

Regulatory Analysis Form

This space for use by IRRC

RECEIVED

2006 JAN 31 PM 3: 04

REGULATORY
REVIEW COMMISSION

(1) Agency

Department of Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-398

IRRC Number:

2523

(3) Short Title

Pennsylvania Clean Vehicle Program Amendment

(4) PA Code Cite

Title 25 Environmental Protection,
Section 121.1 and
Chapter 126, Subchapter D

(5) Agency Contacts & Telephone Numbers

Primary Contact: Marjorie Hughes, 783-8727

Secondary Contact: Michele Tate, 772-4768

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed rulemaking postpones compliance from MY 2006 until MY 2008 to provide flexibility for the vehicle manufacturers during the implementation period. The proposed rulemaking also specifies a three-year early credit-earning period to provide a transition mechanism from the NLEV program and to help ensure that the regulation meets "identity" requirements of the federal Clean Air Act (CAA). Certain definitions related to the program are added, amended or deleted to reflect the current California vehicle program and the proposed rulemaking.

The existing Pennsylvania Clean Vehicles (PCV) program in 25 Pa. Code Chapter 126, Subchapter D (relating to new motor vehicle emissions control program) limits the sale, importation, delivery, purchase, lease, rental, acquisition, receipt or registry of new light-duty vehicles in Pennsylvania to those that have been certified by the California Air Resources Board (CARB) for compliance with the California Low Emissions Vehicle II (CA LEV II) program. The existing Pennsylvania regulation adopts and incorporates certain provisions of the California low emission vehicle (LEV) regulation by reference. Under a compliance alternative contained in Pennsylvania's existing regulation, vehicle manufacturers have been able to use federal programs, either the National Low Emission Vehicle (NLEV) or the federal Tier II programs, to comply with the Pennsylvania regulation until MY 2006. This proposed rulemaking amends the existing PCV program to update incorporation by reference to the CA LEV II program contained in the California Code of Regulations (Title 13 CCR Chapters 1 and 2).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 5 of the Air Pollution Control Act (APCA)(35 P.S. §4005), subsection (a)(1) grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution (35 P.S. §4005(a)(1)). Subsection (a)(7) grants the Board the authority to adopt regulations designed to reduce emissions from motor vehicles (35 P.S. §4005(a)(7)), and subsection (a)(8) grants the Board the authority to adopt regulations to implement the provisions of the CAA (35 P.S. §4005(a)(8)).

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

No. However, Subchapter D of Chapter 126 is included in the Commonwealth's federally enforceable State Implementation Plan (SIP). DEP will submit the revised final regulation to EPA as a SIP revision.

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

The regulation is needed to enable more time for compliant vehicles to be delivered to Pennsylvania, and to avoid unnecessary cost and confusion if the current 2006 model year deadline is maintained and enforced. The interest lies in amending the Commonwealth's existing rule to reflect changes made in the California program and standards subsequent to Pennsylvania's promulgation of Subchapter D in 1999. Section 177 of the CAA prohibits states from adopting engine standards other than the California standard. Amending Subchapter D will clarify references, and help ensure that the Pennsylvania program is identical to the California program. The CAA was amended in 1977 to allow states to adopt emission standards for motor vehicles. Section 177 of the CAA authorizes states to adopt and enforce new motor vehicle emission standards for any model year if the standards are identical to the California standards and the state adopts the standards at least two years before the commencement of the model year. California's standards must also have been granted a waiver from the CAA's prohibition against State emission standards. CAA §177, 42 U.S.C.A. §7507. A Federal Court of Appeals has ruled that states may adopt, but not enforce, California emissions standards before EPA has acted on California's waiver request. *Motor Vehicle Manufacturers Association of the United States v. New York State Department of Environmental Conservation*, 17 F.3d 521, 534 (2d Cir. 1994). If a state does not adopt California's standards, vehicle manufacturers and others are subject to the federal emissions standards established by U.S. Environmental Protection Agency (EPA).

By amending the existing rule to reflect changes in the California requirements and by providing flexibility for the vehicle manufacturers during implementation, Pennsylvania citizens can obtain the air quality benefits of this program with a minimized impact. By 2025 the Department anticipates additional reductions above the current federal Tier II program of 2850 to 6170 tons per year of volatile organic compounds (VOC) 3540 tons per year of nitrogen oxides (NOx), and 5% to 11% total reduction of six toxic air pollutants (including benzene with 7 to 15 percent more benefit). Reductions in VOC and NOx reduce the potential for the formation of harmful ground level ozone.

Ground-level ozone or smog affects the health of millions of Pennsylvanians, in particular children and those with existing respiratory diseases. The problem is still pervasive today despite considerable progress. Because the US Environmental Protection Agency has found that the standard then in place did not adequately protect public health, more protective standards for ozone as well as for fine particulates have been promulgated.

Consequently, today about two-thirds of Pennsylvania's citizens live in counties that do not attain the revised ozone standard. Highway vehicles contribute significantly to the emissions that form ozone. Without additional reductions in highway vehicle emissions, reductions will have to be obtained from industrial, commercial and/or other consumer sources; these controls may not be as cost-effective as the PCV. Therefore, failure to implement the PCV program would increase the likelihood that the Commonwealth would not achieve and maintain the health-based 8-hour National Ambient Air Quality Standard (NAAQS) for ground level ozone. Furthermore, if we do not attain and maintain the standards in our nonattainment areas, these areas would be subject to additional requirements that could affect their industrial/commercial facilities. Postponement of the PCV from MY 2006 to 2008 does not significantly affect long-term air quality and economic benefits. Cost savings for manufacturers and consumers would also be realized with the delayed compliance schedule.

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

If this regulation is not amended, Pennsylvania citizens may find their choice of new vehicles weighing 8,500 pounds or less limited in the short term, as vehicle manufacturers may have difficulty in providing a sufficient number of compliant vehicles for MY 2006. Failure to amend this regulation would also create potential confusion from outdated cross-references.

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

The existing PCV program and the proposed rulemaking will benefit all Pennsylvania citizens by ensuring that the future air quality benefits of the current program are realized. With the proposed rulemaking, vehicle manufacturers will benefit by having more certainty about the Pennsylvania program requirements and additional flexibility to help ensure they can provide California certified models of vehicles that Pennsylvanians want. The proposed rulemaking will postpone the implementing model year from 2006 to MY 2008.

When revisions to this rulemaking are final, the PCV program will reduce emissions in 2025 over the federal program by an additional 2850 to 6170 tons per year of volatile organic compounds (VOC), 3540 tons per year of nitrogen oxides (NOx), and 5% to 11% total reduction of six toxic air pollutants (including benzene with 7 to 15 percent more benefit). Reductions in VOC and NOx reduce the potential for the formation of harmful ground level ozone. Highway vehicles contribute significantly to the emissions that form ozone. Without additional reductions in highway vehicle emissions, reductions will have to be obtained from industrial, commercial and/or other consumer sources; these controls may not be as cost-effective as the PCV program. Therefore, failure to implement the PCV program would increase the likelihood that the Commonwealth would not achieve and maintain the health-based 8-hour National Ambient Air Quality Standard (NAAQS) for ground level ozone. Furthermore, if we do not attain and maintain the standards in our nonattainment areas, these areas would be subject to additional requirements that could affect their industrial/commercial facilities.

In addition, the requirement in the existing regulation that new vehicles have CARB certification will allow the Commonwealth to realize greenhouse gas (GHG) benefits after MY 2009. California estimates

that the program, when fully phased-in, will provide about a 30% reduction in greenhouse gas emissions from new vehicles required to comply compared to the 2002 fleet. The Department anticipates that the Commonwealth would achieve similar benefits. In September 2004, CARB estimated that by 2016 the operational efficiency savings of vehicles meeting greenhouse gas requirements would provide vehicle owners an overall cost savings of \$3.50 to \$7.00 per month, assuming \$1.74 per gallon of gasoline.

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

Cost savings will be realized as a consequence of the rulemaking since new emission standards are postponed from MY 2006 to MY 2008.

The following methodology has been used to calculate the maximum cost savings attributable to the postponement of the implementation date. In 1999, CARB estimated a potential increase in price of California vehicles from \$68 to \$276 per vehicle depending on type. The Pennsylvania Department of Transportation (PENNDOT) estimated a four-year average of more than 610,000 new automobiles and light-duty trucks registered in Pennsylvania each model year. The Pennsylvania Department of Transportation (PENNDOT) estimated a four-year average of more than 610,000 new automobiles and light-duty trucks registered in Pennsylvania each model year. Based on an estimated typical Pennsylvania retail cost increase of \$172, at the midpoint of the 1999 CARB-estimated range, and an estimated 610,000 subject vehicles registered in a typical model year, the Department estimates an annual savings of \$104,920,000 for the next two years due to the proposed rulemaking.

An internet comparison of the MSRP of vehicles available in the summer of 2005 on the dealer lots in non-CA LEV II states (including Pennsylvania) with New York and Massachusetts (CA LEV II states), indicated that some major vehicle manufacturers did price CARB-certified and non-CARB-certified vehicles differently while others generally specified that CARB certified vehicles may cost more. Pennsylvania was included in this assessment because CA LEV II is not required for MY 2005 vehicles in Pennsylvania.

