RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 126]

New Motor Vehicle Emissions Control Program

The Environmental Quality Board (Board) by this order amends Chapters 121 and 126 (relating to general provisions; and mobile sources) to read as set forth in Annex A.

The final rulemaking establishes a new motor vehicle emissions control program designed to reduce emissions of carbon monoxide (CO), nitrogen oxides (NOx) and volatile organic compounds (VOCs) from new passenger cars and light-duty trucks. These amendments create the mechanism to meet the requirements of the State opt-in provisions of the National Low Emission Vehicle (NLEV) program. These amendments also adopt and incorporate by reference certain requirements of the low-emissions vehicle program authorized under section 177 of the Federal Clean Air Act (CAA) (42 U.S.C.A. § 7507) (Section 177). The amendments will allow automobile manufacturers to voluntarily comply with the NLEV program as an alternative to complying with the Pennsylvania Clean Vehicles Program requirements.

The order was adopted by the Board at its meeting of September 15, 1998.

A. *Effective Date*

These amendments are effective immediately upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Arleen Shulman, Chief, Mobile Sources Section, Division of Air Resource Management, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4310, or R. A. Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final rulemaking is available through the Department of Environmental Protection (Department) Web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

This action is made under the authority of section 5(a)(1) of the Air Pollution Control Act (act) (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth. The Board is also expressly authorized by section 5(a)(7) of the act to adopt regulations designed to reduce emissions from motor vehicles.

D. *Background and Summary*

The most persistent air pollution problem in this Commonwealth is ground level ozone. Ozone causes health problems because it damages lung tissue, reduces lung function and sensitizes the lungs to other irritants. Exposure to ozone for several hours at relatively low concentrations has been found to significantly reduce lung function and induce respiratory inflammation in normal, healthy people during exercise. This decrease in lung function generally is accompanied by symptoms including chest pain, coughing, sneezing and pulmonary congestion.

Motor vehicles primarily emit three pollutants—CO, VOCs and 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. Because of the higher temperatures in the summer months, the formation of ozone is greater at that time of year. One third of this Commonwealth's ozone pollution comes from motor vehicles.

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 2 years before the commencement of the model year. California's standards must also have been granted a waiver under section 209(b) from the CAA's prohibition against state emission standards. (42 U.S.C.A. § 7543(b)).

Congress amended Section 177 in 1990 to prohibit states from taking any action that would have the effect of creating a motor vehicle or motor vehicle engine different than a motor vehicle or 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 recognizes that ground level ozone is a regional problem not confined to state boundaries. Section 184 of the CAA (42 U.S.C.A. § 7511c), establishes the Northeast Ozone Transport Commission (OTC) to assist in developing recommendations for the control of interstate ozone air pollution. The Commonwealth is a member OTC State.

Several years ago, the auto manufacturers, OTC states and the EPA began negotiations for a voluntary alternative LEV program described as the "49-State LEV Program" or NLEV program. Under this alternative LEV program, auto manufacturers would voluntarily agree to manufacture LEVs for 49 states as an alternative to the California LEV program. However, section 202(b)(1)(C) of the CAA (42 U.S.C.A. § 7521(b)(1)(C)) precludes the EPA from mandating new exhaust emission standards before the 2004 model year. Therefore, states and the auto manufacturers must voluntarily agree to accept the NLEV program as a compliance alternative to Section 177 state LEV programs.

On June 6, 1997, the EPA promulgated the first of two NLEV final rules. (62 F. R. 31192). The first rule establishes the basic framework for the voluntary program. It allows auto manufacturers to comply with tailpipe standards modeled after the California program, but provides less stringent fleet average nonmethane organic gases (NMOG) standards. The rule also provides for Federal implementation of the program.

The NLEV program allows manufacturers to certify light-duty vehicles and light-duty trucks certified by the California Air Resources Board (CARB) to one of the

following certification standards: Tier 1; transitional low emission vehicle (TLEV); low emission vehicle (LEV); ultra-low emission vehicle (ULEV); or zero-emission vehicle (ZEV). These certification categories contain tailpipe emission standards for CO, formaldehyde, NOx, NMOG and particulate matter (PM).

On January 7, 1998, the EPA promulgated a second, supplementary rule to conclude the Federal regulatory steps necessary to set up the NLEV program. (63 F. R. 926). This rule addresses the NLEV opt-in and opt-out procedures for auto manufacturers and OTC states.

Under this rule, OTC states commit to the NLEV program when: (1) the Governor and Secretary for environmental protection by letter indicate the state's intent to opt into the NLEV program; and (2) the state submits a State Implementation Plan (SIP) revision that incorporates its commitment to the NLEV program in state regulations, which the EPA will approve into a Federally enforceable SIP.

On January 26, 1998, the Commonwealth indicated its intent to opt into the NLEV program through letters submitted to the EPA by Governor Tom Ridge and the Department's Secretary James Seif. This final rulemaking incorporates that intent into State regulations.

Auto manufacturers opt into the NLEV program by submitting a written notification, signed by the Vice President for Environmental Affairs (or another company official who is authorized to bind the company to the NLEV program) that unambiguously states that the manufacturer opts into the program, subject only to conditions expressly contained in the regulations.

The final rulemaking also sets forth specific regulatory language it requests OTC states to use in the promulgation of its regulations. Because the OTC states and auto manufacturers are signing up for a voluntary program, using the specified language ensures that they sign up for the same program. Otherwise, the opt-ins might not represent agreement on the terms and conditions of the voluntary NLEV program.

If OTC states use the language specified, the EPA will be able to find the NLEV program in effect without the need for further rulemaking. Moreover, the EPA will be able to find that an OTC states' SIP revision meets the NLEV SIP requirements without further rulemaking. More importantly, an approved SIP revision is Federal law and has binding legal effect. It is this binding legal effect that makes the NLEV program enforceable for the EPA to grant states credits for SIP purposes. Finally, the importance of ensuring that all parties know what they are signing up for at the time of opt-in also supports the requirement for OTC states to use this exact language for the SIP revisions.

This specific regulatory language was not available to the Board when it published its proposed rulemaking at 27 Pa.B. 6303 (November 29, 1997). This EPA approved language is now available and it is in the final rulemaking.

The NLEV rule allows auto manufacturers to opt out of the NLEV program if an OTC state does any of the following: (1) takes final action in violation of its commitment to allow the NLEV program as a compliance alternative to a Section 177 program or to a ZEV mandate (in those OTC states without existing ZEV mandates); (2) fails to submit an NLEV SIP revision within the time frame set forth in the NLEV regulations; (3) submits an inadequate NLEV SIP revision; (4) takes final action (by an OTC state without an existing ZEV mandate) adopting a ZEV mandate effective during the state's commitment to the NLEV program; or (5) opts out of the NLEV program.

Manufacturers may also opt out if another manufacturer opts out, or if the EPA fails to consider in-use fuel issues or changes certain NLEV emission standards.

The NLEV rule also allows OTC states to opt out of the NLEV program under the following two circumstances: (1) if an auto manufacturer were to opt out of the NLEV program; or (2) the EPA were to find that circumstances had changed which would have altered the EPA's initial determination that the NLEV program would produce emissions reductions equivalent to OTC state Section 177 programs.

