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**INDEPENDENT REGULATORY REVIEW COMMISSION
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October 22, 2003

Honorable Allen D. Biehler, P.E., Secretary
Department of Transportation
Keystone Building, 8th Floor
400 North Street
Harrisburg, PA 17120

Re: Regulation #18-385 (IRRC #2347)
Department of Transportation
Vehicle Equipment and Inspection

Dear Secretary Biehler:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

evp

Enclosure

cc: Honorable Richard A. Geist, Majority Chairman, House Transportation Committee
Honorable Keith R. McCall, Democratic Chairman, House Transportation Committee
Honorable Roger A. Madigan, Chairman, Senate Transportation Committee
Honorable J. Barry Stout, Minority Chairman, Senate Transportation Committee

Comments of the Independent Regulatory Review Commission

on

Department of Transportation Regulation No. 18-385

Vehicle Equipment and Inspection

October 22, 2003

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Transportation (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on September 22, 2003. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Vehicles exempted from emission 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.

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.

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.

Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



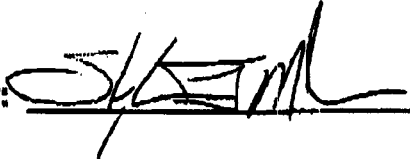
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INDEPENDENT REGULATORY REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Transportation's regulation #18-385 (IRRC #2347). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:  Date: 10/22/2003