California's GHG regulations affect MY 2009 and subsequent vehicles. While CARB predicted that by 2016 the operational efficiency of vehicles meeting GHG requirements may actually afford owners an overall cost savings of \$3.50 to \$7.00 per month (assuming \$1.74 per gallon of gasoline), information on initial cost (which could be related to sticker price) is provided. Based on separate CARB estimates for passenger cars/small trucks and large trucks/SUVs and the make-up of the fleet in Pennsylvania (about 80%/20%), Pennsylvania consumers could see an increase in per vehicle costs of \$21 for MY 2009, \$63 for MY 2010 and \$219 for MY 2011 to about \$1000 in MY 2016. CARB estimates that by 2016 the operational efficiencies realized by GHG technology will result in an overall savings of \$3.50 to \$7.00 per month (\$42 to \$84 dollars per year) based on a MY 2016 vehicle costing an additional \$1029 to \$1064 per vehicle. Cost savings data from CARB for the model years earlier than 2016 were not available. The department is assuming that a similar cost savings could result in earlier years but at a smaller magnitude. This is reflected in the table as no net cost or savings.

Vehicle manufacturers would be affected by the existing regulation by having to produce additional CARB-certified vehicles in order to supply Pennsylvania by MY 2006; the proposed rulemaking postpones this effect until MY 2008. The proposed rulemaking does not impose any additional paperwork requirements on the approximately 1200 Pennsylvania new car dealers and a smaller number of car leasing agencies and rental car businesses.

(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.)

Under the existing regulations and the proposed rulemaking, domestic and foreign vehicle manufacturers may offer only CARB-certified vehicles and must submit paperwork to the Department to demonstrate they meet the emissions standards and program requirements. There are at least 20 vehicle manufacturers that currently offer vehicles for sale in Pennsylvania. None of these companies is based or has significant manufacturing operations in Pennsylvania.

Pennsylvania new vehicle dealers, car leasing agencies, car rental agencies, and any person who registers a new vehicle subject to the program will be required under the existing regulations and the proposed rulemaking to provide documentation to PENNDOT that the vehicle meets the California emissions standards by showing the vehicle's accompanying paperwork. Since new vehicle dealerships, and not consumers, register most new vehicles subject to the program, the burden of providing proof of CARB certification for a motorist for registration will fall primarily on Pennsylvania's new vehicle dealers.

(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.

Prior to drafting the proposed regulation, Department staff contacted program staff in many states that currently, or will soon, implement the CA LEV II program (New Jersey, New York, Rhode Island). In addition, the Air Quality Technical Advisory Committee (AQTAC) reviewed and supports the proposed rulemaking. Material submitted to AQTAC is posted publicly on the internet. The Air Committee of DEP's Citizen Advisory Council was consulted and supports the proposed rulemaking. The Department staff also briefed the Small Business Compliance Advisory Committee.

The Department sent letters to the vehicle manufacturers on June 10, 2005 reminding them of the Commonwealth's existing clean vehicles regulation and informing them that the Department is proposing to amend the regulation. The letter asked for any information or input that the manufacturers could provide. Discussions have commenced with industry representatives.

Department staff also consulted with the Pennsylvania Automotive Association (representing Pennsylvania new vehicle dealers), talked with environmental advocacy groups and briefed staff of the Pennsylvania House and Senate Environmental Resources and Energy Committees.

(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.

Cost savings will be realized from this rulemaking since compliance dead lines are extended from MY 2006 to 2008 and regulatory flexibility is provided.

The following methodology has been used to calculate the maximum cost savings attributable to the postponement of the implementation date. In 1999, CARB estimated a potential increase in price of California vehicles from \$68 to \$276 per vehicle depending on type. The Pennsylvania Department of Transportation (PENNDOT) estimated a four-year average of more than 610,000 new automobiles and light-duty trucks registered in Pennsylvania each model year. Based on an estimated typical Pennsylvania retail cost increase of \$172, at the midpoint of the 1999 CARB-estimated range, and an estimated 610,000 subject vehicles registered in a typical model year, the Department estimates an annual savings of \$104,920,000 for the next two years due to the proposed rulemaking.

An internet comparison of the MSRP of vehicles available in the summer of 2005 on the dealer lots in non-CA LEV II states (including Pennsylvania) with New York and Massachusetts (CA LEV II states), indicated that some major vehicle manufacturers did price CARB-certified and non-CARB-certified vehicles differently while others generally specified that CARB-certified vehicles may cost more. Pennsylvania was included in this assessment because CA LEV II is not required for MY 2005 vehicles in Pennsylvania.

California's GHG regulations affect MY 2009 and subsequent vehicles. While CARB predicted that by 2016 the operational efficiency of vehicles meeting GHG requirements may actually afford owners an overall cost savings of \$3.50 to \$7.00 per month (assuming \$1.74 per gallon of gasoline), information on initial cost (which could be related to sticker price) is provided. Based on separate CARB estimates for passenger cars/small trucks and large trucks/SUVs and the make-up of the fleet in Pennsylvania (about 80%/20%), Pennsylvania consumers could see an increase in per vehicle costs of \$21 for MY 2009, \$63 for MY 2010 and \$219 for MY 2011 to about \$1000 in MY 2016. CARB estimates that by 2016 the operational efficiencies realized by GHG technology will result in an overall savings of \$3.50 to \$7.00 per month (\$42 to \$84 dollars per year) based on a MY 2016 vehicle costing an additional \$1029 to \$1064 per vehicle. Cost savings data from CARB for the model years earlier than 2016 were not available. The department is assuming that a similar cost savings could result in earlier years but at a smaller magnitude. This is reflected in the table as no net cost or savings.

CARB-certified vehicles are required to have warranties more stringent than the federal regulations require, which could provide a long-term savings for purchasers.

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

Under the proposed rulemaking, local governments that purchase new vehicles under the proposed rulemaking will NOT be required to purchase CARB certified vehicles until they buy new MY 2008 or later vehicles. Emergency vehicles do not need to be CARB-certified vehicles. Pennsylvania municipalities purchase approximately 2,500 light-duty vehicles per year. The savings for local governments could be as much as \$430,000 for the next two years.

When the PCV program is implemented, local governments will experience reduced costs of an undetermined amount on health care and welfare costs, including reduced hospital admissions, Medicaid and Medicare costs and cost of prescriptions as a result of improved air quality.

In addition, local government will receive the benefits of an enhanced warranty for each vehicle. CARB-certified vehicles are required to have warranties more stringent than the federal regulations require.

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

Under the existing regulation and the proposed rulemaking, DEP will require one full-time equivalent employee to develop implementation procedures and administer the program, work with PENNDOT to ensure that all new subject Pennsylvania vehicles are CARB-certified, implement an enforcement program, and keep abreast of changes to the California program that could affect the Pennsylvania program. This can

be accomplished by reallocating existing, approved positions within the Department. The proposed rulemaking will update the references to the California program. This will improve implementation and reduce the staff time needed to develop policy and procedure to implement the regulation.

PENNDOT may incur minimal costs under the existing regulation and proposed rulemaking to administer the CARB certification requirement for registering new vehicles. An additional form would mostly likely be required for registration which would be made available online to registering agents in order to save printing costs. PENNDOT and DEP would share responsibility for outreach and the dissemination of information that will be needed by PENNDOT registration processing staff and non-governmental groups that submit new vehicle registrations (dealerships, notaries public, etc.). Since this outreach would go through already existing channels (websites, bulletins, etc.) and with existing staff, it is not anticipated that measurable costs would be incurred.

The Commonwealth purchases approximately 1000 light-duty vehicles a year. The proposed rulemaking will defer a possible additional cost of \$172,000 annually for fiscal year 05/06 and 06/07.

State government will receive the benefits of an enhanced warranty under the PCV program for each vehicle. CARB-certified vehicles are required to have warranties more stringent than the federal regulations require.

When the PCV program is implemented, state government will experience reduced costs of an undetermined amount on health care and welfare costs, including reduced hospital admissions, Medicaid and Medicare costs and cost of prescriptions, as a result of improved air quality.

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

	Current FY	FY +1 Year	FY +2 Year[*]	FY +3 Year^{**}	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$104,920,000	\$104,920,000	0	0	0	0
Local Government	\$430,000	\$430,000	0	0	0	0
State Government	\$172,000	\$172,000	0	0	0	0
Total Savings	\$105,522,000	\$105,522,000				
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses						

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

Amending the existing regulation in Chapter 126 postpones the MY 2006 CARB certification requirement to 2008, thus the annual costs associated with the Pennsylvania Clean Vehicle Program for the fiscal years 05/06 and 06/07 are deferred until fiscal year 07/08 in which the 2008 model year begins.

PENNDOT annually registers on average 610,000 new automobile and light duty trucks that will be subject to this regulation. Assuming a median cost of \$172 per vehicles, the estimated annual regulated community savings was obtained by multiplying \$172 by 610,000.

Local government savings were estimated by multiplying the estimated 2,500 vehicles purchased annually by local governments by \$172 per vehicle.

State government savings were estimated by multiplying the 1000 light duty vehicles the Commonwealth purchases annually, by \$172 per vehicle.