The EPA's supplementary rule also addresses the issue of when under Section 177 the 2 year lead time period would start if a state with a backstop Section 177 Program were to delete the NLEV program (either in violation of its commitment to the NLEV program or legitimately by opting out) or if a manufacturer legitimately decided to opt out of the NLEV program. This interpretation of Section 177 applies only in the context of the NLEV program and only in the special circumstances that arise when a state has a backstop Section 177 program that allows the NLEV program as a compliance alternative.

The EPA determined that the NLEV program was officially in effect on March 2, 1998. (63 F. R. 11374, March 9, 1998). Nine northeastern states and 23 auto manufacturers opted into the NLEV program. Therefore, auto manufacturers must comply with the tailpipe emission standards and annual fleet average NMOG value established by the EPA's final NLEV rule.

This final rulemaking establishes the NLEV program as a compliance alternative to the Clean Vehicles Program and will serve as a mechanism to control new motor vehicle emissions in this Commonwealth. Under the authority of Section 177 of the CAA, these final amendments also establish the Pennsylvania Clean Vehicles Program that adopts and incorporates by reference the LEV program of California as a "backstop" to the NLEV program. This program will only be implemented if an auto manufacturer opts out of the NLEV program or at the conclusion of the NLEV program. The Board incorporates by reference new emission standards for passenger cars and light-duty trucks that are identical to the low emission standards adopted by California except for the ZEV production mandate and the emissions control warranty systems statement provisions.

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 (2nd Cir. 1994); *American Automobile Manufacturers Association v. Greenbaum,* No. 93-10799-MA (D. Mass. October 27, 1993) aff'd., 31 F.3d 18 (1st Cir. 1994).

In addition, the Pennsylvania Clean Vehicles Program does not incorporate the California ZEV production mandate. Section 177 does not require adoption of all California standards, but only requires that if a state adopts

motor vehicle standards that those standards adopted be identical to the California standards. The EPA concludes that states adopting a Section 177 program need not adopt the ZEV mandate to comply with the requirements for identical standards under Section 177. (60 F. R. 4712, January 24, 1995).

This final rulemaking allows the Board to revise the Commonwealth's SIP to identify the NLEV program as an alternative to complying with the LEV standards of California specified in the Pennsylvania Clean Vehicles Program requirements. The NLEV program establishes emission requirements for light-duty vehicles and light-duty trucks rated at 6,000 pounds or less gross vehicle weight (GVW) (if designed to operate on gasoline).

The EPA provides several specified and limited conditions that allow auto manufacturers or states to opt-out of the NLEV program. These conditions are structured to maximize the stability of the NLEV program. If an auto manufacturer opts out of the NLEV program according to the opt out procedures in the NLEV regulations, and the opt out is effective, that manufacturer would be subject to the requirements of the Commonwealth's Section 177 program.

The EPA also includes provisions that govern any transition from the NLEV program to a state Section 177 Program in the event of an opt-out. The earliest date on which a transition could occur is governed by the 2 year lead time requirement under the CAA. Therefore, the earliest the Pennsylvania Clean Vehicles Program requirements could apply to auto manufacturers that opt-out would be to engine families for which production begins after the date 2 calendar years from the effective date of the final rule. Auto manufacturers can also opt out with a later effective date for their opt out.

At the end of the Commonwealth's participation in the NLEV program, auto manufacturers may no longer use it as a compliance alternative to the Pennsylvania Clean Vehicles Program. The Commonwealth's NLEV program participation ends with model year 2006. However, if by December 15, 2000, the EPA does not promulgate the next generation of Federal new car standards (Tier 2 standards) that are at least as stringent as the NLEV standards, and that would go into effect no later than model year 2006, the Commonwealth's participation in the NLEV program ends with model year 2004. Since neither the Federal Tier 2 nor the California post-2004 standards have yet been established, it is presently uncertain which program would be more appropriate for the Commonwealth in the middle of the next decade. Therefore, the Board intends to reassess the air quality needs and emission reduction potential of both programs well in advance of the end of the Commonwealth's commitment to the NLEV program.

This regulation will also be submitted to the EPA as a substitute for the Clean Fuel Fleet program required under sections 182(c)(4) and 246 of the CAA. (42 U.S.C.A. §§ 7511a(c)(4) and 7586).

The Department of Environmental Protection (Department) consulted with the Air Quality Technical Advisory Committee (AQTAC) on the final rulemaking. On May 29, 1998, AQTAC recommended that this rulemaking be submitted to the Board for consideration. As required under section 5(a)(7) of the act, the Department also consulted with the Pennsylvania Department of Transportation (PennDOT) during the development of these amendments.

E. *Summary of Comments and Responses on the Proposed Rulemaking*

The Board received four sets of comments on the regulatory proposal. The following summarizes the major issues and the Board's responses.

All commentators support participation in the NLEV program. One enthusiastically supported the Section 177 backstop program and two did not oppose the backstop. The auto manufacturers specified that they do not support the creation of the Pennsylvania Clean Vehicles Program as a backstop to the NLEV program. In the final rulemaking, the Board plans to retain the Pennsylvania Clean Vehicles Program and the NLEV program as a compliance alternative. Under Section 177 of the CAA, the backstop program is the only program that a state may establish by regulation. It is the backstop that creates the legal mechanism to establish the voluntary NLEV program in this Commonwealth. The Board believes the Pennsylvania Clean Vehicles Program is necessary to ensure that clean vehicles are sold in this Commonwealth for the duration of the Commonwealth's commitment to the NLEV program and thereafter.

One commentator believed that the Pennsylvania Clean Vehicles Program will increase consumer and administrative costs. The Board agrees that costs will increase slightly, but air quality will improve measurably, making the program a cost effective emission reduction strategy.

One commentator stated that the emission reduction estimates used by the Board are outdated. The Board understands that estimates will change as more information, and better estimation tools become available. Refined estimates of emission reductions from the NLEV program will be made when the Commonwealth includes the NLEV program in its Rate-of-Progress SIP.

One commentator was concerned that the technology used in the Pennsylvania Clean Vehicles Program will only achieve its greatest emissions reduction potential with low sulfur burning gasoline and consequently the backstop program should be abandoned. It is the backstop that creates the legal mechanism to establish the voluntary NLEV program in this Commonwealth. Consequently, the backstop cannot be abandoned. Moreover, the Board does not agree that it is a valid reason to dispense with the backstop provision. Both LEV and NLEV vehicles are certified to similar emission standards. Therefore, what is true about one vehicle is true about the other vehicle. In addition, the Commonwealth is precluded from requiring the low sulfur gasoline program in California, and the EPA continues to address the issue of low sulfur fuels on a National basis.

One commentator believed that in-use surveillance testing should be applied across this Commonwealth to assure that the benefits of the program are long term. The Board intends for testing results to be applied Statewide. Under the NLEV program, the in-use surveillance will be performed solely by the EPA as is current practice for Federal motor vehicle emission standards. If the Pennsylvani Clean Vehicles Program is implemented, the Board will utilize the program to assure that the benefits are long-term and Statewide.

Two commentators commended the Commonwealth for ensuring that the fuel requirements and zero emission vehicle mandates are not included in the proposal. The Board agrees that neither provision is appropriate and that the EPA will address fuel requirements on a National level.

