such language has not posed a problem. The Department has only rarely been questioned concerning whether a certain aftermarket part could be used.

- *Inconsistent language*

The visual inspection provisions under Subsection (d)(2) require the inspector to reject a component if it “...*appears to be* the wrong type for the certified vehicle configuration” (Emphasis added). The phrase “appears to be” may allow a vehicle to be rejected based on an appearance rather than an actual problem. It is also not completely consistent with the language in Chapter 177. The phrase “appears to be” is used to describe “visual inspection procedures” in Section 177.203(d) of the recently submitted final-omitted regulation (#18-384). However, the final-omitted regulation (#18-384) retains existing language in Subsection (4) of Section 177.204 entitled “Basis for failure” that states:

A vehicle shall fail the visual inspection if applicable required emission control equipment specified in § 177.203(d) **is not present, is not properly connected or is not the correct type for the certified equipment.** (Emphasis added)

In the final-form regulation, the Department should use similar language in Section 175.80(d)(2) since the objective is to require that emission control components are present and connected.

Response: The Department accepts the recommendation and will change the language in Section 175.80(d)(2) to that used in Section 177.204.

III. Public Comments

E-mail comment dated August 26, 2003 from Jay Snavelly.

Mr. Snavelly noted that the proposed amendment to Chapter 175 does not exempt classics and antiques, and asked if these specialty vehicles continue to be exempt, regardless of the county location.

Response: Antique vehicles are exempt from the safety inspection, and as noted in the response to IRRC Comment 1 above, the Department will be including an exemption for vehicles registered as classics and collectibles from the visual inspection requirements in Section 175.80.

September 4, 2003 letter from the Specialty Equipment Market Association (SEMA)

Commenting on behalf of SEMA, Stephen B. McDonald, Senior Director, Government Affairs expressed concern that the proposed amendment discriminates against the motor vehicle aftermarket industry by restricting emissions devices to those installed by the original equipment manufacturer or equivalent replacement components meeting the same standards. SEMA is concerned that the proposed language could unintentionally call into question the use of approved aftermarket parts that include the removal of required parts. SEMA suggested language that would allow the use of aftermarket parts that meet the qualification of an Environmental Protection Agency (EPA) Memorandum or that have been certified by the California Air Resources Board.

Response: The Department disagrees with SEMA's interpretation that the proposed regulation discriminates against the aftermarket industry. As discussed in the Department's response to IRRC Comment 2 above, the proposed regulation as drafted allows for the use of certified aftermarket parts. In addition, pursuant to Section 4107 of the Vehicle Code, it is unlawful for any person to "[w]illfully or intentionally remove (other than for purposes of repair and replacement) or render inoperative, in whole or in part, any item of vehicle equipment which was required to be installed at the time of manufacture or thereafter upon any vehicle, by any law, rule, regulation or requirement of any officer or agency of the United States or the Commonwealth, if it is intended that the vehicle be operated upon the highways of this Commonwealth unless the removal or alteration is specifically permitted by this title or by regulations promulgated by the department." 75 Pa. C.S. § 4107(b)(1). Moreover, Section 4107(c)(2) provides that this part of the Vehicle Code shall not be construed to "[l]imit the use of independent after market repair and service parts in the repair of vehicles and items of vehicle equipment unless in violation of the provisions of this title or regulations promulgated thereunder." 75 Pa. C.S. 4107(c)(2). The proposed regulation specifically provides that the emission control components can be "equivalent aftermarket replacement components meeting the same standards" as the original emission control components. Thus, there is no need to make the change sought by SEMA.

September 16, 2003 letter from Jay Snavely

In this correspondence, Mr. Snavely objects to the proposed regulation on the ground that the effect is likely to be unfairly removing hobby cars from the highway. He requested that the exemptions that apply in the emissions inspection program be extended to this portion of the safety inspection program. He also observed that there is no recourse given for vehicles that are missing any of the emission components and for which there are no aftermarket suppliers.

Response: As noted in the response to IRRC Comment 1, the Department will be including an exemption for classic and collectible vehicles. As noted in the responses below, on the rare occasions during the six years in during which the I/M program has been in place that a vehicle owner has alleged that replacement parts are not available, the Department has worked with the vehicle owner to locate an acceptable replacement part.

September 22, 2003 letter from David J. English

In this correspondence, Mr. English objects to the proposed regulation on the ground that there is a growing number of older cars being restored and kept on the road for which the original emission control equipment no longer functions. He states that for many of these vehicles there are no aftermarket replacement parts available.

Response: The Department disagrees with Mr. English's assessment of the vehicle population. The Department has never received any notice or other indication from vehicle owners or from emission inspection stations that any emission control part was unavailable as a replacement part. In addition, as previously noted in the response to IRRC Comment 1 and the response to the SEMA Comment, both federal and state law require that if a vehicle originally was equipped with emission control parts or components, those parts or components may not be removed or altered except to be replaced by identical or approved equivalent parts.

September 16, 2003 e-mail from Mike Kramer

In this comment Mr. Kramer included a draft notice describing the alleged impacts of the proposed regulation. He claimed that because there are no aftermarket parts available for certain emission control components, many older vehicles will not be able to pass the safety inspection.

Response: Use of aftermarket parts under this regulation is discussed in the response to IRRC Comment 2 above. In addition, as noted in the above response to the Comment of David English, it is the Department's experience that emission control parts are available. Under the I/M program, the Department has been made aware of fewer than 10 vehicles (out of the approximately 11 million vehicles tested since the commencement of the I/M program in 1997) for which a replacement part allegedly could not be found. On the rare occasions in which this has occurred, the Department has worked with the vehicle owner to locate an acceptable replacement part.