The Department did not estimate the savings related to reduced health-care costs and improved air quality from implementation of the PCV program, nor did the Department estimate the long-term savings to the regulated community, and state and local governments resulting from the improved emissions control component warranty afforded with CARB- certified vehicles. Based on separate CARB estimates for passenger cars/small trucks and large trucks/SUVs and the make-up of the fleet in Pennsylvania (about 80%/20%), Pennsylvania consumers could see an increase in per vehicle costs of \$21 for MY 2009, \$63 for MY 2010 and \$219 for MY 2011 (and \$1000 for MY 2016). CARB estimates that by 2016 the operational efficiencies realized by GHG technology will result in an overall savings of \$3.50 to \$7.00 per month (\$42 to \$84 dollars per year) based on a MY 2016 vehicle costing an additional \$1029 to \$1064 per vehicle. Cost savings data from CARB for the model years earlier than 2016 were not available. The department is assuming that a similar cost savings could result in earlier years but at a smaller magnitude. This is reflected in the table as no net cost or savings.

* Cost & savings data for MY 2008 – first year of PCV program implementation

** Cost & savings data for MY 2009 – first year of GHG requirements

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

No programs were affected by the regulation over the last three years.

Program	FY-3	FY-2	FY-1	Current FY
233-20084 Clean Air Fund Mobile and Area Facilities	\$4,305,000	\$8,282,000	\$6,234,000	\$7,370,000
161-10382 Environmental Program Management	\$43,780,000	\$43,679,000	\$31,839,000	\$37,049,000

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

Amending the regulation will defer the short-term costs of implementing the PCV program for two years and provide flexibility to vehicle manufacturers both to help ensure compliance for MY 2008 and provide sufficient CARB-certified vehicles for Pennsylvania consumers. The proposed rulemaking will help ensure that the regulation meets "identity" requirements of the federal Clean Air Act and will provide a transition mechanism from the NLEV program by specifying a three-year early credit earning period. The proposed rulemaking provides clarity by updating cross-references to the California regulations. Without additional reductions in highway vehicle emissions from the PCV, reductions may have to be obtained from industrial, commercial and/or other consumer sources; these controls may not be as cost-effective as the PCV. Postponement of the PCV from MY 2006 to MY 2008 does not significantly affect long-term benefits. The GHG provisions included in California's program provides an overall net savings to consumers from operational efficiencies.

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

Some vehicle manufacturers would likely be unable to provide sufficient numbers of new vehicles to meet demand if the Department implemented the regulation in MY 2006, rather than revising the regulation to postpone compliance to MY 2008. Additionally, as the regulations have not been updated to reflect changes in the California program, there is a possibility that the regulated community would not understand how the current regulation would be applied in Pennsylvania.

Implementing the current regulation through policy or guidance would increase the potential of litigation by either the vehicle manufacturers or third parties.

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

Under the federal Clean Air Act, Pennsylvania must either adopt California standards or be covered by federal requirements. State adoption of the California standards must meet the criteria of "identity" as established by statute and case law. Pennsylvania evaluated longer and shorter periods of implementation and various transition mechanisms, including those adopted or being considered in nearby states. The alternative being proposed provided the best balance of emission benefits, legal identity, compliance flexibility and regional consistency. The regional consistency will help keep price differentials between Pennsylvania and other states to a minimum.

With the more aggressive implementation schedule mandated under the existing requirements, the same types of vehicles might not be available to Pennsylvania consumers in the short term, thus imposing a burden on Pennsylvania new car purchasers.

(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.

California vehicle standards are more stringent than the current EPA federal Tier II program. This proposed rulemaking continues the existing adoption of the California program and is no more stringent than what is currently required in the existing Pennsylvania regulations and in the regulations of other states that have

adopted California standards. This program is necessary to achieve and maintain the 8-hour ozone NAAQS and to satisfy related Clean Air Act requirements. Without additional reductions in highway vehicle emissions, reductions will have to be obtained from industrial, commercial and/or other consumer sources; these controls may not be as cost-effective as the PCV. Therefore, failure to implement the PCV program would increase the likelihood that the Commonwealth would not achieve and maintain the health-based 8-hour National Ambient Air Quality Standard (NAAQS) for ground level ozone. Furthermore, if we do not attain and maintain the standards in our nonattainment areas, these areas would be subject to additional requirements that could affect their industrial/commercial facilities. Postponement of the PCV from MY 2006 to 2008 does not significantly affect long-term benefits.

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

New Jersey, New York, Connecticut, Rhode Island, Vermont, Massachusetts, Maine, Washington and Oregon either currently have, or will soon implement, California vehicle standards. The proposed rulemaking amends the Pennsylvania program in a manner similar to many of these states. The proposed three-year credit-earning period is almost identical to that adopted by Rhode Island, another newly implementing LEV II state. Pennsylvania would not be at a competitive disadvantage as it is already the second largest new vehicle market in the Northeast and Middle-Atlantic states. As Pennsylvania is already such a large market, there is great incentive for manufacturers to continue to provide vehicles in this Commonwealth. When the Northeast and Middle-Atlantic states, including Pennsylvania, have fully implemented the California LEV II program, industry estimates that close to 30% of all new vehicles sold in the United States will be required to be CARB-certified.

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

The proposed rulemaking will not affect other existing DEP regulations.

There should be no impact on PENNDOT regulations.

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

Three public hearings will be conducted in Norristown, Harrisburg and Pittsburgh.

(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.

The existing PCV program requires vehicle manufacturers, beginning with MY 2006, to submit to the Department projected and actual sales information and technical information on request. The proposed rulemaking will defer the reporting requirements until MY 2008. The proposed rulemaking also clarifies that vehicle manufacturers may fulfill the Pennsylvania requirements using formats developed for California.

The existing PCV program requires any person registering a new vehicle to provide proof that the vehicle is CARB-certified by producing proper paperwork, which accompanies all new cars, when registering the vehicle. Car dealers, car leasing agencies, and rental car agencies are also required to provide documentation that vehicles under their control that do not meet the standards are operated predominately outside of Pennsylvania. The proposed rulemaking will defer these requirements until MY 2008.

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

No special provisions have been included in the proposed rulemaking.

The California low emissions vehicle program has special provisions for small- and medium-sized motor vehicle manufacturers. These are incorporated by reference in the existing Pennsylvania regulation and continue to be incorporated by reference in the proposed rulemaking.

The Department will provide compliance assistance to affected parties and will work with appropriate trade and motorist organizations to distribute information to their members. The Commonwealth will also explain the program on the Department's web site.

(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?

The anticipated effective date for the rulemaking is the end of 2006. The CARB certification requirement will affect the regulated community beginning MY 2008 under the proposed rulemaking. MY 2008 can begin as early as January 2, 2007, but are generally introduced in mid- to late-2007. Vehicle manufacturers will not be required to demonstrate compliance with the model-year 2008 NMOG (non-methane organic gases – an equivalent for volatile organic compound, or VOC) fleet average based on Pennsylvania sales until 2011. No permits, licenses or other approval are needed.

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

The regulation will continue to be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

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

(Pursuant to Commonwealth Documents Law)

RECEIVED
2006 JAN 31 PM 3:04
INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

2523

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

By: *Amy M. Elliott*
(Deputy Attorney General)

JAN 11 2006

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. 7-398

DATE OF ADOPTION October 18, 2005

BY *Kathleen A. McGinty*

TITLE **KATHLEEN A MCGINTY
CHAIRPERSON**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY *David J. DeVries*
DAVID J. DEVRIES

DEC 15 2005
DATE OF APPROVAL
EXECUTIVE
(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 PROPOSED RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

PA Clean Vehicles Program

25 Pa. Code, Chapters 121 & 126

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
LABORATORY OF ORGANIC CHEMISTRY
CHICAGO, ILLINOIS

RECEIVED

1954

TO THE DIRECTOR OF THE UNIVERSITY OF CHICAGO
FROM THE DIRECTOR OF THE UNIVERSITY OF CHICAGO
RE: [Illegible text]

UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5800 S. DICKINSON DRIVE
CHICAGO, ILLINOIS

Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapter 126)
Pennsylvania Clean Vehicles Program

Preamble

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code, Chapter 126, Subchapter D (relating to new motor vehicle emissions control program). The amendments propose to postpone the compliance date from model year (MY) 2006 to MY 2008 and update definitions in Section 121.1 (relating to definitions) for terms that are used in the substantive provisions in Chapter 126, Subchapter D. The amendments also propose to clarify the Pennsylvania Clean Vehicles Program in Chapter 126, Subchapter D and to specify in that subchapter a transition mechanism for compliance with the Pennsylvania Clean Vehicles Program.

This proposal was adopted by the Board at its meeting of October 18, 2005.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Arleen Shulman, Chief, Mobile Sources Section, Bureau of Air Quality, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3926, or Kristen M. Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The proposed rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (35 P.S. §4005), which in subsection (a)(1) grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution (35 P.S. §4005(a)(1)), in subsection (a)(7) grants the Board the authority to adopt regulations designed to reduce emissions from motor vehicles (35 P.S. §4005(a)(7)), and in subsection (a)(8) grants the Board the authority to adopt regulations to implement the provisions of the Clean Air Act (35 P.S. §4005(a)(8)).