One commentator thought that a single State fleet NMOG average provision is burdensome and not necessary. The Commonwealth is allowed to adopt only those standards authorized under Section 177 of the CAA. Accordingly, this includes the fleet NMOG average required by California for that model year.

One commentator did not oppose the Commonwealth using the California emission standards as a backstop to the NLEV program, but requested what other alternatives the Commonwealth can employ. Section 177 of the CAA precludes the Commonwealth from adopting its own emission standards. Therefore, except for the California standards, there are no other emission standards that can be used as a backstop to the NLEV program.

One commentator found that the regulations do not clearly indicate the procedures the Commonwealth may use if it chooses to opt out of the NLEV program. This commentator believed that if the Commonwealth does opt out of the NLEV program, it will need to promulgate a regulation that deletes the provisions relating to the NLEV program. This final rulemaking authorizes implementation of the NLEV program in this Commonwealth. As such, this authorization can only be revised through the regulatory process.

One commentator questioned the relevance of and need for having fleet average sales reports for California. Upon further consideration, the Board has deleted the requirement for fleet average sales reports from California.

F. *Summary of Regulatory Requirements*

This final rulemaking establishes the requirements for the implementation of a new motor vehicle emissions control program in this Commonwealth. The final rulemaking allows auto manufacturers to comply with the provisions of the NLEV program as an alternative to the low emission vehicle standards established under the Pennsylvania Clean Vehicles Program. A summary of the final rulemaking follows:

Chapter 121. General Provisions

The amendments to § 121.1 (relating to definitions) include terms and phrases applicable to the Pennsylvania Clean Vehicles Program. In part, the definitions include the following terms: "CARB—California Air Resources Board," "Clean Vehicles Program," "dealer," "fleet average," "GVWR—gross vehicle weight rating," "motor vehicle manufacturer," "model year," "motor vehicle," "NLEV—National Low Emission Vehicle," "NLEV Program," "new motor vehicle or new light-duty vehicle," "offset vehicle," "passenger car," "ultimate purchaser" and "ZEV—Zero-Emission Vehicle."

The definition of the term "emergency vehicle" is consistent with the statutory definition of "emergency vehicle" codified in 75 Pa.C.S. § 102 (relating to definitions).

The definitions "ATV—Advanced Technology Vehicle" and "emission standard" are deleted because neither term is referred to in the final rulemaking.

The rulemaking also amends the existing definition of "light-duty truck" to include a meaning in the "light-duty truck" definition that is consistent with Title 13 CCR Section 1900(b)(8). For purposes of the new motor vehicle emissions control program requirements, a "light-duty truck" means any motor vehicle rated at 6,000 pounds GVW or less, which is designed primarily for purposes of transportation of property or is a derivative of a vehicle, or is available with special features enabling off-road or off-highway operation and use.

Chapter 126. Mobile Sources

Subchapter D. New Motor Vehicle Emissions Control Program

Subchapter D contains provisions that establish a new motor vehicle emissions control program in this Commonwealth to reduce the emissions of CO, NOx and VOCs from passenger cars and light-duty trucks under Section 177 of the CAA. It also provides the regulatory framework to allow auto manufacturers to comply with the NLEV program requirements as an alternative to the Section 177 emission standards and to meet the requirements of the State opt-in provisions of the NLEV program.

Section 126.401 (relating to purpose), consistent with and under the authority of Section 177 of the CAA, establishes the Pennsylvania Clean Vehicles Program. It adopts and incorporates by reference certain provisions of the California LEV Program that serve as the basic framework for the Pennsylvania Clean Vehicles Program. The rule also recognizes the voluntary NLEV program as an acceptable compliance alternative to the Pennsylvania Clean Vehicles Program established under this subchapter. In addition, the final rulemaking deletes a duplicative regulatory provision.

Section 126.402 (relating to NLEV scope and applicability) allows motor vehicle manufacturers to comply with the NLEV program requirements as an alternative to the Section 177 program requirements of the Pennsylvania Clean Vehicles Program. The NLEV program requirements are applicable as a compliance alternative for passenger cars and light-duty trucks up through 6,000 pounds GVWR, or medium-duty trucks from 6,001 to 14,000 pounds if designed to operate on gasoline. The use of the NLEV program as a compliance alternative for the auto manufacturers was triggered on March 2, 1998, when the EPA found the NLEV program in effect. Consequently, the proposed language that set forth the contingency of the NLEV program "being in effect" is deleted.

In addition, the proposed language that states the condition of the NLEV program as "no longer in effect" is no longer accurate because the EPA, in its final supplementary rule, structured the program so that no single event automatically terminates the NLEV program. The EPA will make the NLEV program available as long as one or more manufacturers wish to remain in the program. Accordingly, the proposed language that set forth this condition is deleted.

This section includes a provision that the NLEV program is available as a compliance alternative to covered auto manufacturers that do not opt out of the NLEV program. However, if a covered auto manufacturer opts out of the NLEV program, and that opt out is effective, it is then subject to the Section 177 program requirements of this subchapter. The transition from the NLEV program to the Pennsylvania Clean Vehicles Program is governed by the EPA NLEV regulations provided under 40 CFR 86.1707 which are incorporated by reference.

In addition, this section also provides that the Pennsylvania Clean Vehicles Program applies to all applicable motor vehicles starting with the model year beginning 2 years after the effective date of this final rulemaking. The CAA allows a state to adopt Section 177 standards so long as it provides auto manufacturers with a 2 year lead time. Therefore, this 2-year lead time provision was added to be consistent with Federal law.

Finally, this section incorporates the specific language recommended by the EPA in its final supplementary rule.

This additional language will enable the EPA to find that Pennsylvania's SIP revision meets the NLEV SIP requirements. This additional language will also enable the EPA to approve the revision to Pennsylvania's SIP without further rulemaking. Moreover, this language was not available to the Board at the time the proposed rulemaking was published. Consequently, this section is revised to accommodate the EPA language.

Section 126.402(b) incorporates this specific language and commits the Commonwealth to participate in the NLEV program until model year 2006, except as provided in the NLEV regulatory State opt-out provisions. However, if by December 15, 2000, the EPA has not issued mandatory Tier 2 standards, at least as stringent as the NLEV standards, that would go into effect no later than model year 2006, the Commonwealth is committed to participate in the NLEV program only until model year 2004, except as provided in the NLEV regulatory provisions for state opt outs.

Section 126.402(c) also incorporates this specific language and provides that for the duration of the Commonwealth's commitment to the NLEV program, the auto manufacturers may comply with NLEV or mandatory Federal Tier 2 standards of at least equivalent stringency as a compliance alternative to the Pennsylvania Clean Vehicles Program standards that are applicable to passenger cars, light-duty or medium-duty trucks if designed to operate on gasoline.

Finally, § 126.402(e) incorporates this specific language and acknowledges that if a covered auto manufacturer opts out of the NLEV program under the opt-out provisions in the NLEV regulations, the transition from the NLEV program to the Pennsylvania Clean Vehicles Program is governed by the NLEV regulations which are incorporated by reference.