September 27, 2003 letter from Senators Roger Madigan and J. Barry Stoudt, Majority and Minority Chairs of the Senate Transportation Committee.

This correspondence expressed concurrence with IRRC's Comment 1 regarding exemptions from the I/M program under 67 Pa. Code, Chapter 177 which were not carried over to the proposed amendments to Chapter 175.

Response: As discussed thoroughly in the response to IRRC Comment 1 above, the exemptions for classic and collectible vehicles have been included in the final form rulemaking.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE CHARACTERISTICS

ARTICLE VII. VEHICLE CHARACTERISTICS

CHAPTER 175. VEHICLE EQUIPMENT AND INSPECTION

Subchapter A. General Provisions

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Subchapter C. Certificate of Inspection

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§ 175.42. Recording inspection.

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(c) [*Duplicates.*] Records retention. [An] The original official inspection report sheet shall be [maintained in duplicate and, upon completion of the entire sheet, the original copy shall be forwarded immediately to the Bureau of Motor Vehicles, Vehicle Control Division, Post Office Box 8696, Harrisburg, Pennsylvania 17105. The duplicate copy shall be] retained as a garage record and kept on file at the station for 2 years. At the close of each inspection period, [the original report shall be returned to the Bureau at once,] the official inspection report sheet shall be placed in the station's files, even though all spaces may not have [not] been used, and a new inspection report sheet shall be started for the new inspection period.

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(f) [*Enclosures prohibited.* Letters, checks, sticker requisitions or other items may not be enclosed when forwarding the report forms to the Vehicle Control Division.

(g)] * * *

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Subchapter E. Passenger Cars and Light Trucks

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§ 175.80. Inspection procedure.

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(d) Visual inspection of emission control system. Vehicles registered in counties where there is not an emission inspection program under 67 Pa. Code, Chapter 177 (relating to emission inspection program), shall be checked visually for the presence of emission control components. These components may be original vehicle equipment or an equivalent aftermarket replacement component meeting the same standards. IN ADDITION TO THE EXCEPTIONS UNDER § 175.4, THIS SUBSECTION SHALL NOT APPLY TO VEHICLES REGISTERED AS COLLECTIBLE OR CLASSIC MOTOR VEHICLES AS DEFINED IN 75 Pa. C.S. § 102.

(1) The visual inspection shall be performed through direct observation or through indirect observation, using a mirror or other visual aid.

(2) Provided that the make and model year of the vehicle would have originally been equipped with the device, reject if one or more of the following apply:

(i) The catalytic converter has been removed, disconnected or appears to be IS the wrong type for the certified vehicle configuration.

(ii) Exhaust gas recirculation (EGR) valve has been removed, disconnected or appears to be IS the wrong type for the certified vehicle configuration.

(iii) Positive crankcase ventilation (PCV) valve has been removed, disconnected or appears to be IS the wrong type for the certified vehicle configuration.

(iv) Fuel inlet restrictor has been removed, disconnected or appears to be IS the wrong type for the certified vehicle configuration.

(v) Air pump has been removed, disconnected or appears to be IS the wrong type for the certified vehicle configuration.

(vi) Evaporative control system components have been removed, disconnected or appears to be IS the wrong type for the certified vehicle configuration.

(e) Beneath the vehicle inspection. A beneath the vehicle inspection shall be performed as follows:

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[(e)] (f) * * *

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(717) 787-6485

October 30, 2003

Robert E. Nyce
Executive Director
14th Floor Harrisstown 2
333 Market Street
Harrisburg, PA 17101

**Re: Regulation #18-385 — 67 Pa. Code, Chapter 175, Vehicle
Equipment and Inspection, Notice of Final Rulemaking**

Dear Mr. Nyce:

Enclosed please find a copy of the Face Sheet, Preamble, Comment and Response Document, Annex A and Regulatory Analysis Form for Amendments to 67 Pa. Code, Chapter 175, Vehicle Equipment and Inspection, which the Department of Transportation today delivered to the Legislative Reference Bureau for publication as a proposed rulemaking in accordance with the provisions of the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, 45 P.S. § 1201 *et seq.*, and the Regulatory Review Act, 71 P.S. § 745.1 *et seq.*

Copies of these materials were also delivered today to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees.

The Department of Transportation will provide you with any assistance you require to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

Stephen F. J. Martin
Regulatory Counsel

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

I.D. NUMBER: #18-385

SUBJECT: Vehicle Equipment and Inspection, 67 Pa. Code, Chapter 175

AGENCY: Department of Transportation

TYPE OF REGULATION

- Proposed Regulation
- X 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

RECEIVED
 2003 OCT 30 PM 4:40
 INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE SIGNATURE DESIGNATION

10/30	<u>Patricia E. Cooney</u> for Majority Chair	HOUSE COMMITTEE ON TRANSPORTATION
10/30/03	<u>Michael J. Luter</u> for Minority Chair	
10/30/03	<u>Kristine O. Latham</u> for Majority Chair	SENATE COMMITTEE ON TRANSPORTATION
10/30/03	<u>Mary E. Slattery</u> for Minority Chair	
10/30/03	<u>Diana Page</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (N/A)
_____	_____	LEGISLATIVE REFERENCE BUREAU
Date:	October 30, 2003	