D. Purpose and Background

The purpose of this proposed rulemaking is to postpone the compliance date from model year (MY) 2006 to MY 2008 and specify a three-year early-credit earning period within which vehicle manufacturers must come into compliance with the NMOG fleet average of the Pennsylvania Clean Vehicles Program. Specifying an early-credit earning period is intended to provide a transition mechanism from the NLEV program and to help ensure “identity” with the California program. The purpose of this proposed rulemaking is also to clarify the Pennsylvania Clean Vehicles Program to reflect post-1998 amendments of the California provisions incorporated by reference and to reflect the end of the NLEV compliance option.

By amending the existing rule to reflect changes in the California requirements and by providing flexibility for the vehicle manufacturers during implementation, Pennsylvania citizens can obtain the air quality benefits of this program with a minimized impact. Postponement of the PCV from MY 2006 to MY 2008 does not significantly affect long-term air quality and economic benefits. Cost savings for manufacturers and consumers would also be realized with the delayed compliance schedule.

The Commonwealth intends to suspend its enforcement of the Pennsylvania Clean Vehicles Program during the pendency of the amendatory rulemaking process. The existing Pennsylvania Clean Vehicles Program will remain part of the Commonwealth's State Implementation Plan (SIP) until these proposed regulatory revisions are adopted in the Commonwealth and approved as a revision to the SIP.

The Pennsylvania Clean Vehicles Program does not mandate the sale or use of reformulated motor fuels that comply with the specifications for reformulated motor fuels mandated by the State of California. The courts have held that a state's failure to adopt California fuel requirements does not violate the Section 177 requirement that state emission standards be identical to the California standards for which a waiver has been granted. 42 U.S.C.A. §7507. *Motor Vehicle Manufacturers Association of the United States v. New York State Department of Environmental Conservation*, 17 F.3d 521 (2d Cir. 1994); *American Automobile Manufacturers Association v. Greenbaum*, No. 93-10799-MA (D. Mass. Oct. 27, 1993) aff'd., 31 F.3d 18 (1st Cir. 1994).

In addition, the Pennsylvania Clean Vehicles Program does not incorporate the California ZEV provisions. Section 177 does not require adoption of all California standards, but only requires that if a state adopts motor vehicle standards those standards be identical to the California standards. The EPA concludes that states adopting a Section 177 program need not adopt California's ZEV requirements to comply with the CAA requirements for identical standards under Section 177. 60 F.R. 4712, January 24, 1995.

Retaining and updating the California LEV program in Pennsylvania is consistent with the actions of other Northeast States. Maine, Massachusetts, New York, and

Vermont adopted the California LEV program in the first instance, as did this Commonwealth, but they did not provide the NLEV compliance option like this Commonwealth did. Those states have revised their regulations to incorporate the California LEV II provisions. Other Northeastern states adopted the California LEV program and the NLEV compliance option in the first instance, like this Commonwealth did. Of those states, Rhode Island and Connecticut both have adopted regulations to implement the California LEV II program and New Jersey, with statutory authority, is proceeding with a rulemaking to incorporate California LEV II.

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The United States Environmental Protection Agency (EPA) has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Further, although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activities that involve physical exertion. Though the symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

Gasoline-powered motor vehicles primarily emit three pollutants: carbon monoxide (CO), volatile organic compounds (VOCs) and oxides of nitrogen (NOx). Ozone is not directly emitted by motor vehicles, but is created as a result of the chemical reaction of NOx and VOCs, in the presence of light and heat, to form ozone in air masses traveling over long distances. The formation of ozone is greater in the summer months because of the higher temperatures. About one third of this Commonwealth's ozone-forming pollution comes from motor vehicles.

The Federal Clean Air Act (CAA) was amended in 1977 to allow States to adopt emission standards for motor vehicles. Section 177 of the CAA authorizes States to adopt and enforce new motor vehicle emission standards for any model year if the standards are identical to the California standards and the State adopts the standards at least two years before the commencement of the model year. California's standards must also have been granted a waiver from the CAA's prohibition against State emission standards. CAA §177, 42 U.S.C.A. §7507. A Federal Court of Appeals has ruled that States may adopt, but not enforce, California emissions standards before EPA has acted on California's waiver request. *Motor Vehicle Manufacturers Association of the United States v. New York State Department of Environmental Conservation*, 17 F.3d 521, 534 (2d Cir. 1994). If a State does not adopt California's standards, vehicle manufacturers and others are subject to the Federal emissions standards established by EPA.

Congress amended Section 177 of the CAA in 1990 to prohibit states from taking any action that would have the effect of creating a motor vehicle or motor vehicle engine different from a motor vehicle or motor vehicle engine certified in California under California standards or otherwise create a "third vehicle." Shortly thereafter, many states began to consider clean vehicle or "low emission vehicle" (LEV) programs as a control strategy to achieve and maintain the National Ambient Air Quality Standard (NAAQS) for ozone.

Congress also recognized that ground level ozone is a regional problem not confined to state boundaries. Section 184 of the CAA (42 U.S.C.A. §7511c) established the Northeast Ozone Transport Commission (OTC) to assist in developing recommendations for the control of interstate ozone air pollution. The Commonwealth is a member of the OTC.

Shortly after establishment of the OTC, the member states began negotiating with the vehicle manufacturers for cleaner cars to address regional air quality needs. In 1998, EPA adopted regulations for a voluntary alternative low emission vehicle (LEV) program, called the National Low Emissions Vehicle (NLEV) program, reflecting these negotiations. Under this alternative LEV program, vehicle manufacturers agreed to manufacture LEVs for 49 states as an alternative to the California LEV program. The Commonwealth and eight other Northeastern States, as well as 23 vehicle manufacturers, opted into the NLEV program, effective in the OTC for MY 1999 and outside the OTC for MY 2001.

In 1998, under the authority of section 177 of the CAA, the Commonwealth adopted the Pennsylvania Clean Vehicles Program. (28 Pa. B. 5873, Dec. 5, 1998.) In the same rulemaking, the Commonwealth adopted the NLEV program as a compliance alternative to the Pennsylvania Clean Vehicles Program. The Pennsylvania Clean Vehicles Program incorporates by reference the LEV program of California as a "backstop" to the NLEV program in the event a vehicle manufacturer opted out of the NLEV program and at the conclusion of the NLEV program. The Pennsylvania Clean Vehicles Program incorporates by reference emission standards for passenger cars and light-duty trucks identical to the low emission standards adopted by California, except that it does not incorporate by reference the California zero emissions vehicle (ZEV) or emissions control warranty systems statement provisions.

The Commonwealth's participation in the NLEV program extended only until MY 2006, at which time vehicle manufacturers would no longer be able to use NLEV as a compliance alternative to the Pennsylvania Clean Vehicles Program. In practical terms, the NLEV program was replaced for MY 2004 and later by the more stringent Federal "Tier II" vehicle emissions regulations, 65 F.R. 6698 (Feb. 10, 2000), and vehicle manufacturers operating under the NLEV program became subject to the Tier II requirements.

California adopted its LEV regulations, known as "LEV I," in 1991. California's LEV I requirements were generally applicable in California in MY 1994. EPA granted a waiver of Federal preemption for California's LEV I program on January 13, 1993. 58 F.R. 4166. California adopted revised LEV regulations in 1996, for model years 2004 and later, known as "LEV II." EPA granted a waiver of Federal preemption for California's LEV II program on April 22, 2003. 68 F.R. 19811.

Since neither the federal Tier II nor California LEV II standards had been established when the Commonwealth adopted the Pennsylvania Clean Vehicles Program in 1998, it was uncertain which program would be more appropriate for this Commonwealth in the long run. Because of this, the Board stated an intention in the 1998 final rulemaking Order to reassess the air quality needs and emission reduction potential of both programs in advance of the end of the Commonwealth's commitment to the NLEV program. 28 Pa. B. 5873, 5875, Dec. 5, 1998.

The assessment is now complete. It shows that the Commonwealth will experience more air pollution reduction benefits from regulating light-duty cars and trucks under the California LEV II requirements than under the federal Tier II requirements.

With the California LEV II program, the Commonwealth will achieve additional VOC and NOx emission reductions of about 2850 to 6170 tons per year of volatile organic compounds (VOC), 3540 tons per year of nitrogen oxides (NOx), and 5% to 11% total reduction of six toxic air pollutants (including benzene with 7 to 15 percent more benefit) by 2025, when full fleet turnover is expected.

Highway vehicles contribute significantly to the emissions that form ozone. Ground-level ozone or smog affects the health of millions of Pennsylvanians, in particular children and those with existing respiratory diseases. The problem is still pervasive today despite considerable progress, because the US Environmental Protection Agency has found that the standard then in place did not adequately protect public health. More protective standards for ozone as well as for fine particulates have been promulgated.

Consequently, today about two-thirds of Pennsylvania's citizens live in counties that do not attain the revised ozone standard. Without additional reductions in highway vehicle emissions, reductions will have to be obtained from industrial, commercial and/or other consumer sources; these controls may not be as cost-effective as the PCV. Therefore, failure to implement the PCV program would increase the likelihood that the Commonwealth would not achieve and maintain the health-based 8-hour National Ambient Air Quality Standard (NAAQS) for ground level ozone. Furthermore, if we do not attain and maintain the standards in our nonattainment areas, these areas would be subject to

additional requirements that could affect their industrial/commercial facilities. Postponement of the PCV from MY 2006 to 2008 does not significantly affect long-term air quality and economic benefits. Without additional reductions in highway vehicle emissions, reductions will have to be obtained from industrial, commercial and/or other consumer sources; these controls may not be as cost-effective as the PCV.