Section 126.411 (relating to general requirements) contains the provisions for the implementation of the Pennsylvania Clean Vehicles Program under the authority of and consistent with Section 177 of the CAA. This section adopts and incorporates by reference certain emission standards that are applicable in California. The rule adopts and incorporates by reference Title 13 CCR Chapter 1 (relating to motor vehicle pollution control devices) and Chapter 2 (relating to enforcement of vehicle emission standards and surveillance testing). This incorporation by reference includes exhaust emission standards for transitional low emission vehicles, low emission vehicles and ultra-low emission vehicles. However, the Pennsylvania Clean Vehicles Program does not adopt and incorporate the reformulated fuels component of the California LEV program. The final rule also changes the order of the subsection from the proposed rulemaking.

The Pennsylvania Clean Vehicles Program does not mandate the sale of ZEVs. Therefore, the final rulemaking does not incorporate the zero-emissions sales mandate provision specified in Title 13 CCR Section 1960.1(g)(2) (footnote 9) and will not require manufacturers complying with the Pennsylvania Clean Vehicles Program to include a specified percentage of ZEVs in the manufacturers sales fleet of passenger cars and light-duty trucks.

The rule does not adopt and incorporate the Emission Control Warranty Statement provisions in Title 13 CCR Section 2039 which describes a California warranty statement that is included along with the manufacturer's new motor vehicle warranty. The California statement includes references to California's Smog Check vehicle emission inspection program.

Section 126.412 (relating to emission requirements) prescribes that a person may not sell, import, deliver, purchase, lease, rent, acquire, receive or register a new motor vehicle that is subject to the Pennsylvania Clean Vehicles Program requirements which has not received a CARB Executive Order starting with the model year beginning December 5, 2000. All new passenger cars and light-duty trucks in the effective model year and subsequent model years would have to meet the California low emission vehicle standards.

Section 126.412(d) provides that new motor vehicles subject to the Pennsylvania Clean Vehicles Program must possess a valid emissions control label which meets the requirements of Title 13 CCR § 1965.

Section 126.413 (relating to exemptions) provides an exemption from the Pennsylvania Clean Vehicles Program for the following types of new motor vehicles: emergency vehicles and light-duty vehicles transferred by a dealer to another dealer; transferred for use exclusively off-highway; or transferred for registration out of State. This section also provides an exemption for vehicles granted a National security or testing exemption under section 203(b)(1) of the CAA and motor vehicles defined as military tactical vehicles or engines used in military tactical vehicles including a vehicle or engine excluded from regulation under 40 CFR 85.1703 (relating to applicability of section 216(2)).

The final rulemaking includes exemptions for light-duty vehicles held for daily lease or rental to the general public as well as light-duty vehicles engaged in interstate commerce that are registered and principally operated outside this Commonwealth. The final rule adds the requirement that the motor vehicles be registered outside this Commonwealth.

An exemption from the Pennsylvania Clean Vehicles Program requirements is provided for light-duty vehicles 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.

The final rule also provides exemptions for light-duty vehicles transferred by inheritance or court decree and light-duty vehicles transferred after the date on which this subchapter becomes applicable if the vehicles were registered in this Commonwealth before December 5, 1998.

The final rule exempts light-duty vehicles having a certificate of conformity issued under the Federal CAA and originally registered in another state by a resident of that state who subsequently establishes residence in this Commonwealth. Upon registration of the vehicle in this Commonwealth, the registrant must provide satisfactory evidence to PennDOT concerning the previous out-of-State residence and motor vehicle registration.

To obtain the exemptions authorized under § 126.413, the person seeking registration must provide satisfactory evidence that the exemption is applicable, as determined by PennDOT.

Section 126.421 (relating to new motor vehicle certification testing) provides that prior to being offered for sale or lease in this Commonwealth, new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements must be certified by auto manufacturers to meet the requirements of Title 13 CCR § 1960.1, as

determined by testing in accordance with Title 13 CCR Chapter 2, Sections 2101—2110, 2150 and 2151, which are incorporated by reference in this section. New Vehicle Compliance Testing determinations and findings made by CARB shall apply to testing conducted under this section.

Section 126.422 (relating to new motor vehicle compliance testing) requires that prior to being offered for sale or lease in this Commonwealth, new motor vehicles subject to this subchapter shall be certified as meeting the motor vehicle requirements of Title 13 CCR § 1960.1, as determined by New Vehicle Compliance Testing, conducted under Title 13 CCR Chapter 2 §§ 2101—2110, 2150 and 2151 and incorporated by reference.

Section 126.423 (relating to assembly line testing) provides that each manufacturer of new motor vehicles subject to the requirements of this subchapter, certified by CARB and sold or leased in this Commonwealth, shall conduct Inspection Testing and Quality Audit Testing under Title 13 CCR §§ 2061, 2106 and 2107, incorporated by reference. Inspection Testing and Quality Audit Testing determinations and findings made by CARB shall apply to assembly line testing conducted under this section.

Subsection (c) provides that if a motor vehicle manufacturing facility which manufactures vehicles certified by CARB, for sale in this Commonwealth, is not subject to the Inspection Testing and Quality Audit testing requirements of the CARB, the Department may, after consultation with CARB, require testing under Title 13 CCR §§ 2061, 2106, 2107 and 2150, incorporated by reference. An auto manufacturer may, upon written request and demonstration of need, substitute functional testing. With the written consent of the Department, the testing of a statistically significant sample conducted under the procedures incorporated in Title 13 CCR § 2061 can be substituted for the 100% testing rate in Title 13 CCR § 2061.

Section 126.424 (relating to in-use motor vehicle enforcement testing) allows the Department to conduct in-use vehicle enforcement testing under the protocol and testing procedures in Title 13 CCR §§ 2136—2140, incorporated by reference, after consulting with CARB if motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements fail to meet the motor vehicle emission requirements of Title 13 CCR § 1960.1. In-use vehicle enforcement testing determinations and findings made by CARB shall apply to testing conducted under this section.

Section 126.425 (relating to in-use surveillance testing) provides that 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. The in-use surveillance testing determinations and findings made by CARB shall be applicable.

In-use surveillance is a process that allows CARB to collect emissions data from the in-use California fleet to update its highway vehicle model, identify vehicles that exceed emission standards, identify problem emission control equipment and evaluate manufacturers' warranty requirements. In-use surveillance is used only as an information gathering tool that enables CARB to require auto manufacturers to make repairs and necessary design and warranty modifications. The Commonwealth will use in-use surveillance in a similar fashion. In-use surveillance will not be used to determine an individual motorist's needs to make repairs like an inspection and maintenance (I&M) program, nor does it substitute for an I&M program in this Commonwealth.

Specifically, CARB performs in-use surveillance by selecting 400 vehicles of different model year and engine class for each test cycle. The entire test cycle takes nearly a year. Each car is tested for emissions and faulty emission components. Necessary repairs are performed at no cost to the owner. Vehicles are obtained and randomly selected from citizens at large. If these citizens agree to the tests, they are reimbursed and provided with a rental car during the 5-day test period.

The Department will use in-use surveillance in the Clean Vehicles Program to determine whether a vehicle or emission component sold in this Commonwealth is responsible for excessive emissions. The Department will contract a qualified facility to perform the test.

Section 126.431 (relating to warranty and recall) specifies that a manufacturer of new motor vehicles, subject to the requirements of this subchapter, shall warrant to the owner that each vehicle shall comply over its warranty coverage period with all requirements of Title 13 CCR §§ 2035—2038, 2040 and 2041, as amended and incorporated by reference. Emission-Related Components reports, as defined in Title 13 CCR § 2144 for vehicles subject to this subchapter, must be submitted to the Department. The Emission-Related Components reports must comply with the procedures in Title 13 CCR §§ 2141—2149 and are incorporated by reference.