Copies of the Commonwealth's mobile source modeling consultant's analyses are available from the contact persons identified in "Section B. Contact Persons" of this Preamble.

The Pennsylvania Clean Vehicles Program in Chapter 126, Subchapter D (relating to new motor vehicle emissions control program), applies to vehicle manufacturers, new vehicle dealers, leasing and rental agencies and other registrants. Under the program, a person may not sell, import, deliver, purchase, lease, rent, acquire, receive or register a new passenger car or light-duty truck (with some exceptions) in this Commonwealth that has not received certification from the California Air Resources Board (CARB) for compliance with the California Low Emissions Vehicle II (LEV II) program. To receive CARB certification for a vehicle make and model, a manufacturer must demonstrate to CARB that the vehicle test group associated with the specific make and model meets specified criteria pollutant standards and that the manufacturer's low emission fleet as a whole meets the non-methane organic gases (NMOG) fleet average standard.

In addition to requiring CARB certification, the Pennsylvania Clean Vehicles Program requires that manufacturers demonstrate that the California NMOG fleet average standard is met based on the number of new light-duty vehicles delivered for sale in this Commonwealth.

California recently added a greenhouse gas fleet average requirement to its LEV II program, beginning with MY 2009. California's program would address emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride from LEVs offered for sale in California. California adopted a greenhouse gas fleet average on the basis that greenhouse gases trap atmospheric heat and contribute to global warming. The greenhouse gas fleet average would have to be met in California in order to obtain CARB certification.

Therefore, this Commonwealth would realize the benefits of California's greenhouse gas certified vehicles through the Commonwealth's existing requirement that new vehicles have CARB certification. California estimates that the program, when fully phased-in, will provide about a 30% reduction in greenhouse gas emissions from new vehicles required to comply compared to the 2002 fleet. The Department anticipates that the Commonwealth would achieve similar results. California is currently defending its greenhouse gas regulations against legal challenges filed by the auto industry.

The Department of Environmental Protection (Department) consulted with the Air Quality Technical Advisory Committee (AQTAC) on the proposed rulemaking on April 21, 2005 and June 16, 2005. At the June 16, 2005 meeting, AQTAC recommended that the Environmental Quality Board approve the amendments as proposed rulemaking. On April 27, 2005, the Department consulted with the Small Business Advisory Committee. As required under section 5(a)(7) of the act, the Department has begun consultations with the Pennsylvania Department of Transportation (PENNDOT), and will continue consultations with PENNDOT during the development of this rulemaking.

This proposed rulemaking is necessary to achieve and maintain the 8-hour ozone NAAQS and to satisfy related CAA requirements. This proposed rulemaking, if approved, would be submitted to the EPA as a revision to the SIP.

E. Summary of Regulatory Requirements

This proposed rulemaking deletes the definitions of “debit” and “ZEV—Zero-emission vehicle” from Chapter 121 (relating to definitions) because the terms are already defined in the California regulations incorporated by reference in Chapter 126. The proposed rulemaking deletes the definitions of “NLEV” and “NLEV Program” because they are no longer relevant. The proposed rulemaking makes typographical corrections to the definitions of “fleet average” and “LDV—Light-duty vehicles” and revises the definition of “offset vehicle”. The definition “LDT—Light-duty truck” is revised both to incorporate a separate definition of “Light duty truck” used for Chapter 129, Section 129.52 (relating to surface coating processes) and, for purposes of this proposed rulemaking, to be consistent with the California program. The separate definition of “Light duty truck” is deleted as it is proposed to be incorporated into the definition of “LDT-Light-duty truck”.

The proposed revisions to Chapter 126, Subchapter D (relating to new motor vehicle emissions control program) revise the title of Subchapter D to reflect the cessation of the NLEV program. The proposed revisions delete the NLEV provisions in Sections 126.401(b) (relating to purpose) and 126.402 (relating to NLEV scope and applicability).

Throughout Subchapter D, the proposed revisions update cross-references to the California regulations, reflecting the 1999 restructuring of California’s regulations. These revisions are proposed to make Subchapter D clearer and easier to understand, and to reduce the need for future revisions if California restructures its regulations again. The revisions of this nature are not individually addressed in this preamble.

The proposed revisions to Section 126.411(a) (relating to general requirements) postpone the model year to which the Pennsylvania Clean Vehicles Program will first apply from the model year beginning after December 5, 2000 to model year 2008.

Proposed revisions to Section 126.411(b)(1) update the cross-reference to, and retain the Commonwealth's specific exclusion of, California's ZEV program, by replacing "§ 1960.1(g)(2) (footnote 9)," with "§ 1962." This is an example of the cross-reference revisions reflecting California's 1999 regulatory restructuring.

The proposed revisions to Section 126.412(a) (relating to emission requirements) postpone the first model year for which a person is prohibited from selling, importing, delivering, purchasing, leasing, renting, acquiring, receiving or registering a vehicle subject to the Pennsylvania Clean Vehicles Program if the vehicle has not received CARB certification, from the model year beginning after December 5, 2000 to model year 2008.

The proposed revisions to Section 126.412(b) change the first model year for which compliance with the NMOG fleetwide average is required, from the model year beginning after December 5, 2000 to model year 2008. Language regarding California's ZEV program is deleted from subsection (b) because CARB moved the ZEV provisions out of the cross-referenced section.

Proposed new section 126.412(d) specifies the 3-year early-credit earning period within which vehicle manufacturers must come into compliance with the NMOG fleet average.

Proposed revisions to Section 126.413(a)(2) (relating to exemptions) clarify the original intent of the subsection, which is to allow a vehicle dealer to transfer a non-CARB certified new vehicle as long as the vehicle will not ultimately be sold in Pennsylvania as a new vehicle.

The proposed revision to Section 126.413(a)(11) conforms the model year registration cut-off for vehicle exemption with the MY 2008 start date of the CARB certification and NMOG fleet average requirements.

A new Section 126.413(a)(13) is proposed to exempt vehicles transferred for the purpose of salvage. This paragraph is added to ensure that Pennsylvania salvage and metal scrap operations may accept salvaged new motor vehicles that may not have CARB certification.

The Board approved an amendment to the proposed rulemaking at the Board's October 18, 2005 meeting, which appears as new Section 126.413(a)(14). This amendment exempts vehicles purchased or leased from an out-of-state dealer by a resident of the Commonwealth for the personal use of the resident and not for immediate resale. The amendment is designed to reflect the intention of the Commonwealth not to deny registration of a non-CARB certified vehicle in this situation. The Board specifically seeks comments on the scope of the exemption, namely, whether the exemption should cover the registration requirement or a broader range of requirements.

Proposed revisions to the motor vehicle testing provisions require vehicle manufacturers to provide CARB testing determinations and findings to the Department upon request. The revised sections are Section 126.421(b) (relating to new motor vehicle certification testing), Section 126.422(b) (relating to new motor vehicle compliance testing), Section 126.423(b) (relating to assembly line testing), Section 126.424(b) (relating to in-use motor vehicle enforcement testing) and Section 126.425(b) (relating to in-use surveillance testing).

Section 126.431(b) (relating to warranty and recall) requires each vehicle manufacturer to submit to the Department failure of emission-related components reports. The proposed revision allows a vehicle manufacturer to submit to the Department copies of the reports the manufacturer submitted to CARB for purposes of compliance with this subsection.

The proposed revision to Section 126.431(c) clarifies that any voluntary or influenced emission-related recall campaign initiated by any motor vehicle manufacturer under the California program shall extend to all motor vehicles sold, leased, offered for sale or lease or registered in this Commonwealth that would be subject to the recall campaign if sold, leased, offered for sale or lease or registered as a new motor vehicle in California.

A new Section 126.431(d) provides that any order issued by CARB or enforcement action taken by CARB to correct noncompliance with any provision of Title 13 CCR, which results in the recall of any vehicle pursuant to Title 13 CCR, Chapter 2, shall be deemed to apply to all motor vehicles sold, leased, offered for sale or lease or registered in this Commonwealth that would be subject to the order or enforcement action if sold, leased, offered for sale or lease or registered as a new motor vehicle in California.

Section 126.432(a) (relating to reporting requirements) requires that each vehicle manufacturer submit annually to the Department, within 60 days of the end of each model year, a report documenting the total deliveries for sale of vehicles in each engine family over that model year in this Commonwealth, for purposes of determining compliance with the Pennsylvania Clean Vehicles Program. The proposed revisions change the first model year to which this requirement applies from the model year beginning after December 5, 2000 to the 2008 model year. The proposed revisions to Section 126.432 change the term "engine family" to "test group" to conform to California's change in terminology. Proposed subsection (d) requires that compliance with the NMOG fleet average for the 2008, 2009 and 2010 model years be demonstrated following the completion of the 2010 model year.

New vehicle dealer responsibilities are clarified in the proposed revision to Section 126.441 (relating to responsibilities of motor vehicle dealers), which reiterates the prohibition against a new vehicle dealer selling, offering for sale or lease or delivering a vehicle subject to the Pennsylvania Clean Vehicles Program unless the vehicle has received the requisite CARB certification.

The Board approved an amendment to the proposed rulemaking at the Board's October 18, 2005 meeting, which appears as new Section 126.451. This amendment would require the Department to monitor and advise the Board in specific ways of any proposed or final rulemakings under consideration by CARB that amend or modify the California low emission vehicle program. This amendment would also require the Department to submit comments to CARB on proposed or final CARB rulemakings. This amendment is designed to ensure that the Board and other residents of the Commonwealth are informed about changes that might occur in the California program and able fully to appreciate the impact of a CARB rulemaking on residents of this Commonwealth. The Board is specifically seeking comment on this proposed amendment.

F. Benefits, Costs and Compliance

Benefits

The proposed rule will save the manufacturers, dealers, and purchasers of light-duty vehicles and trucks from incurring any additional costs for CARB-certified vehicles for two model years. Implementation of the Pennsylvania Clean Vehicles Program in accordance with the proposed rulemaking will contribute to the attainment and maintenance of the ozone health-based national ambient air quality standard in this Commonwealth due to emission reductions from the operation of low emission passenger cars and light-duty trucks. The Commonwealth's analyses indicate that, by implementing the California LEV II program under the proposed revisions, the Commonwealth will experience emission benefits when compared to the federal program. By 2025, when full fleet turnover is expected, the California LEV II program will provide an additional 2850 to 6170 tons per year of volatile organic compounds (VOC), 3540 tons per year of nitrogen oxides (NOx) and 5% to 11% more reduction of six toxic air pollutants, including a 7 to 15 percent additional benefit for benzene, a known carcinogen. The Commonwealth would also realize the benefits of California's greenhouse gas certified vehicles. CARB estimates that the program, when fully phased-in, will provide about a 30% reduction in greenhouse gas emissions from new vehicles required to comply compared to the 2002 fleet.

In addition, CARB predicted that by MY 2016 the operational efficiency savings of vehicles meeting the GHG requirements, which start in MY 2009, would afford owners an overall cost savings of \$3.50 to \$7.00 per month, assuming a price of \$1.74 per gallon of gasoline.

Compliance Costs

The proposed rulemaking will defer any costs associated with CARB-certified vehicles for two model years, from MY 2006 to MY 2008. In fact, as stated, cost savings will be realized. The existing regulations and the proposed revisions will apply to vehicle manufacturers, new vehicle dealers, leasing and rental agencies and other registrants, who sell, import, deliver, purchase, lease, rent, acquire, receive or register light-duty automobiles or trucks in the Commonwealth. No new costs will be incurred as a result of the proposed rulemaking compared to the costs that would be experienced without the proposed rulemaking.

In September 2004, CARB estimated that by MY 2016 the operational efficiency savings of vehicles meeting greenhouse gas requirements would provide vehicle owners an overall cost savings of \$3.50 to \$7.00 per month, assuming \$1.74 per gallon of gasoline. CARB estimated the GHG-related initial investment costs, possibly reflected in sticker prices, would start under \$50 per vehicle for MY 2009, be approximately \$350 in 2012 and \$1000 per vehicle in MY 2016. Vehicle manufacturers disagree with CARB's GHG estimate, citing initial costs of as much as \$3000 per vehicle.

The Commonwealth offers rebates to consumers for the initial purchase of hybrid electric vehicles and offers grants to alternative fuel vehicle buyers. These rebates and grants could offset any additional initial costs that might be passed on to consumers under the existing or amended Pennsylvania Clean Vehicles Program. Additionally, CARB-certified vehicles have more robust emissions control systems warranties that can save purchasers additional out-of-pocket repair costs as vehicles age.

Compliance Assistance Plan

Compliance assistance with the Pennsylvania Clean Vehicles Program will be provided to affected parties, primarily new vehicle dealers, through appropriate State trade organizations in the distribution of information to their membership. Information concerning the program will also be provided to consumers through the media, DEP publications, the Internet and appropriate motorist and other organizations.

The Commonwealth offers rebates to consumers for the initial purchase of hybrid electric vehicles and offers grants to alternative fuel vehicle buyers. These incentives may help vehicle manufacturers meet their obligations under the Pennsylvania Clean Vehicles Program.

Paperwork Requirements

No additional paperwork requirements will be imposed by the proposed rulemaking. When the Pennsylvania Clean Vehicles Program is implemented, vehicle manufacturers will be required to submit paperwork demonstrating compliance with the emission standards and other requirements of the program.

Motor vehicle dealers, leasing and rental agencies and other registrants of new motor vehicles must demonstrate to PENNDOT's Bureau of Motor Vehicles that new vehicles subject to the program are those certified by California.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. DEP encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

The existing regulations and proposed revisions give vehicle manufacturers the freedom to select technologies that prevent pollution. Similarly, vehicle manufacturers are given the freedom to select exhaust treatment technologies in order to meet the requirements. Air pollution will be reduced by requiring vehicle manufacturers to produce vehicles that lower emissions at their source. Because California warranties are longer, they also provide incentives for longer-lived vehicles, and thus a potentially lower rate of vehicle scrappage.

H. Sunset Review

This regulation will continue to be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on January 31, 2006, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the

General Assembly and the Governor of comments, recommendations or objections raised.

J. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 12, 2006. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 12, 2006. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments - Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by April 12, 2006. A subject heading of the proposal and a return name and address must be included in each transmission.

K. Public Hearings

The Environmental Quality Board will hold three public hearings for the purpose of accepting comments on this proposal. The hearings will be held as follows:

March 14, 2006 1:00 p.m.	Department of Environmental Protection Southwest Regional Office Waterfront A&B Conference Room 400 Waterfront Drive Pittsburgh, PA 15222.
March 20, 2006 7:00 p.m.	Department of Environmental Protection Rachel Carson State Office Building, Room 105 400 Market Street Harrisburg, PA 17105
March 28, 2006 10:00 a.m.	Department of Environmental Protection Marple Twp. Municipal Building 227 South Sproul Road Springfield and Sproul Roads Broomall, PA 19008

Individuals who would like to present testimony at the hearings must contact Natalie Shepherd at the EQB, P.O. Box 8477, Harrisburg, PA, 17105-8477, or (717) 787-4526 at

least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to ten minutes for each witness. Witnesses are requested to use this time to summarize their written testimony. Witnesses are requested to submit three written copies of their statement to the hearing chairperson at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the public hearings and require an auxiliary aid, service or other accommodation in order to participate should contact Natalie Shepherd at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD), to discuss how the Department may accommodate their needs.

BY:

KATHLEEN A. MCGINTY
Chairperson
Environmental Quality Board

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

ARTICLE I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUBPART C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

~~[Debit—Fleet average NMOG debits as calculated from the amount that the manufacturer's applicable fleet average NMOG value is above the applicable fleet average NMOG standard, times the applicable production for a given model year.]~~

~~Fleet average—~~For the purposes of motor vehicles subject to Pennsylvania's Clean Vehicles Program requirements, a motor vehicle manufacturer's average vehicle ~~[o]~~emissions of all NMOG emissions from vehicles which are produced and delivered for sale in this Commonwealth in any model year.

~~LDT—light-duty truck—~~For purposes of Chapter 129, Section 129.52 (relating to surface coating processes), a light-duty truck is a~~[A]~~ motor vehicle rated at 8,500 pounds gross vehicle weight or less which is designed primarily for purposes of transportation or major components of the vehicle, including, but not limited to, chassis, frames,

doors and engines. For purposes of Chapter 126, Subchapter D (relating to **[new motor vehicle emissions control]** the Pennsylvania Clean Vehicles program **[requirements]**), a light-duty truck is a **[ny]** motor vehicle, rated at **[6,000]****8,500** pounds gross vehicle weight or less which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

LDV-light-duty vehicle[s]—A passenger car or light-duty truck.

[Light duty truck—A motor vehicle rated at 8,500 pounds gross vehicle weight or less which is designed primarily for purposes of transportation or major components of the vehicle, including, but not limited, to chassis, frames, doors and engines.]

[NLEV—National Low Emission Vehicle.]

[NLEV Program—A voluntary low emission vehicle program specified in 40 CFR Part 86, Subpart R (relating to general provisions for the voluntary national low emission vehicle program for light-duty vehicles and light-duty trucks) for light-duty vehicles and light-duty trucks.]

~~Offset vehicle~~—A light-duty vehicle which has been certified by California as set forth in the CCR, Title 13, Chapter 1[, **Section 1960**].

[~~ZEV—Zero-Emission Vehicle~~—A light-duty vehicle which is certified to produce zero emissions of any criteria pollutants under any possible operational modes and conditions. Incorporation of a fuel fired heater does not preclude a vehicle from being certified as a ZEV if the fuel fired heater cannot be operated at ambient temperatures above 40°F the heater is demonstrated to have zero evaporative emissions under any operational modes and conditions.]

TITLE 25. ENVIRONMENTAL PROTECTION

ARTICLE I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUBPART C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 126. MOTOR VEHICLE AND FUELS PROGRAMS

SUBCHAPTER D. **[NEW MOTOR VEHICLE EMISSIONS CONTROL]**

PENNSYLVANIA CLEAN VEHICLES PROGRAM

GENERAL PROVISIONS

§ 126.401. Purpose.

(a) This subchapter establishes a clean vehicles program under section 177 of the Clean Air Act (42 U.S.C.A. § 7507) designed primarily to achieve emission reductions of the precursors of ozone and other air pollutants from new motor vehicles.