Subsection (c) provides that any voluntary or influenced emission-related recall campaign initiated by any automobile manufacturer under Title 13 CCR §§ 2113—2121 shall extend to all new motor vehicles subject to this subchapter, sold, leased, offered for sale or lease or registered in this Commonwealth.

Section 126.432 (relating to reporting requirements) specifies that for purposes of determining compliance with the Pennsylvania Clean Vehicles Program, commencing with the model year beginning 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 over that model year, in this Commonwealth. The final rule deletes reference to model year 2001 and replaces it with the model year beginning December 5, 2000.

Subsection (b) requires each motor vehicle manufacturer to submit to the Department, no later than March 1 of the calendar year following the close of the completed model year, an annual report of the fleet average NMOG emissions of its total deliveries for sale of light-duty vehicles in each engine family for this Commonwealth for that particular model year. The fleet average report, calculating compliance with the fleetwide NMOG Exhaust Emission Average, must be prepared according to the procedures in Title 13 CCR § 1960.1(g)(2).

Subsection (c) specifies that the fleet average reports shall, at a minimum, identify the total number of vehicles including offset vehicles sold in each engine family 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. References relating to the fleet sales of California and other states in the proposed rule is deleted in the final rule.

Section 126.441 (relating to responsibilities of motor vehicle dealers) provides that dealers may not sell, offer

for sale or lease or deliver a new motor vehicle subject to this subchapter unless the vehicle conforms to the standards and requirements contained in Title 13 CCR § 2151 and incorporates those provisions by reference.

G. *Benefits and Costs*

Executive Order 1996-1 requires a cost/benefit analysis of the amendments.

Benefits

The new motor vehicle emissions control program will contribute to the attainment and maintenance of the ozone health standard in this Commonwealth due to emission reductions from the operation of low emission passenger cars and light-duty trucks. Modeling data from the Philadelphia area indicate that daily emissions of NOx and VOCs will be reduced by 13.5 and 11.5 tons, respectively, in 2005.

Implementation of the NLEV program as an alternative compliance strategy will result in significant environmental and health benefits. Modeling shows that the NLEV program provides greater emission reductions compared to a state-by-state adoption of Section 177 programs throughout the Ozone Transport Region. (62 F. R. 44757, August 22, 1997). The NLEV program will not only reduce ozone pollution, but will also reduce emissions of particulate matter, NMOG, formaldehyde and benzene. The EPA estimates that in the year 2005, the NLEV program will reduce benzene emissions by 7 tons per day and formaldehyde by 4 tons per day Nationwide. The NLEV program should achieve NOx emission reductions of 400 tons/day in 2005 and 1,250 tons/day in 2015 on a Nationwide basis. The NLEV program should also result in NMOG emission reductions of 279 tons/day in 2005 and 778 tons/day in 2015.

Compliance Costs

The NLEV program should result in a reduction in compliance costs for auto manufacturers. Manufacturers currently design, test and produce new motor vehicles meeting Federal or California emission standards. The NLEV program should streamline the new car certification requirements thereby reducing testing costs. The amendments should reduce compliance costs for auto manufacturers by eliminating duplicative reporting and recordkeeping requirements.

Consumers in this Commonwealth could be required to pay an additional $76 to $120 per vehicle for the cost of the required control technology. However, an additional $76 associated with the purchase of a vehicle subject to the NLEV program would be less than 0.5% of the price of a new car. The EPA believes that the incremental cost for LEVs available Nationwide will be less than $76 due to factors like continued advancement in automotive pollution control technology and the demonstrated rapid price decreases in successive model years for technology newly introduced by the auto industry. The incremental estimated costs per car for LEVs in California is approximately $120. However, the EPA believes that LEV price estimates provided by CARB are usually higher than actual price differences.

Compliance Assistance Plan

Under both the NLEV program and the Pennsylvania Clean Vehicles Program compliance assistance will be provided to affected parties, primarily automobile dealers, through appropriate State trade organizations in the distribution of information to their membership. Information concerning the program will also be provided to affected consumers through AAA and Department newsletters.

Paperwork Requirements

When the Pennsylvania Clean Vehicles Program is implemented, auto manufacturers will be required to submit paperwork demonstrating compliance with the emission standards and other requirements of the Pennsylvania Clean Vehicles Program. Motor vehicle dealers, leasing and rental agencies and registrants of new motor vehicles must demonstrate to PennDOT's Bureau of Motor Vehicles that new vehicles subject to the final rulemaking meet the emission standards.

The NLEV program requires certain reports of vehicle sales from auto manufacturers to the EPA. The EPA estimates that the testing, recordkeeping and reporting requirements should be approximately 241 hours annually for each manufacturer under the NLEV program. Under the Pennsylvania Clean Vehicles Program, the incremental paperwork requirements would be considerably less since manufacturers are already required to do compliance testing under CARB requirements.

H. *Sunset Review*

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the Board to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 13, 1997, the Board submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments as well as other documents.

In preparing these final-form regulations, the Board considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committees on October 26, 1998. IRRC met on November 5, 1998, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 27 Pa.B. 6303 (November 29, 1997).

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble and are reasonably necessary to achieve and maintain the NAAQS for ozone.

K. *Order*

The Board, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 126, are amended by amending § 121.1 and by adding §§ 126.401—126.402, 126.411—126.413, 126.421—126.425, 126.431—126.432 and 126.441 to read as set forth in Annex A with the ellipses referring to the existing text of regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) These final-form regulations are effective upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 5818 (November 21, 1998).)

Fiscal Note: Fiscal Note 7-330 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

CARB—California Air Resources Board—The board established and empowered to regulate sources of air pollution in California, including motor vehicles, under California Health & Safety Code Section 39003.

CARB Executive Order—A document issued by CARB certifying that a specified engine family or model year vehicle has met applicable Title 13 CCR requirements for certification and sale in California.

CCR—California Code of Regulations.

Clean Vehicles Program—A low-emissions vehicle program established under section 177 of the Clean Air Act (42 U.S.C.A. § 7507) which implements the low emission standards for new motor vehicles and motor vehicle engines adopted by California under a waiver obtained from the Administrator of the EPA under section 209(b) of the Clean Air Act (42 U.S.C.A. § 7543(b)).

* * * * *

Dealer—A person who is engaged in the sale or distribution of new motor vehicles or new motor vehicles to the ultimate purchaser as defined in section 216(4) of the Clean Air Act (42 U.S.C.A. § 7550).

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.

* * * * *

Emergency vehicle—A fire, police or sheriff department vehicle, ambulance, blood-delivery vehicle, hazardous material response vehicle, armed forces emergency vehicle, one vehicle operated by a coroner or chief deputy coroner or deputy chief county medical examiner used for answering emergency calls. The term includes motor vehicles designated as emergency vehicles by the State Police under 75 Pa.C.S. § 6106 (relating to designation of emergency vehicles by Pennsylvania State Police), or a privately-owned vehicle specified in 75 Pa.C.S. § 102 (relating to definitions) which is used in answering an emergency call by any of the following:

(i) A police chief and assistant chief.