[(b) This subchapter allows motor vehicle manufacturers to comply with the voluntary NLEV program described in 40 CFR Part 86, Subpart R (relating to general provisions for the voluntary national low emission vehicle program for light-duty vehicles and light-duty trucks), as a compliance alternative to the Pennsylvania Clean Vehicles Program requirements described in §§ 126.411–126.441 and creates the

mechanism to meet the requirements of the state opt-in provisions of the NLEV Program.]

[(c)](b) The subchapter adopts and incorporates by reference certain provisions of the California Low Emission Vehicle Program.

[(d)](c) The subchapter also exempts certain new motor vehicles from the Pennsylvania Clean Vehicles Program.

§ 126.402. [NLEV scope and applicability] Reserved.

(a) Covered motor vehicle manufacturers as defined in 40 CFR 86.1702 (relating to definitions) that do not opt-out of the NLEV Program as provided under 40 CFR 86.1707 (relating to general provisions; opt-outs) may comply with the NLEV program requirements in 40 CFR Part 86, Subpart R (relating to general provisions for the voluntary national low emission vehicle program for light-duty vehicles and light-duty trucks) as an alternative to complying with the Pennsylvania Clean Vehicles Program requirements in §§ 126.411–126.441.

(b) The Commonwealth's participation in the NLEV Program extends until model year 2006, except as provided in 40 CFR 86.1707. If no later than December 15, 2000, the EPA does not adopt standards at least as stringent as the NLEV standards

provided in 40 CFR Part 86, Subpart R that apply to new motor vehicles in Model Year 2004, 2005 or 2006, the Commonwealth's participation in the NLEV program extends only until Model Year 2004, except as provided in 40 CFR 86.1707.

(c) For the duration of the Commonwealth's participation in the NLEV Program, manufacturers may comply with the NLEV standards or equally stringent mandatory Federal standards in lieu of compliance with the Pennsylvania Clean Vehicles Program established in §§ 126.411-126.441 or any program, including any mandates for sales of ZEVs adopted by Pennsylvania under section 177 of the Clean Air Act (42 U.S.C.A § 7507) applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in CCR, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

(d) Except as provided in subsections (a) and (c), the Pennsylvania Clean Vehicles Program applies to all new-passenger cars, and light-duty trucks (if designed to operate on gasoline) sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received or registered in this Commonwealth starting with the model year

beginning after December 5, 2000, and each model year thereafter.

(e) If a covered manufacturer, as defined in 40 CFR 86.1702 (relating to definitions) opts out of the NLEV Program under the EPA NLEV regulations in 40 CFR 86.1707, the transition from the NLEV requirements to the Pennsylvania Clean Vehicles Program or any Pennsylvania Section 177 Program applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR or medium-duty vehicles from 6,001 pounds to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in CCR, Title 13, Division 3, Chapter 1, Article 1, Section 1900, will proceed in accordance with the EPA NLEV regulations in 40 CFR 86.1707.]

[PENNSYLVANIA CLEAN VEHICLES PROGRAM]

§ 126.411. General requirements.

(a) The Pennsylvania Clean Vehicles Program requirements apply to all new passenger cars and light-duty trucks sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received or registered in this

Commonwealth starting with the 2008 model year [**beginning after December 5, 2000,**] and each model year thereafter.

(b) The provisions of the California Low Emission Vehicle Program, Title 13, CCR, Chapters 1 and 2, are adopted and incorporated herein by reference, and apply except for the following:

(1) The zero emissions vehicle percentage requirement [**sales mandate**] in Title 13 CCR Chapter 1, § 1962 [**1960.1(g) (2) (footnote 9),**].

(2) The emissions control system warranty statement in Title 13 CCR, Chapter [2]1, § 2039.

§ 126.412. Emission requirements.

(a) Starting with the model year [**beginning after December 5, 2000**] 2008, a person may not sell, import, deliver, purchase, lease, rent, acquire, receive or register a new light-duty vehicle, subject to the Pennsylvania Clean Vehicles Program requirements, in this Commonwealth that has not received a CARB Executive Order for all applicable requirements of Title 13 CCR, incorporated herein by reference.

(b) Starting with the model year **[beginning after December 5, 2000] 2008**, compliance with the NMOG fleetwide average in Title 13 CCR Chapter 1, **[\$ 1960.1(g)(2),] § 1961** shall be demonstrated for each motor vehicle manufacturer based on the number of new light-duty vehicles delivered for sale in this Commonwealth. **[This requirement excludes the percentage requirement for zero emission vehicles included in footnote 9 of Title 13 CCR Chapter 1, § 1960.1(g)(2).]**

(c) Credits and debits for calculating the NMOG fleet average shall be based on the number of light-duty vehicles delivered for sale in this Commonwealth and may be accrued and utilized by each manufacturer according to procedures in Title 13 CCR Chapter 1[, § 1960.1(g)(2)].

(d) NMOG fleet average credits generated during the 2008, 2009 and 2010 model years may be applied toward any of the model years 2008 through 2010 for the purpose of demonstrating compliance with subsections (b) and (c).

[(d)](e) New motor vehicles subject to the requirements of this subchapter shall possess a valid emissions control label which meets the requirements of Title 13 CCR Chapter 1[, § 1965, incorporated herein by reference].

§ 126.413. Exemptions.

(a) The following new motor vehicles are exempt from the Pennsylvania Clean Vehicles Program requirements of this subchapter:

- (1) Emergency vehicles.
- (2) A light-duty vehicle transferred by a dealer to another dealer **for ultimate sale outside of the Commonwealth.**
- (3) A light-duty vehicle transferred for use exclusively off-highway.
- (4) A light-duty vehicle transferred for registration out of state.
- (5) A light-duty vehicle granted a National security or testing exemption under section 203(b)(1) of the Clean Air Act (42 U.S.C.A. § 7522(b)(1)).
- (6) A light-duty vehicle held for daily lease or rental to the general public which is registered and principally operated outside of this Commonwealth.

(7) A light-duty vehicle engaged in interstate commerce which is registered and principally operated outside of this Commonwealth.

(8) A light-duty vehicle acquired by a resident of this Commonwealth for the purpose of replacing a vehicle registered to the resident which was damaged, or became inoperative, beyond reasonable repair or was stolen while out of this Commonwealth if the replacement vehicle is acquired out of this Commonwealth at the time the previously owned vehicle was either damaged or became inoperative or was stolen.

(9) A light-duty vehicle transferred by inheritance or court decree.

(10) A light-duty vehicle defined as a military tactical vehicle or engines used in military tactical vehicles including a vehicle or engine excluded from regulation under 40 CFR 85.1703 (relating to application of section 216(2)).

(11) A light-duty vehicle **[sold after December 5, 2000, if the vehicle was]** registered in this Commonwealth before **[December 5, 2000]** _____ . (Editor's Note: The blank refers to the effective date of this final-form regulation.)

(12) A light-duty vehicle having a certificate of conformity issued under the Clean Air Act and originally registered in another state by a resident of that state who subsequently establishes residence in this Commonwealth and upon registration of the vehicle provides satisfactory evidence to the Department of Transportation of the previous residence and registration.

(13) A vehicle transferred for the purpose of salvage.

(14) A light-duty vehicle purchased or leased from an out-of-state dealer by a resident of the Commonwealth for the personal use of the resident and not for immediate resale.

(b) To register an exempted vehicle, the person seeking registration shall provide satisfactory evidence, as determined by the Department of Transportation, demonstrating that the exemption is applicable.

APPLICABLE MOTOR VEHICLE TESTING

§ 126.421. New motor vehicle certification testing.

(a) Prior to being offered for sale or lease in this Commonwealth, new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements shall be certified as meeting the motor vehicle requirements of Title 13 CCR

Chapter 1, [**§ 1960.1**]**§ 1961** as determined by testing in accordance with Title 13 CCR Chapter 2[, **§§ 2101–2110, 2150 and 2151, incorporated herein by reference**].

(b) For purposes of complying with subsection (a), new vehicle certification testing determinations and findings made by CARB are applicable **and shall be provided by motor vehicle manufacturers to the Department upon request.**

§ 126.422. New motor vehicle compliance testing.

(a) Prior to being offered for sale or lease in this Commonwealth, new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements of this subchapter shall be certified as meeting the motor vehicle requirements of Title 13 CCR Chapter 1, [**§ 1960.1**]**§ 1961**, as determined by New Vehicle Compliance Testing, conducted in accordance with Title 13 CCR Chapter 2[, **§§ 2101–2110, 2150 and 2151, and incorporated herein by reference**].

(b) For purposes of complying with subsection (a), new vehicle compliance testing determinations and findings made by CARB are applicable **and shall be provided by motor vehicle manufacturers to the Department upon request.**

§ 126.423. Assembly line testing.

(a) Each manufacturer of new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements of this subchapter, certified by CARB and sold or leased in this Commonwealth, shall conduct inspection testing and quality audit testing in accordance with Title 13 CCR Chapter 2[, **§§ 2061, 2106 and 2107, incorporated herein by reference**].

(b) For purposes of complying with subsection (a), inspection testing and quality audit testing determinations and findings made by CARB are applicable and shall be provided by motor vehicle manufacturers to the Department upon request.