(ii) A fire chief, assistant chief and, when a fire company has three or more fire vehicles, a second or third assistant chief.

(iii) A fire police captain and fire police lieutenant.

(iv) An ambulance corps commander and assistant commander.

(v) A river rescue commander and assistant commander.

(vi) A county emergency management coordinator.

(vii) A fire marshal.

(viii) A rescue service chief and assistant chief.

* * * * *

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

* * * * *

GVWR—Gross Vehicle Weight Rating— The total motor vehicle weight, including load, as designated by the manufacturer of the vehicle.

* * * * *

LDT—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. For purposes of Chapter 126, Subchapter D (relating to new motor vehicle emissions control program requirements), a light-duty truck is any motor vehicle, rated at 6,000 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 vehicles—A passenger car or light-duty truck.

* * * * *

Model year—The manufacturer's annual production period (as determined under 40 CFR 85.2304 (relating to definition of production period)) which includes January 1 of the calendar year. If the manufacturer has no annual production period, the term means the calendar year.

* * * * *

Motor vehicle—A self-propelled vehicle designed for transporting persons or property on a street or highway.

Motor vehicle manufacturer—A person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles, new nonroad engines or importing these vehicles or engines for resale. The term includes a person who acts for and is under the control of any manufacturer in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles, new nonroad engines. The term does not include a dealer with respect to new motor vehicles or new motor vehicle engines received by the dealer in commerce.

* * * * *

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.

NMOG—Nonmethane organic gases.

* * * * *

New motor vehicle or *new light-duty vehicle*—A motor vehicle for which the equitable or legal title has never been transferred to the ultimate purchaser. For purposes of the Pennsylvania Clean Vehicles Program, the equitable or legal title to a motor vehicle with an odometer reading of 7,500 miles or more shall be considered to be transferred to the ultimate purchaser. If the equitable or legal title to a motor vehicle with an odometer reading is less than 7,500 miles, the vehicle will not be considered to be transferred to the ultimate purchaser.

* * * * *

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

* * * * *

Passenger car—A motor vehicle designed primarily for transportation of persons and having a design capacity of 12 persons or less.

* * * * *

Ultimate purchaser—With respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

* * * * *

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 and the heater is demonstrated to have zero evaporative emissions under any operational modes and conditions.

CHAPTER 126. MOBILE SOURCES

Subchapter D. NEW MOTOR VEHICLE EMISSIONS CONTROL PROGRAM

GENERAL PROVISIONS

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126.401. Purpose.
126.402. NLEV scope and applicability.

PENNSYLVANIA CLEAN VEHICLES PROGRAM

126.411. General requirements.
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APPLICABLE NEW MOTOR VEHICLE TESTING

126.421. New motor vehicle certification testing.
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MOTOR VEHICLE MANUFACTURERS' OBLIGATIONS

126.431. Warranty and recall.
126.432. Reporting requirements.

MOTOR VEHICLE DEALER RESPONSIBILITIES

126.441. Responsibilities of motor vehicle dealers.

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) The subchapter adopts and incorporates by reference certain provisions of the California Low Emission Vehicle Program.

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

§ 126.402. NLEV scope and applicability.

(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 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 sales mandate in Title 13 CCR Chapter 1, § 1960.1(g)(2) (footnote 9),

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

§ 126.412. Emission requirements.

(a) Starting with the model year beginning after December 5, 2000, 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, compliance with the fleetwide average in Title 13 CCR Chapter 1, § 1960.1(g)(2), 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 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) 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.

(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.

(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.

(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 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.

§ 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, 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.

§ 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.

(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 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.

(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, in-use surveillance testing determinations and findings made by CARB are applicable.

(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, §§ 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.

(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.

§ 126.432. Reporting requirements.

(a) For the purposes of determining compliance with the Pennsylvania Clean Vehicles Program, commencing with the 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 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 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 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.

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 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 ±3°.

(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.

[Pa.B. Doc. No. 98-1982. Filed for public inspection December 4, 1998, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 109]

Operation of Personal Watercraft

The Fish and Boat Commission (Commission) by this order amends § 109.3 (relating to personal watercraft). The Commission is publishing this amendment under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendment relates to the operation of personal watercraft (PWC).

A. *Effective Date*

This amendment will go into effect upon publication of this order adopting the amendment.

B. *Contact Person*

For further information on the amendment, contact John F. Simmons, Director, Bureau of Boating and Education (717) 657-4538 or Laurie E. Shepler, Assistant Counsel (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site at http://www.fish.state.pa.us.

C. *Statutory Authority*

This amendment is published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. *Purpose and Background*

The amendment is designed to update, modify and improve Commission regulations pertaining to boating. The specific purpose of the amendment is described in more detail under the summary of changes.

E. *Summary of Changes*

PWCs are the fastest growing segment of recreational boating in this Commonwealth. In 1997, the Commission registered about 21,000 PWCs, about 6% of the total number of boats. It is projected that by the year 2000, there will be over 23,000 registered PWCs in this Commonwealth.

PWC operators are involved in a disproportionate number of boating accidents. In 1996, one third of all reported boating accidents involved at least one PWC, and 61% of all reported collisions between boats involved at least one PWC. Collisions are the most common type of accident reported, and they are usually caused by the operator not keeping a proper lookout or operating the boat in a reckless manner. Many of the accidents are caused by people new to PWC operation, and nearly all of these accidents are avoidable.

Some PWC operators do not seem to realize that they are operating boats when they operate PWCs. Some do not appear to understand that PWC operators must follow the same laws and regulations as other power boaters. As a result, a disproportionate number of boating regulation violations are by PWC operators. At a recent Commission meeting, over half of all proposed revocations of boating privileges that were considered were for violations by operators of PWC. The majority of the violations were for negligent operation of watercraft. In addition, a high percentage of complaints relate to actual or perceived PWC operational deficiencies. A number of the complaints concern noise issues which, although usually not a violation of Commission regulations, could be avoided if the PWC operator understood ethical operation of these watercraft. Many of the complaints pertain to wake violations and reckless operation.

Boating ethics are an important part of PWC operation that all operators must understand to reduce conflicts on the waters of this Commonwealth. Courtesy toward others on the water and people living along the shore cannot be overemphasized. Inconsiderate PWC operators prevent others from enjoying the same rights as they do. Spraying someone on shore, jumping another boat's wake too closely or riding near someone who is fishing have created hard feelings. Once negative opinions are formed, they are difficult to change. "Perception" of wrong doing can be just as strong as actually doing something wrong. PWC operators must be responsible and understand how their activity is being viewed by others.

If everyone who operates a PWC (or any boat for that matter) took a boating course, there would still be some accidents and conflicts. However, there is no question that the information that operators learn in an approved boating course provides operators with information that they would not learn on their own. Presumably, this education will give the operator information that will result in proper boating procedures and ethics. States, such as Connecticut, have indicated that they have had a proportional drop in accidents once they initiated mandatory boating education. Therefore, the Commission published a notice of proposed rulemaking, proposing to institute a mandatory education program for operators of PWCs and to amend its regulations to provide that effective January 1, 2000, a person may not operate a PWC on the waters of this Commonwealth unless the person has obtained a Boating Safety Education Certificate.

On final rulemaking, the Commission adopted the amendment on boating safety education certification for

operators of PWCs as set forth in Annex A, effective January 1, 2000, with no exceptions based on the age of the operator. It is the intent of the Commission that there be no extension of the January 1, 2000, deadline for operators of PWCs to obtain Boating Safety Education Certificates. In addition, the Commission, on final rulemaking, added language to address the concerns voiced by boat rental businesses and dealers. There appears to be a need to provide for issuance of temporary Boating Safety Education Certificates to operators of newly purchased PWCs after some training and completion of a written test. Staff are working on some more extensive proposed changes to the regulations on boat rental businesses to accommodate these new requirements. A proposed rulemaking on this subject should be ready for Boating Advisory Board (Board) and Commission review by the fall 1998 meetings. In addition, staff will present a draft of proposed rulemaking on temporary Boating Safety Education Certificates at the fall meetings.

F. *Paperwork*

The amendment will increase paperwork and will create new paperwork requirements in that, after January 1, 2000, all persons who wish to operate a PWC on Commonwealth waters will need to complete an appropriate boating safety course and receive a certification of completion of the course. The Commission's estimate is that there are about 60,000 operators of PWCs. They will need to complete a safe boating course and apply for and receive a Boating Safety Education Certificate prior to January 1, 2000. After the initial response to the training requirement, the Commission estimates that about 20,000 operators of PWCs will seek certification each year. In addition to this paperwork requirement, enforcement of this amendment may result in an increase of applications for duplicate or replacement Boating Safety Education Certificates, which will have to be carried by operators of PWCs.

G. *Fiscal Impact*

The amendment will have no adverse fiscal impact on political subdivisions. The amendment will impose some new costs on the Commonwealth, acting through the Commission. Conducting additional boating safety courses will result in some additional costs for time and materials. Many of these courses are conducted by Commission volunteers as well as the United States Coast Guard Auxiliary and the United States Power Squadron, but there will be some additional costs for administrative functions related to the increased number of persons completing boating safety courses, as well as overtime for instructors. The Commission estimates that the additional personnel costs should total about $25,000 per year from the Boat Fund for FY 98-99 and FY 99-2000. After the initial response to the training requirements, the annual additional personnel costs should be about $10,000 per year. The additional costs for course materials will total about $7,500 per year for FY 98-99 and FY 99-2000 and $5,000 per year thereafter. In addition, issuance of approximately 50,000 additional Boating Safety Education Certificates will impose additional costs of about $20,000 in FY 98-99 and $30,000 in FY 99-2000. Thereafter, the cost of printing, issuing and distributing certificates should level off at about $15,000 per year. The Commission also expects to incur modest printing costs (less than $1,000 per year) for the issuance of temporary Boating Safety Education Certificates to operators of newly purchased PWCs. All of the costs described previously will be paid from the Boat Fund, a special fund administered by the Commission.

The amendment also will impose additional costs on the private sector. Although the number of power boats registered as rental boats by boat liveries totals only about 100 in the entire State, those businesses that rent PWCs will face a reduction in business at least in the initial stages of implementation of the mandatory education requirement. If a person cannot rent a PWC unless the person has first completed a boating safety course, some potential customers may be discouraged from renting the watercraft.

The amendment will impose additional costs on the general public. Many boating safety courses are free, but some providers do charge a fee to take a course. It is expected that the private sector (community colleges, private schools, and the like) will come forward to meet some of the demand for boating safety courses and that these costs will be passed on to the members of the general public who take a course.

H. *Public Involvement*

A notice of proposed rulemaking containing the amendment was published at 28 Pa.B. 1954 (April 25, 1998). The Commission allowed for an extended public comment period of 60 days instead of the usual 30-day public comment period. Before and during the public comment period, the Commission received 76 written comments on the proposed requirement that PWC operators possess a Boating Safety Education Certificate. Thirty-two of the comments are generally in favor of the proposal. Thirty-three suggested that this requirement should apply to all boaters; some of these comments suggested that the amendment was discriminatory toward PWC users and, if it became law, should apply to all motorboat operators. Eleven commentators have miscellaneous observations or have expressed reservations or opposition to some aspects of the proposal. Most of the reservations concern the impacts on rental watercraft. Copies of all public comments were provided to the Commissioners.

In addition, a public hearing to solicit additional public comments was held on June 23, 1998, in Harrisburg. Seven persons provided comments during this hearing. Comments were generally in favor of the proposed amendment, as long as boat liveries and boat dealers are given some opportunity to provide training and temporary certification. A copy of the hearing transcript was provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and that all comments received were considered.

(3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 93, are amended by amending § 109.3 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

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

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

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-78 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

§ 109.3. Personal watercraft.

(a) As used in this section, "personal watercraft" means a boat less than 16 feet in length which:

(1) Uses an internal combustion motor powering a water jet pump as its primary source of motive propulsion.

(2) Is designed to be operated by a person sitting, standing or kneeling rather than in the conventional manner of boat operation.

(b) It is unlawful for a person to operate, or be a passenger onboard, a personal watercraft on the waters of this Commonwealth unless the person is wearing a Type I, II, III or V United States Coast Guard approved personal flotation device. Inflatable personal flotation devices may not be used to meet this requirement.

(c) A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch shall attach the lanyard to his person, clothing or personal flotation device as appropriate for the specific vessel.

(d) A person may not operate a personal watercraft between sunset and sunrise.

(e) Subsections (b) and (c) do not apply to a performer participating in a permitted regatta, race, marine parade, tournament or exhibition or to a person preparing to participate in the event at the location and within 48 hours prior to the event.

(f) A rental business may not lease, hire or rent a personal watercraft to or for use by a person who is 15 years of age or younger.

(g) The operator of a personal watercraft with a capacity of two or less persons as determined by the manufacturer, may not tow water skiers or engage in water skiing or similar activities while operating a personal watercraft. Other personal watercraft may tow no more than one skier.

(h) Except as otherwise provided in this subpart, on or after January 1, 2000, a person may not operate a personal watercraft on the waters of this Commonwealth unless the person has obtained a Boating Safety Education Certificate as defined in § 91.6 (relating to certificates).

(1) The Executive Director may authorize boat rental businesses to issue temporary boating safety education certificates, effective for the period of rental only, to operators of rental personal watercraft if the boat rental business and the operator comply with the requirements governing the rental of personal watercraft and the operation of personal watercraft rental businesses as defined in Chapter 117 (relating to boat rental business).

(2) The Executive Director may authorize issuance of temporary boating safety education certificates to operators of newly purchased personal watercraft upon completion of training and examination the Executive Director may require.

(3) New purchasers of personal watercraft and members of their immediate families may be eligible for issuance of temporary certificates, which shall be valid for at least 90 and no more than 180 days from the date of purchase.

[Pa.B. Doc. No. 98-1983. Filed for public inspection December 4, 1998, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 155 AND 170]

Single Factor Apportionment and Student Loan Assets Exempt by Public Policy; Corporation Taxes

The Department of Revenue (Department), under the authority contained in sections 408 and 603 of the Tax Reform Code of 1971 (TRC) (72 P. S. §§ 7408 and 7603), by this order adopts amendments to § 155.10 (relating to single factor apportionment) and deletes § 170.2 (relating to student loan assets exempt by public policy) to read as set forth in Annex A.