(c) If a motor vehicle manufacturing facility which manufactures vehicles for sale in this Commonwealth certified by CARB is not subject to the inspection testing and quality audit testing requirements of **[the]** CARB, the Department may, after consultation with CARB, require testing in accordance with Title 13 CCR Chapter 2[, **§§ 2061, 2106, 2107 and 2150, incorporated herein by reference**]. Upon a manufacturer's written request and demonstration of need, functional testing under the procedures incorporated in Title 13 CCR Chapter 2[, **§ 2061**] of a statistically significant sample, may substitute for the 100% testing rate required in Title 13 CCR Chapter 2[, **§ 2061**], with the written consent of the Department.

§ 126.424. In-use motor vehicle enforcement testing.

(a) For purposes of detection and repair of motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements which fail to meet the motor vehicle emission requirements of Title 13 CCR Chapter 1, [~~§ 1960.1,~~] the Department may, after consultation with CARB, conduct in-use vehicle enforcement testing in accordance with the protocol and testing procedures in Title 13 CCR Chapter 2[, ~~§§ 2136-2140,~~ **incorporated herein by reference**].

(b) For purposes of compliance with subsection (a), in-use vehicle enforcement testing determinations and findings made by CARB are applicable and shall be provided by motor vehicle manufacturers to the Department upon request.

(c) The results of testing conducted under this section will not affect the result of any emission test conducted under 67 Pa. Code Chapter 177 (relating to enhanced emission inspection).

§ 126.425. In-use surveillance testing.

(a) For purposes of testing and monitoring the overall effectiveness of the Pennsylvania Clean Vehicles Program in

controlling emissions, the Department may conduct in-use surveillance testing after consultation with CARB.

(b) For purposes of program planning **and analysis**, in-use surveillance testing determinations and findings made by CARB are applicable **and shall be provided by motor vehicle manufacturers to the Department upon request.**

(c) The results of in-use surveillance testing conducted under this section will not affect the result of any emission test conducted under 67 Pa. Code Chapter 177 (relating to enhanced emission inspection).

MOTOR VEHICLE MANUFACTURERS' OBLIGATIONS

§ 126.431. Warranty and recall.

(a) A manufacturer of new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements of this subchapter which are sold, leased, offered for sale or lease or registered in this Commonwealth, shall warrant to the owner that each vehicle shall comply over its period of warranty coverage with the requirements of Title 13 CCR Chapter **[2]1**, §§ 2035–2038, 2040 and 2041[, **incorporated herein by reference**].

(b) Each motor vehicle manufacturer shall submit to the Department failure of emission-related components reports, as defined in Title 13 CCR Chapter 2[, § 2144], for motor vehicles subject to the Pennsylvania Clean Vehicles Program in compliance with the procedures in Title 13 CCR Chapter 2[, §§ 2141–2149, incorporated herein by reference]. For purposes of compliance with this subsection, a manufacturer may submit copies of the reports submitted to CARB.

(c) For motor vehicles subject to the Pennsylvania Clean Vehicles Program, any voluntary or influenced emission-related recall campaign initiated by any motor vehicle manufacturer under Title 13 CCR Chapter 2, [§§ 2113–2121] shall extend to all [new] motor vehicles sold, leased, offered for sale or lease or registered in this Commonwealth[.] that would be subject to the recall campaign if sold, leased, offered for sale or lease or registered as a new motor vehicle in California.

(d) For motor vehicles subject to the Pennsylvania Clean Vehicles Program, any order issued by or enforcement action taken by CARB to correct noncompliance with any provision of Title 13 CCR, which results in the recall of any vehicle pursuant to Title 13 CCR, Chapter 2, shall be deemed to apply to all motor vehicles sold, leased, offered for sale or lease

or registered in this Commonwealth that would be subject to the order or enforcement action if sold, leased, offered for sale or lease or registered as a new motor vehicle in California.

§ 126.432. Reporting requirements.

(a) For the purposes of determining compliance with the Pennsylvania Clean Vehicles Program, commencing with the 2008 model year [**beginning after December 5, 2000**], each manufacturer shall submit annually to the Department, within 60 days of the end of each model year, a report documenting the total deliveries for sale of vehicles in each [**engine family**]test group over that model year in this Commonwealth.

(b) For purposes of determining compliance with the Pennsylvania Clean Vehicles Program, each motor vehicle manufacturer shall submit annually to the Department, by March 1 of the calendar year following the close of the completed model year, a report of the fleet average NMOG emissions of its total deliveries for sale of LDVs in each [**engine family**]test group for Pennsylvania for that particular model year. The fleet average report, calculating compliance with the fleetwide NMOG exhaust emission average,

shall be prepared according to the procedures in Title 13 CCR Chapter 1[, § 1960.1(g) (2)].

(c) Fleet average reports shall, at a minimum, identify the total number of vehicles, including offset vehicles, sold in each **[engine family]test group** delivered for sale in this Commonwealth, the specific vehicle models comprising the sales in each state and the corresponding certification standards, and the percentage of each model sold in this Commonwealth in relation to total fleet sales.

(d) Compliance with the NMOG fleet average for the 2008, 2009 and 2010 model years shall be demonstrated following the completion of the 2010 model year.

MOTOR VEHICLE DEALER RESPONSIBILITIES

§ 126.441. Responsibilities of motor vehicle dealers.

A dealer may not sell, offer for sale or lease or deliver a new motor vehicle subject to this subchapter unless the vehicle **has received the certification described in Sections 126.421 and 126.422 (relating to new motor vehicle certification testing; and new motor vehicle compliance testing)**, and conforms to the following standards and

requirements contained in Title 13 CCR Chapter 2, § 2151 **[and incorporated herein by reference]**:

(1) Ignition timing is set to manufacturer's specification with an allowable tolerance of $\pm 3^\circ$.

(2) Idle speed is set to manufacturer's specification with an allowable tolerance of ± 100 revolutions per minute.

(3) Required exhaust and evaporative emission controls including exhaust gas recirculation (EGR) valves, are operating properly.

(4) Vacuum hoses and electrical wiring for emission controls are correctly routed.

(5) Idle mixture is set to manufacturer's specification or according to manufacturer's recommended service procedure.

DEPARTMENT OF ENVIRONMENTAL PROTECTION RESPONSIBILITIES

§126.451. Responsibilities of the Department of Environmental Protection.

The Department of Environmental Protection shall do all of the following:

Monitor and advise the Environmental Quality Board of any proposed or final rulemakings under consideration by the

California Air Resources Board or its successor that amend or modify the California Low Emission Vehicle Program. The department shall:

- (1) Prepare a Regulatory Analysis Form to be submitted to the Environmental Quality Board and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for each proposed or final CARB rulemaking. The department shall complete all relevant provisions of the Regulatory Analysis Form as practical, including a cost/benefit analysis of the proposed or final CARB rulemaking.
- (2) Evaluate the estimated incremental cost to manufacture vehicles that comply with the California Low Emission Vehicle Program compared to the cost to manufacture vehicles that comply with the federal "Tier II" vehicle emissions regulations, or its successor, promulgated under section 177 of the federal Clean Air Act to the extent data is available. This evaluation shall be conducted on any proposed or final rulemakings under consideration by the California Air Resources Board or its successor and shall be distributed to the Environmental

Quality Board and the Chairpersons of the House and
Senate Environmental Resources and Energy
Committees.

- (3) Submit comments on proposed or final rulemakings to
the California Air Resources Board on behalf of the
Commonwealth of Pennsylvania's residents.



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

January 31, 2006

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown #2
333 Market Street
Harrisburg, PA 17120

Re: Proposed Rulemaking – Pennsylvania Clean Vehicles Program Amendments (#7-398)

Dear Mr. Kaufman:

Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on February 11, 2006 with a 60-day public comment period. The Environmental Quality Board adopted this proposal at its October 18, 2005 meeting.

In 1998, Pennsylvania adopted the Pennsylvania Clean Vehicles Program (28 Pa. B. 5873, Dec. 5, 1998) and the National Low Emissions Vehicle (NLEV) program as a compliance alternative. The Pennsylvania Clean Vehicles Program incorporates by reference emission standards for passenger cars and light-duty trucks. This proposed rulemaking amends Chapters 121 and 126 to update definitions, set a new compliance date of model year 2008, and also includes a three-year early credit-earning period. This three-year period provides a transition mechanism from the expiring NLEV program and ensures that the PCV regulation meets the “identity” requirements of the federal Clean Air Act.

The Department will provide the Commission with assistance to review this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions received by the Commission, as well as the Committees and public commentators, prior to final adoption of the regulation.

For additional information, please contact me at 783-8727.

Sincerely,

Marjorie L. Hughes
Regulatory Coordinator
Policy Office

Enclosures



TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 7-398
SUBJECT: PA Clean Vehicles Program Amendment
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

2006 JAN 31 PM 3:03
INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1-31	<i>Cavale S. Leddicus</i>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
1-31-06	<i>Donna A. Astello</i>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
1/31/06	<i>St. Melnett</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only)
1.31.06	<i>Janey Bayne</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5800 S. DICKINSON DRIVE
CHICAGO, ILLINOIS 60637
TEL: 773-936-3700
WWW.CHEM.UCHICAGO.EDU

RECEIVED
DATE: 10/15/2011
BY: [Signature]
[Signature]
[Signature]