Purpose

It has long been the public policy of the Commonwealth to improve higher educational opportunities by assisting persons in meeting the educational expenses of higher education and by enabling the Pennsylvania Higher Education Assistance Agency, other lenders and educational institutions to make loans available to students and the parents of students for educational purposes. Financial assistance to students is provided through various Federal, State and private student loan programs.

The business trust form is frequently used as a financing vehicle to increase the availability of financing for student loans. In these trust structures, a trust is established to acquire student loan notes from originators of student loans. The trust certificates of beneficial interest and debt securities issued by the trusts to raise funds to acquire student loans from originators are secured by the student loan notes acquired, related Federal and State guarantees and subsidies of the student loans, and certain other related assets commonly held by student loan trusts to facilitate the ownership, maintenance and management of, and investment in or purchase and sale of, student loans. Legal title to the student loan notes is typically held by a financial institution serving as trustee and qualifying to hold title to the loans under applicable student loan laws and regulations. The investment in student loans through the trust structures serves the public purpose of increasing liquidity in

the student loan market and increasing the total funding available to make student loans.

The act of May 7, 1997 (P. L. 85, No. 7) (Act 7) amended section 601 of the TRC (72 P. S. § 7601) so as to change the definitions of "domestic entity" and "foreign entity" with the effect of subjecting all business trusts to the capital stock tax/foreign franchise tax, effective for tax years beginning on or after January 1, 1998. This amendment caused business trusts created for the securitization of student loans to be subject to the capital stock or foreign franchise tax.

Prior to the effective date of Act 7's amendments to the definitions, the Department determined that student loan assets held or owned by an entity created for the securitization of student loans should be exempt from taxation by reason of public policy. The Department published a statement of policy in the *Pennsylvania Bulletin* adopting this policy on November 14, 1997. See 61 Pa. Code § 170.2.

The Department's regulations also list certain assets that have been determined to be exempt from taxation by reason of public policy. See § 155.10(d)(4). Therefore, the Department published a proposed amendment on November 14, 1997, to revise the list of assets exempt from taxation by reason of public policy to include student loan assets held or owned by an entity created for the securitization of student loans.

Article VI of the TRC (72 P. S. §§ 7601—7603) has now been amended by Act 45 to specifically provide a statutory exemption from taxation for student loan assets held or owned by an entity created for the securitization of student loans. This statutory exemption applies to all taxable years beginning after December 31, 1997.

Explanation of Regulatory Requirements

Currently, assets that are statutorily exempt from the capital stock and foreign franchise tax are listed in § 155.10(d)(3). For purposes of implementing Act 45, the list of assets specifically exempt from taxation by Commonwealth statute is being amended to include student loan assets held or owned by an entity created for the securitization of student loans.

Act 45 also supersedes the Department's statement of policy exempting student loan assets from taxation by reason of public policy. Therefore, § 170.2 is being deleted contemporaneous with the promulgation of this amendment.

Affected Parties

Taxpayers subject to the capital stock or foreign franchise tax may be affected by this amendment.

Comment and Response Summary

Notice of proposed rulemaking was published at 28 Pa.B. 380 (January 24, 1998). The amendment is being adopted with changes to the proposed rulemaking.

The Department received comments from the Independent Regulatory Review Commission (IRRC). The Department did not receive any comments during the public comment period. No objections or comments were raised by the Senate Finance Committee or the House Finance Committee.

IRRC had two comments. First, IRRC questioned the Department's authority to exempt student loan assets held by securitization trusts. IRRC requested the Department to cite specific statutory authority for the exemption.

Act 45 was enacted subsequent to the completion of IRRC's comments. Act 45 specifically amended section 602 of the TRC (72 P. S. § 7602) to provide that student loan assets held or owned by an entity created for the securitization of student loans are exempt from the capital stock and foreign franchise tax. See 72 P. S. § 7602. Section 601 of the TRC was also amended to provide a definition of "student loan assets." 72 P. S. § 7601.

IRRC also recommended that the phrase "or with respect to" be deleted from § 155.10(d)(4)(vi)(F) as unnecessary language. This phrase is also included within the definition of "student loan assets" adopted by the Legislature in Act 45. The Department recognizes IRRC's concern, but has elected to retain the language in the regulation for purposes of conforming the regulatory exemption with the recently enacted statutory language.

Fiscal Impact

The Department has determined that the amendment will have no fiscal impact on the Commonwealth.

Paperwork

The amendment will not generate additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The amendment will become effective upon final publication in the *Pennsylvania Bulletin*. The amendment is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the final-form regulation is Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 13, 1998, the Department submitted a copy of the notice of proposed rulemaking, published at 28 Pa.B. 380 to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

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

This final-form regulation was deemed approved by the House and Senate Committee on October 27, 1998. IRRC met on November 5, 1998, and approved the final-form regulation in accordance with section 5(e) of the Regulatory Review Act.

Findings

The Department finds that:

(1) Public notice of intention to adopt the regulation has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 469, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The regulation is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department acting under the authorizing statute, orders:

(a) The regulations of the Department, 61 Pa. Code Chapters 155 and 170, are amended by amending § 155.10 and deleting the statement of policy at § 170.2 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

ROBERT A. JUDGE, SR.,
Secretary

Fiscal Note: 15-397. No fiscal impact; (8) recommends adoption.

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 5818 (November 21, 1998).)

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE VI. CORPORATION TAXES

CHAPTER 155. CAPITAL STOCK TAX AND FOREIGN FRANCHISE TAX

§ 155.10. Single factor apportionment.

* * * * *

(d) *Exempt and taxable assets.* The following assets are exempt or taxable, as specified, for purposes of the taxable assets fraction. This listing is not exclusive.

* * * * *

(3) Certain assets are specifically exempt by Commonwealth statute. These include:

* * * * *

(v) Student loan assets that are owned or held by an entity created for the securitization of student loans, or by a trustee on its behalf, including:

(A) Student loan notes.

(B) Federal, State or private subsidies or guarantees of student loans.

(C) Instruments that represent a guarantee of debt, certificates or other securities issued by an entity created for the securitization of student loans, or by a trustee on its behalf.

(D) Contract rights to acquire or dispose of student loans and interest rate swap agreements related to student loans.

(E) Interests in or debt obligations of other student loan securitization trusts or entities.

(F) Cash or cash equivalents representing reserve funds or payments on or with respect to student loan notes, the securities issued by an entity created for the securitization of student loans, or the other student loan related assets. Solely for purposes of this exemption for student loan assets, "cash or cash equivalents" shall include:

(I) Direct obligations of the United States Department of the Treasury.

(II) Obligations of Federal agencies which obligations represent the full faith and credit of the United States of America.

(III) Investment grade debt obligations or commercial paper.

(IV) Deposit accounts.

(V) Federal funds and banker's acceptances.

(VI) Prefunded municipal obligations.

(VII) Money market instruments and money market funds.

* * * * *

CHAPTER 170. CORPORATION TAX PRONOUNCEMENTS—STATEMENT OF POLICY

§ 170.2. (Reserved).

(*Editor's Note*: This statement of policy is being deleted comtemporaneously with the amendment to rule § 155.10 because the act of April 23, 1998 (P. L. 239, No. 45) supersedes § 170.2.)

[Pa.B. Doc. No. 98-1984. Filed for public inspection December 4, 1998, 9:00 a.m.]